

ANN MARIE DELANEY EMMA SUZANNE DELANEY  
MARGARET ANN BRIEN v. SECRETARY OF STATE FOR  
ENVIRONMENT and LONDON BOROUGH OF BROMLEY [1999]  
EWCA Civ 1590 (16th June, 1999)

IN THE SUPREME COURT OF JUDICATURE SLJ 99/5449/4

COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM THE QUEEN'S BENCH DIVISION  
CROWN OFFICE LIST  
(Mr. Nigel MacLeod QC)

Royal Courts of Justice  
Strand  
London WC2

Wednesday, 16th June 1999

B e f o r e :

LORD JUSTICE LAWS

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ANN MARIE DELANEY EMMA SUZANNE DELANEY  
MARGARET ANN BRIEN  
Applicants

- v -

(1) SECRETARY OF STATE FOR THE ENVIRONMENT (2) THE LONDON BOROUGH OF  
BROMLEY

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MR. A. MASTERS (instructed by Messrs Lance Kent & Co., Berkshire, Herts) appeared on behalf of the  
Applicants.

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J U D G M E N T

( As approved by the Court )  
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LORD JUSTICE LAWS: This is an application for permission to appeal against a judgment of Mr. Nigel MacLeod QC, sitting as a deputy judge in the Crown Office List, by which, on 29th January 1999, he dismissed the applicants' appeal against a decision of the Secretary of State's Inspector on 12th January 1998, when she dismissed an appeal to the Secretary of State against the local planning authority's refusal to grant planning permission for a change of use from disused agricultural land to residential use and for the siting of four mobile homes. The Inspector also had to deal with appeals against two enforcement notices which of course raised a deemed application for planning permission. It is only the refusal of planning permission which is in question in these proceedings.

The applicants are gypsies within the meaning of the Caravan Sites Act 1968, though of course all or some of the obligations imposed by that statute have now been abrogated. The site in question lies within a Green Belt and also within an Area of Special Landscape Character. It is situated a short distance from Biggin Hill Airport and is located in rolling countryside, primarily in agricultural use. It is towards the bottom of a steep sided chalk valley with woodland adjoining its east and west boundaries.

In the context of the planning permission application, the Inspector identified the main issue for decision in paragraph 14 of her decision letter:

"I consider the main issue to be whether the very special circumstances claimed by the appellants on the basis of their status as gypsies and their medical and educational needs, are sufficient to outweigh the presumption against inappropriate development in the Green Belt together with any additional harm which might be identified in terms of the purposes, openness and visual amenities of the Green Belt and the character and quality of the Area of Special Landscape Character."

A number of points were taken before the deputy judge but Mr. Masters before me has urged one only, and has done so with considerable skill and economy. This argument consists in the proposition that the Inspector adopted a general approach to the case which was wrong in principle. What is submitted is that the Inspector was in error to deal with the planning permission application upon the basis enjoined by section 54A of the Town and Country Planning Act 1990. This is the section which introduced what has been called a plan led approach to planning appeals. The section states shortly that where, in making any determination under the Planning Act, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise. Mr. Masters' submission is that the Inspector ought to have held that this provision had no application on the facts of this case because the material Development Plan contained no policies relevant to the location or establishment of gypsy sites.

The relevant plan is the Unitary Development Plan. It is asserted that that Plan was out of date and, as I have said, contained no material policies relating to gypsies.

In paragraph 15 of her decision letter the Inspector says this:

"The site lies within Green Belt defined on the Proposals Map in the approved Unitary Development Plan ... for Bromley under Policy G1. Policy G2 of the UDP states that within the Green Belt, approval will not be given, except in very special circumstances, for the construction of new buildings or for the change of use of existing buildings for purposes other than agriculture and forestry, outdoor sport, cemeteries, institutions standing in extensive grounds, or other uses appropriate to a rural area. Where approval is given for the construction of associated new buildings, these should not have an injurious effect on the visual amenities of the Green Belt by reason of their siting, materials or design. The site lies also within an Area of Special Landscape Character defined on the UDP Proposals Map. Policy G12 states that within Areas of Special Landscape Character defined on the Proposals Map, the Council will seek to conserve, improve and enhance the individual quality and character of each area, protecting nature conservation interests, archaeological and landscape features, skylines and views where appropriate."

It is uncontroversial that the Unitary Development Plan does not contain policies for the provision or location of sites for gypsies. That was asserted to the Inspector, as recorded by her in paragraph 16 of the decision letter. She there also records what Mr. Masters says should be the consequence, namely that the appeal should be determined "on its merits in the light of all the material considerations." The point is of course that such an approach would differ from the approach enjoined by section 54A, because it would not, to use the argot, be plan led.

In paragraph 17 of the decision letter the Inspector refers to Circular 1/94, to which Mr. Masters has also referred. That is a circular issued on 5th January 1994 and headed "Gypsy Sites and Planning". Mr. Masters referred to a number of paragraphs, notably 9-12 which I need not read. They indicate or summarize the kind of matters that the Development Plan might contain so as to elaborate policy relating to the provision and location of gypsy sites, following the abrogation of the duties previously contained in the Act of 1968, to which I referred in passing. However, I think it notable that circular 1/94 also contains this statement in paragraph 13:

"As a rule it will not be appropriate to make provision for gypsy sites in areas of open land where development is severely restricted, for example, Areas of Outstanding Natural Beauty, Sites of Special Scientific Interest, and other protected areas. Gypsy sites are not regarded as being among those uses of land which are normally appropriate in Green Belts. Green Belt land should therefore not be allocated for gypsy sites in development plans. ..."

PPG 2 gives guidance on Green Belt policy. The deputy judge said this:

"It is also clear, in my judgment, that the policies to which the Inspector referred in paragraph 15 of the decision letter (the Green Belt policy and the policy relating to the Area of Special Landscape Character) were highly relevant policies which she took into account, and that in taking them into account she properly acted in accordance with section 54A of the Act and also she approached the proposal before her in accordance with the national policy."

At page 10E he said this:

"In my judgment, it is not possible to find that the development plan policies set out in paragraph 15 of the decision letter (to which I have just referred) are other than relevant. They plainly are relevant and it was necessary for the Inspector to make her decision on the basis that there were relevant development plan policies. Section 54A was the appropriate approach for her to take."

It seems to me first necessary to recall the obvious fact that section 54A is couched in mandatory terms. There can be no question of its being applied or disapplied as a matter of discretion. The only circumstances in which it would properly be disregarded would be a case where it has no application at all, because, as Mr. Masters submitted, there is no policy contained within the Development Plan that is relevant to the application in question, or, possibly, where, as is stated in one of the circulars, policies pull in different directions, so that the Development Plan casts no light and gives no guidance on the question whether permission should be granted.

However, in my judgment, with respect to Mr. Masters' argument, this is obviously not such a case. The policies relating to the Green Belt and the Area of Special Landscape Character, which are referred to in paragraph 15, are unarguably relevant to an application for development upon land which is both within the Green Belt and within an Area of Special Landscape Character. Moreover, though this is not necessary for my decision, it is to be noted that Circular 1/94, at least by virtue of what is there said in paragraph 13, is consistent with the Unitary Development Plan, though I emphasize that I accept that there are no express policies in the Unitary Development Plan relating to gypsy sites. Mr. Masters would only have any chance of success on this application if section 54A fell to be disregarded in what I may call a gypsy case, by reason only of the fact that the Development Plan in question contained no policies expressly relating to gypsies. That seems to me an impossible argument. The Unitary Development Plan, out of date though it may have been, must have given a proper steer to the case, and the Inspector was right to make it her starting point pursuant to section 54A.

Mr. Masters has not developed the other points that were advanced before Mr. Nigel MacLeod QC and are summarised in his skeleton argument. I will not therefore deal with them at length at all. Some emphasis was placed in the skeleton argument, and indeed before the deputy judge, on a review paper, which it was said put these applicants in a special position because it made reference to them and their families. But, for reasons given by the Inspector, it seems to me that, in the end, that did not advance matters in the applicants' favour. I need not, however, go into it further.

For the reasons I have given, this application falls to be dismissed.

Order: Application for permission to appeal refused.