Case No. CO/870/2018

IN THE HIGH COURT OF JUSTICE

PLANNING COURT

BETWEEN:

THE QUEEN

ON THE APPLICATION OF MARDEN PARISH COUNCIL

Claimant

and

HEREFORDSHIRE COUNCIL

Defendant

MR HARRY SMITH

Interested Party

SKELETON ARGUMENT ON BEHALF OF THE CLAIMANT

Preliminary

Reading time: 4 hours

Time: 1 day

This skeleton should be read alongside the Statement of Facts and Grounds.

Essential Reading:

A. These Statement of Facts and Grounds dated 27 February 2018
B. Committee Report dated 6 December 2017; particularly paragraphs 6.1-6.49
C. Committee Report dated 17 January 2018; particularly paragraphs 6.1-6.50
D. Letter before action by the Claimant and Response from Defendant – tabs 29-30
E. Statement of Alison Sutton, Clerk to Claimant, dated 27 February 2018 – tab 10.
F. Committee Update Sheet – tab 20
G. Order granting permission by Garnham J dated 23 April 2018

INTRODUCTION

1. This is a judicial review of Herefordshire Council's ("**the Council's**") grant of planning permission for "*proposed two additional mobile homes, two touring caravans and the construction of a day room, associated hard standing drainage and re-aligned access track".* Reference Number: 172552 ("**The Permission**")

2. Mr Justice Garnham granted permission to all four grounds pursued.

3. The challenged decision was taken on 17 January 2018, with the vote being five votes for the proposals and five votes against. There were three abstentions – the application was approved by the casting vote of the chairman.

4. This matter relates to an original planning permission granted in 2005 ("**the original permission**"). The permission was in relation to a change of use from agricultural to a one family gypsy caravan site. The permission was subject to conditions which made it a personal permission,

   "This permission shall enure for the benefit of Mr Roland Jones and Mrs Dorothy Jones ***only and not for the benefit*** *of the land or any other persons interested in the land."* [emphasis added]

5. The original permission similarly commented on the need for this condition to make what would otherwise be an unacceptable development, acceptable in personal terms,

   "*The nature of the development is such that* ***it is only considered acceptable in this location*** *having regard to the applicant's special circumstances."* [emphasis added]

6. A new personal permission was granted on the site by approval of a variation of condition application to transfer the benefit of the permission to Mr Harry Smith and Mrs Shirley Smith. The 2006 permission contained the same conditions, simply substituting the names of Mr and Mrs Smith and the reason given for the condition was again that "***it is only considered acceptable in this location*** *having regard to the applicant's personal circumstances."* [emphasis added]

7. The proposals granted permission are to add two *additional* mobile homes, two touring caravans and the construction of a day room, associated hard standing drainage and re-aligned access track. One of the additional static caravans proposed is to enable the applicant's elderly mother-in-law to occupy the site along with the Applicant's teenage son. The second static caravan and touring caravan are proposed for the adult son of the Applicant (Hamby Smith) and his family. This is a significant further development of the site.

8. The Planning Policy for Traveller Sites (**"PPTS**") of 2015 applies to these proposals, which the Council accepts it needed to take into account.

9. The planning committee's resolution to grant planning permission was in accordance with the Officer's Report ("**OR**") and, in the absence of any contrary indication, it should be presumed that the committee adopted the reasoning set out in the OR which supported the Officer's recommendation.

10. The principal dispute surrounding the interpretation of the PPTS, as set out below, has not been tested in the courts.

11. The Claimant challenges the determination on four grounds;

    a) Members were materially misled as to the correct interpretation of the PPTS;
    b) The misconstruing of the 2005 original planning permission and the 2006 variation, and as to whether it created a lawful use for one family gypsy site;
    c) Members were misinformed and/or there was a failure to properly consider the implications of the inaccurate plans submitted by the Interested Parties;
    d) There was failure to properly investigate and ascertain the traveller status of the Interested Party and proposed occupants for the purpose of the PPTS 2015.

12. Had the Council not erred in law in the above respects, there is every likelihood that the decision would have been different. The Claim is made within the 6 weeks of

the date of the decision. A pre-action protocol letter was sent by the Claimant on 14 February 2018 and a response received 21 February 2018.

13. These issues and the questions raised around them, as recorded in the witness statement from Alison Sutton on behalf of the Parish Council, show that the legal and planning implications of the application were never properly explained to the Committee.

FACTUAL OVERVIEW

14. The factual overview has been set out in detail in the Statement of Facts and Grounds at paragraph 13-37, to be read alongside this skeleton. For brevity, details contained in the facts and grounds are not repeated.

LEGAL FRAMEWORK

15. The determination of an application for planning permission is to be made in accordance with the development plan, unless material considerations indicate otherwise: section 38(6) Planning and Compulsory Purchase Act 2004.

16. It is for the courts to decide whether a matter is a relevant consideration; but it is for the decision-maker to attribute to the relevant considerations such weight as he thinks fit. The courts will not interfere unless the decision-maker acts unreasonably in the *Wednesbury* sense (*Tesco Stores Ltd v Secretary of State for the Environment and others [1995] 1 WLR 759.*

17. Lord Millett in *Begum v Tower Hamlets London Borough Council [2003] 2 AC 430* at [99] had the following to say:

"A decision may be quashed if it is based on a finding of fact or inference from the facts which is perverse or irrational; or there was no evidence to support it; or it was made by reference to irrelevant factors or without regard to relevant factors. It is not necessary to identify a specific error of law; ***if the decision cannot be supported the court will infer that the decision-making authority misunderstood or overlooked relevant evidence or misdirected itself in law.*** *The court cannot*

substitute its own findings of fact for those of the decision-making authority if there was evidence to support them; and questions as to the weight to be given to a particular piece of evidence and the credibility of witnesses are for the decision-making authority and not the court. But these are the only significant limitations on the court's jurisdiction, and they are not very different from the limitations which practical considerations impose on an appellate court with full jurisdiction to entertain appeals on fact or law but which deals with them on the papers only and without hearing oral evidence." [emphasis added]

18. In *Hopkins Homes v Secretary of State for Communities and Local Government [2017] UKSC 37*, Lord Carnwath said, at [26]:

"Recourse to the courts may sometimes be needed to resolve distinct issues of law, or to ensure consistency of interpretation in relation to specific policies, as in the Tesco case. In that exercise the specialist judges of the Planning Court have an important role. However, the judges are entitled to look to applicants, seeking to rely on matters of planning policy in applications to quash planning decisions (at local or appellate level), to distinguish clearly between issues of interpretation of policy, appropriate for judicial analysis, and issues of judgment in the application of that policy; and not to elide the two."

Committee Reports

19. The Courts have settled the question of how committee reports ought to be read. They should not be construed as enactments but should be read as a whole and in a common-sense manner bearing in mind the fact that they are addressed to an informed readership, namely planning committees.[1] Nor should the courts impose "*too demanding a standard on such reports, for otherwise their whole purpose will be defeated; the councillors either will not read them or will not have a clear enough grasp of the issues to make a decision for themselves. It is their job, and not the court's, to weigh the competing public and private interests involved.*"[2]

[1] (Siraj) v. Kirklees MDC [2010] EWCA Civ 1286 per Sullivan LJ at paragraph 19
[2] Per Baroness Hale at paragraph 36 in R (Morge) v. Hampshire CC [2011] 1 WLR 268

20. As to how comprehensive a committee report ought to be when addressing matters the following should be noted,

"*It is important that the* ***principal issues and key information are put to them,*** [Committee Members], *but it is not necessary, or indeed desirable that the report should be exhaustive. Plainly there will always be room for dispute as to whether the report should in certain respects have been fuller, or whether certain guidance should have been expressly referred to, particularly in a development which is as large and significant as this one, but it is not for the court to second guess the officers…"*[3] [emphasis added]

21. The duty of an Officer is much broader than the duty not to actively mislead. The duty of an Officer is a positive duty to provide sufficient information and guidance to enable Members to reach a decision applying the relevant statutory criteria. But in the end the decision is a matter of fact and degree for the Members.[4] Accordingly, applications for judicial review based on criticisms of an officer's report will "*not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters which are thereafter left uncorrected at the meeting of the planning committee before the relevant decision is taken*".[5]

22. The National Planning Policy Framework ("**the Framework**") is a material consideration which provides guidance for local authorities when determining planning applications. It reiterates that the purpose of the planning system is to contribute to the achievement of sustainable development. In order to deliver on this, there is a presumption in favour of sustainable development, which is considered the "*golden thread running through both plan-making and decision-taking*".

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[3] BT Plc v Gloucester County Council 2001 EWHC (Admin) 1001 per Elias J at paragraph 117
[4] *See* comments by Pill LJ at paragraph 98 in R (Lowther) v Durham County Council 2001 EWCA Civ 781
[5] R (Oxton Farms) v Selby DC (1997, transcript) per Judge LJ

Planning Policy for Traveller Sites

23. For present purposes, the Planning Policy for Traveller Sites ("**PPTS**"), published in August 2015, provides guidance and policy approach for traveller sites. Policy A of the PPTS requires that planning authorities should "*use a robust evidence base to establish accommodation needs to inform the preparation of local plans and make planning decisions."*

24. Policy C: Sites in rural areas and the countryside, paragraph 14 provides,
"14. When assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community."

25. Relevant to this application, when determining planning applications for traveller sites, Policy H of the PPTS states at paragraph 25,

"*Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing undue pressure on the local infrastructure."*

26. Paragraph 26 goes on to add,
"*When considering applications, local planning authorities should attach weight to the following matters:*

a) Effective use of previously developed (brownfield), untidy or derelict land,
b) Sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness,
c) Promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children,
d) Not enclosing a site with so much hard landscaping, high walls or fences that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community."

27. Annex 1: Glossary section of the PPTS provides the following as to the meaning of 'gypsies and travellers':

"Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such."

28. How local authorities should interpret this policy is provided for,

"2. In determining whether persons are "gypsies and travellers" for the purposes of this planning policy, consideration should be given to the following issues amongst other relevant matters:

(a) whether they previously led a nomadic habit of life

(b) the reasons for ceasing their nomadic habit of life

(c) whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances.

SUBMISSIONS

Response to detailed Grounds of Defence

29. The following submissions seek to address points made by the Defendant in the detailed grounds for contesting the claim, in so far as they are relevant to the pursued claim (at paragraphs 1-16).

30. The cornerstone of the Council's Defence appears to be that the Council's officers 'know what they're doing'. This is precisely why it has been necessary to recite details of previous committee reports, for context but also to illustrate that officers of the Council are not infallible as to the interpretation of planning policy relating to traveller sites. Inspectors have in two recent decisions upheld the decision of this Council's planning committee when it rejected a recommendation of approval of traveller sites and overturned a delegated decision refusing a traveller site within

the County.[6] It follows that the strength the Council is able to draw from the 'expertise of its officers' is limited, especially in this context where they seek to justify just a fundamentally flawed decision.

31. The narrow vote of the committee demonstrates just how uncertain members were about the advice they were given. It is curious that the Defendant on the one hand suggests that Members themselves have all the necessary experience required to take an informed view, and yet similarly state that, pursuant to Sullivan J (as he then was) that they may be intimidated by too much detail.[7]

32. The Defendant's inability to grapple with the Site's history, as set out in the SFG, speaks volumes in its continued failure to appreciate the mistake in this decision. This is less about what was said 12 years ago, but how it has influenced the decision of 2018; how the personal permission context was misunderstood; the suggestion that a lawful gypsy site was created; no reasoning given as to why the limitations imposed in 2005/6 were no longer necessary. The failure to grasp this basic point goes to the heart of the decision to grant planning permission. Crucially, the reasons given for the grant of the 2005/2006 permission were never regarded as a matter of weight or judgement to be exercised.

33. The reference to the previous December 2017 report is primarily two fold; it lays bare the lack of 'expertise' of the officers; it also shows an entirely different set of reasoning on the same site by the same said officers. More importantly, the way the officers sought to overcome every conflict with policy again takes us back to a fundamentally flawed assumption; that there was an existing lawful use. In the 17 January 2018 OR, the same conclusion was reached via a different route. This is why it is important that the court see the evolution of the Officer's thinking.

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[6] See page 281 tab 32 and page 290 tab 33 of submission bundle
[7] R v Mendip District Council *ex parte Fabre* [2000] JPL 810 – As quoted at paragraph 6

34. The grant of permission allows a permanent change of use of the land within the red line on the application plans. However, the area which the officer's report advised the caravans would be located and on which assessment of the impacts of the application was based, is approximately one fifth of the red line area. The permission seeks to restrict occupation of the site to this small area, although it is clear that the caravans and day rooms would not fit within this area. The Defendant could not reasonably object to location of caravans elsewhere on the site because the permission granted has enabled a change of use of the land within the red line to a permanent travellers' site.

35. It is obvious the siting of six caravans within the red line, where previously two were permitted would have a significant impact.

36. Despite accepting the gypsy status of Mr and Mrs Smith in 2006, the Council concluded a personal permission was nonetheless necessary. The Defendant says that a condition (no.3 of the 2006 permission) was 'obviously designed to present business use of the site' (see paragraph 9 of the grounds of defence). The point seems to be lost on the Defendant; that stables being used to accommodate the applicant's horses *only* specifically underlines the personal nature of the permission. A condition would not be worded in this way if the site were an ordinary Gypsy & Traveller Site, which was not attached to a personal permission. Instead, a condition may have restricted the use of the stables to accommodate horses used by travellers or by occupiers of the site rather than those belonging to the named beneficiary of the permission, if, as the Defendant argues the 2005 and 2006 permissions created a lawful use as a travellers site.

37. The Defendant's position in its Grounds of Defence is that it had a shortfall in deliverable traveller sites. The GTAA which had been approved by the Council and submitted to the Planning Inspectorate as part of the Traveller Sites Development Plan Document at the time of this decision, advised that the shortfall in traveller sites could be met by the allocation of additional pitches. It would appear that in the detailed grounds of defence the Defendant seeks to suggest that there would be a continuing shortfall, contrary to what its own DPD said. The Defendant has robustly

defended the evidence base and methodology used in the GTAA during the examination process, which is not yet concluded.

38. In sum, the Defendant has either not understood the challenge against it and/or where it has, it would appear to suggest wholly contradictory answers to the points made by the Claimant. Either way, this is a flawed decision.

GROUND 1 – Members misled as to interpretation of the PPTS

39. As a starting point, the Claimant's grounds of challenge at paragraphs 52-62 are commended to the court. The contents contained therein are not repeated.

40. This ground ultimately relates to the following succinct points;

a) A complete lack of engagement with PPTS paragraph 25; the policy interpretation incorrectly treated the site as applying only to 'new traveller sites' – when the operative part of PPTS 25 is 'to new traveller site **development**' [emphasis added];

b) The Committee Report then treated the site as a place where the principle of development for a lawful gypsy site had been established; as a consequence, the OR then dismissed all conflicts with the development plan and *all material* considerations, because the site was already a lawful traveller site. This thread and understanding underpins every consideration in the Officer Report;

c) The specific context and implications of the personal permission granted in 2005 were ignored; resulting in the misleading of Members;

d) The 2005 and 2006 permissions allowed for the temporary use of the site for the siting of caravans. It envisaged that the use would end when the named occupiers no longer had a requirement for the use, whereas the

permission under challenge allowed for a significant level of operational development, which would permanently change the landscape. The level of operational development on caravan sites is usually regarded as a de-minimis element to the change of use and, although the 2005/2006 permissions allowed for the erection for a small timber stable block, this was actually never built;

e) The consequences of the aforementioned are quite serious.

41. The Defendant is wrong as to why what was said 12 years ago is pertinent; what matters for present purposes is how the Officer looking at the same site today interpreted it, in the context of a new policy landscape and the basis on which Members reached a view to grant permission. The limitations placed upon the permission granted in 2005/06 were ignored; instead what was permitted grants a permanent change of use of the land.

42. The Defendant's grounds do not seem to refute any of these points. Instead it is simply suggested that the Defendant, '*as a body that frequently deals with caravan sites, is of course very well aware that in itself a caravan site is a use of land*.' And yet, the Defendant suggests that it is entitled to consider the site as previously developed land on the basis that this site '*like almost every caravan site nowadays, includes operational development*'.[8] This plainly does not answer the points made against the Defendant. The conditions attached to this permission clearly contradict the Defendant's position. The 2005/06 permissions allowed the erection of a stable block, which was never built and an access track, but no other operational development. Crucially, if there has been additional operational development, then it was unlawful and would require a Certificate of Lawfulness to establish whether it has become immune from enforcement.

[8] Paragraph 20 of the Detailed Grounds of Defence

43. It is trite that the quoting of the relevant parts of the PPTS, and its clear misapplication are two different matters. The fundamental misunderstanding being that it applies equally to development of existing sites as well as new sites.

44. The way harm was assessed was equally flawed. With the starting point being that this was a lawful gypsy site, a 'modest degree' of harm was said to be justified. It follows that the true impact on the countryside was underestimated; partly though not wholly due to the inadequate drawings and the conditions failing to prevent the caravans from being located anywhere within the red line. If the correct starting point was applied, namely that there was no lawful use, then a proper assessment on the impact on the countryside would have been undertaken, arguably resulting in the conclusion that the harm would be much greater than what was concluded.[9]

45. In sum, this is not a modest proposal. It is for the use of 0.7 ha of land in otherwise undeveloped open countryside. If this were a residential development, it would accommodate up to 38 houses based on Herefordshire Council's Core Strategy target net density of 30-50 dwellings per hectare.[10]

GROUND 2 – approach to original 2005 / 2006 permissions

46. The Defendant's position on this point appears to be that 'all material considerations at the date of the decision' were considered. In addition to the points made in the Statement of Facts and Grounds, the following submissions are added to address the Defendant's grounds.

47. The argument that the Claimant treats the previous permission as a type of precedent that would never be accepted for 'bricks and mortar housing' is plainly wrong. An example where it would clearly be accepted for 'bricks and mortar' housing is an agricultural workers' dwelling. A condition restricting occupation to agricultural workers is standard and binding. This analogy is apt to the purpose

[9] See paragraphs 6.33 and 6.39 of Officer's Report
[10] Herefordshire Local Plan Core Strategy 2011-2031 (adopted October 2015)

pursued through the 2005/2006 permissions, where such development would not normally have been permitted and strict conditions were imposed with the intention of preventing permanency or expansion. Crucially, the following points are made.

a) The Council did not consider the original permission as a temporary one;
b) This was not assessed as a material consideration in its own right;
c) It was instead argued that the original permission permitted a permanent change of the use of land, allowing the Defendant to disregard all other material considerations;
d) This led to the wrong / mischaracterised application of the relevant passages of PPTS 25, *inter alia.*

48. The 2005/6 permission demonstrated a clear need and purpose to restrict development on the site. The precedent question here is only applicable in that the Council treated the 2005/6 permission having granted lawful use of the site. To that end, the constraints imposed on the earlier permissions were material considerations – North Wilts DC v Secretary of State and Glover (1992) JPL 955 in which Mann LJ said:

"One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so there is consistency in the appellate process…

To state that cases should be decided alike presupposes that the earlier case is alike and is not distinguishable in some relevant aspect. If it is distinguishable then it usually will lack materiality by reference to consistency although it may be material in some other way. Where it is indistinguishable then ordinarily it must be a material consideration. A practical test for the inspector to ask himself whether, if I decide this case in a particular way am I necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case?"

49. The only material difference between this application and the 2005/2006 applications was that it sought a larger number of caravans and a permanent day room, in clear conflict with the stated aim of the conditions on the earlier

permissions, which were intended to prevent operational development, permanency or expansion.

50. There was no assessment in the Officer Report as to whether this permission under challenge disagreed with the earlier permission. There was complete disregard of the specific controls imposed on the earlier permission.

GROUND 3 – Inaccurate Plans

51. The Defendant has failed to understand the point made against it on this ground. The points made at paragraphs 67 – 71 of the Statement of Facts and Grounds are not repeated. The following submissions are made in relation to the Defendant's response. First, the Defendant appears to not have understand the document on which it seems to have made a decision. The block plan showed *all* of the caravans and the day room as being confined to a small part of the site *within* the red line and not to the *whole* red line area. To that end, landscape impacts were purportedly appraised (and justified on the basis of existing lawful use).

52. Secondly, the following passages are worth noting from the Officer Report (6.33)

When appraising the scheme and whether it complies with policy requirements, ***only the impact of the proposed development should be assessed and this should be carried out in the context of the lawful use of the site.*** *The extent of the lawful site, and indeed the originally approved site, would not be enlarged by this proposal for additional caravans, dayroom and revised vehicular access, but rather they would all be situated within its confines.* ***Other than the dayroom, the development would be located between the existing static and the unclassified road to the southern boundary."*** [emphasis added]

And at 6.39:

"Overall, it is accepted that the increased number of caravans on the site would be more obvious in the landscape and this is exacerbated by their colour, which does not naturally harmonise with the landscape or sporadic built form of development.

However, views are filtered by existing hedgerows and the grouping of the caravans accords with the general pattern of the built form in the locality. ***Moreover, the siting of the additional caravans on the lower part of the site minimises the visual impact due to the levels and also by not encroaching further into the more open part of the parcel of land.*** *Planting to the west of the revised access driveway would filter views of the caravans from lane. On landscape criteria alone there is a modest degree of harm. The proposed layout is considered to be the most satisfactory option for accommodating the additional units and can be further improved with appropriate planting*." [emphasis added]

53. The red line in question was the same for the 2005/2006 permission. Landscaping planting which was supposed to be done as part of the mitigation with the original permission was never undertaken. This has since allowed for the site to be expanded in the way currently sought. The plans as originally drawn had no metric scale annotated on them, this came subsequently written by hand.

54. The Defendant's misunderstanding of this ground of the claim is the Claimant's point that, following the Council's flawed approach, the development permitted could not be confined *within* the red line. Therefore, the assessment of the impacts was understated because it was based on *all* of the development being confined to this small area. To that end, the application claimed that six caravans and a day room would fit into an area currently occupied by one static and one touring caravan.

55. The Defendant also falls back on the age old point that this was a matter of judgement. This is wrong. It was not a matter of planning judgement whether the plans were adequate.[11] Objectors had pointed this out to the Defendant which should in reality have led to the invalidation of the application. Local Planning authorities should not entertain an application that fails to comply with any legal

[11] Article 7 (2) of The Town and Country Planning (Development Management Procedure) Order 2015: "*Any plans or drawings required to be provided by paragraph (1) (c)(i) or (ii)* ***must be drawn to an identified scale*** *and, in the case of plans, must show the direction of North."* [emphasis added]

requirement as to the form and manner in which an application is made.[12] It would be wholly inappropriate, in these circumstances, to simply state that there should be some exemption to the Gypsy and Traveller community.

56. In sum, the argument is not whether the caravans would fit within the red line. Rather, whether they would fit inside the area shown on the plans on which the Defendant based its assessment of impacts – and concluded that landscape impacts were acceptable precisely because the caravans would be confined to this area.

GROUND 4 – failure to ascertain the Applicant and family's gypsy status

57. This ground goes to the heart of the gypsy status of the Applicants, the Interested Party. Given the exceptional nature of the permission granted in 2006, the Council needed to carefully consider the status of the Applicant. The decision under challenge quotes an understanding from the 2006 permission which does not fit.

58. The Defendant has similarly misunderstood the error in their action. At 6.27 of the Officer Report it is said,

"6.27 Although there is no requirement to demonstrate need, it should be noted that providing an additional static caravan and provision for the siting of a touring caravan for Hamby Smith, on an established site without expansion of its area accommodates another gypsy family ***without the need for an additional site,*** *which in planning policy might otherwise be steered to a site closer or adjacent to a settlement."* [emphasis added]

59. The point about the pitch in Shropshire is not directly relevant to the gypsy status of Hamby Smith. Rather, it is a question of whether the Council had carried out a proper check they would have found that he did not need a pitch on this particular site. The rationale in the passage quoted above suggests that if he were not granted

[12] See Section 327A Town and Country Planning Act 1990; inserted by Section 42 Planning & Compulsory Purchase Act 2004

permission for a pitch here, he would need permission for a pitch elsewhere.

60. Policy required expects the Defendant to check, amongst other matters, the availability (or lack) of alternative accommodation for the applicants when determining applications for travellers' sites.[13] There was evidence submitted to the Council with an anonymous objector showing that neither Mr Hamby Smith, his family nor his mother-in-law had any requirement for the pitches, despite being the intended occupiers. The Council failed to act on this evidence, disregarding policy requirement.[14]

61. The Council needed to know and follow up as necessary any information in relation to alternative pitches for Hamby Smith. This had direct consequences in relation to conditions imposed first in relation to the removal of one caravan, and subsequently what was to replace it and how this was to be enforced.

62. The Defendant has fundamentally not understood the details and the intricacies of the background relating to this site and the people currently occupying it.

CONCLUSIONS

63. In summary, contrary to what the Defendant seeks to maintain, this is not planning permission related to a family living together. It is a permission for an unrestricted traveller/gypsy site for six caravans and a day room.

64. The decision under challenge follows the original permission in 2005 / 2006 which was permitted under very specific circumstances, and with which the one granted in 2018 has little resemblance. This matter goes beyond a question of judgement as maintained by the Defendant.

[13] Paragraph 24(b) of the Planning Policy for Traveller Sites 2015
[14] See page 208, tab 19 of submission bundle

Hashi Mohamed 24 June 2018

Barrister, **No5 Chambers**

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SKELETON ARGUMENT ON BEHALF OF THE CLAIMANT

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