JOHN CLIFFORD EATSON v. PAMELA EATSON v. SECRETARY OF STATE FOR ENVIRONMENT v. SOUTH BEDFORDSHIRE DISTRICT COUNCIL [1997] EWHC Admin 966 (3rd November, 1997)

IN THE HIGH COURT OF JUSTICE CO/1737/97; CO/1847/97

QUEEN'S BENCH DIVISION
(CROWN OFFICE LIST)

Royal Courts of Justice
Strand
London WC2

Monday, 3rd November 1997

B e f o r e:

MR GERALD MORIARTY QC
(Sitting as a Deputy Judge of the Queen's Bench Division)

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JOHN CLIFFORD EATSON

-and- Appellants

PAMELA EATSON

-v-

THE SECRETARY OF STATE FOR THE ENVIRONMENT
1st Respondents

-and-

THE SOUTH BEDFORDSHIRE DISTRICT COUNCIL
2nd Respondents

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MR T JONES (instructed by Lance Kent & Co., Berhamsted, Herts HP4 3DX) appeared on behalf of the Appellants.

MR J KARAS (instructed by the Treasury Solicitors, London SW1H 9JS) appeared on behalf of the First Respondents.

THE SECOND RESPONDENTS did not appear and were unrepresented

J U D G M E N T
(As approved by the Court)

Monday, 3rd November 1997

1. MR GERALD MORIARTY QC: In these proceedings Mr and Mrs Eatson apply for leave to appeal under section 289 of the Town and Country Planning Act 1990 against the dismissal by the Secretary of State for the Environment, by his Inspector, of their appeal against an Enforcement Notice. They also apply under section 288 of the 1990 Act to quash a decision in the same letter dismissing their appeal under section 78 of the 1990 Act against the refusal by the local planning authority (the second Respondents) of their application for permission to develop land by, in effect, continuing to live in their caravan or mobile home and trailer caravan on the land at their own Kingswood Nursery, Dunstable, Kingswood in Bedfordshire. They have lived on that land for some time and at an earlier stage of the history they were given a temporary planning permission to live there. The period for which they were permitted to live there expired and the enforcement proceedings followed. The nature of those proceedings was, quite simply, that there was an alleged breach of control by failure to comply with the relevant condition of the permission.

2. The Secretary of State made his decision in the letter of 21st April 1997. After dealing with the nature and requirements of the Enforcement Notice and some other preliminary matters, including the correction of that Enforcement Notice to refer to caravans rather than mobile home and touring caravans, the Inspector continued in the conventional away in paragraph 7 and paragraph 8 to describe the appeal site. The Appellants carry on a business there of a nursery.

3. The first question that I have to decide is whether or not to give leave to appeal against the Enforcement Notice. It was agreed that I should hear the facts and arguments de bene esse . It seems to me that having heard those arguments there is an arguable point and, therefore, I give leave. This judgment will treat, as the arguments did, the issues arising on the Enforcement Notice appeal and the section 288 application together.

4. In paragraph 10 of the decision letter the Inspector said that having regard to the development plan and national planning guidance, he considered that the main issue was whether there were very special

circumstances which could justify making an exception to the normal, firm presumption against inappropriate development within the Green Belt. He prefaced that definition of the issue by recording that it was accepted on behalf of the Appellants that the development then under consideration by him was not "appropriate" in terms of Green Belt policy. He went on, having defined the issue, to say this:

"Although there is clearly some overlap, the topics to be considered under the heading of very special circumstances may be categorised broadly as follows: (1) gypsy status and the level of provision or opportunities in the locality for gypsy accommodation; (2) the needs of the horticultural enterprise; (3) personal circumstances, including considerations arising "from Article 8 of the European Convention on Human Rights."

5. In relation to the first of those three topics the Inspector, first of all, considered the question of gypsy status. He reached his conclusion on that point in paragraphs 11 and 12 of the decision letter. He concluded that the gypsy status of the Appellants had not been lost. He said that it followed that Circulars 1/94 and 18/94 were relevant and had to be considered. He qualified his findings on that in these words:

"... the nature of the appellants' present lifestyle has also to be taken into account, and I refer to this further below."

6. The Appellants' circumstances were such that they, although they were gypsies, required or wished for some element of the permanent settlement in their lives.

7. The Inspector turned next to the second limb of his first topic, that is "the level of provision or opportunities in the locality for gypsy accommodation". He dealt with that in paragraphs 12, 13, and 14. He dealt with the question of need specifically in paragraphs 15 and 16, and with the personal difficulty of the Appellants in finding another private gypsy caravan site if they had to leave their present one in paragraphs 17 to 20, with which I think one also has to read paragraphs 21 and 22. In paragraph 21 he dealt with the question of visibility of the site which is relevant to Green Belt consideration, and in paragraph 22 he noted in favour of the Appellants that there was very little public opposition to their proposals. He took that into account, but he said that it did not alter his opinion about the planning merits of the case, nor did it outweigh the Green Belt policy objections he had then identified.

8. He then went on to deal with his second topic, "horticultural need", in paragraphs 23, 24, and 25, to which I need not make further reference. He described the circumstances in rather more detail and he concluded that the nursery business added very little weight to the case based on very special circumstances.

9. Finally, under the heading of the third topic, "personal circumstances", which he dealt with in paragraphs 26 to 28 and, also, it seems to me, in paragraphs 30 and 31, he looked specifically at the medical condition of Mr Eatson, who suffers from chronic bronchitis and asthma, and Mrs Eatson, who suffers from diabetes and has to have injections twice a day. He considered those circumstances in those paragraphs. I have included my reference to paragraphs 30 and 31 because in paragraph 30 he recorded that he had been referred to the case of Buckley v United Kingdom [1995] JPL 633 which concerned Article 8 of the Convention. He said specifically:

"If these appeals are dismissed the appellants will have to move from their land on which they are now living, (albeit that their residence is in breach of the conditions on the temporary planning permission). Any interference with rights set out in the convention needs close consideration."

10. Then, in paragraph 31, he had this to say:

"I have set out in detail in the previous paragraphs conclusions about the various special circumstances put forward by the appellants. In my judgement these circumstances, whether taken separately or cumulatively, are not an adequate basis on which to allow an exception to Green Belt policy. That conclusion stands, even when it is fully borne in mind that, as a consequence, the appellants will have to cease residing on the site. In coming to the view that planning permission should not be granted I have also had regard to the well-known comments, about 'the human factor' made by Lord Scarman in Westminster City Council v Great Portland Estates [1985] AC 661. (That factor, and the points arising from the European Convention on Human Rights, will however be taken into consideration again under ground (g)). My overall conclusion on the main issue is the appeal on ground (a), the deemed application, and the Section 78 appeal should be dismissed."

11. The criticisms that are made of that conclusion can be put, it seems to me, under two broad heads. Before I come to those criticisms, which Mr Jones has helpfully stated for me, I should record that there is a general agreement on the principles on which this court should approach the consideration of the criticisms made of this decision. Those principles are set out helpfully in the skeleton of Mr Karas for Secretary of State. His statement of the principles has to be modified in the way suggested by Mr Jones, and it is agreed that that modification should be made. I can deal with the matter quite shortly in that in relation to paragraph 2.3 of Mr Karas' statement, the words "... the Court should not..." should be deleted and replaced by 'the court shall not be bound to quash the Inspector's decision if on the facts as found, his decision would inevitably have been same (notwithstanding the error)'. That is a modification based an Ord.55, r. 7(7). Corrected in that way, as I understand it, Mr Jones has no complaint of that very summary statement. Each of these propositions is supported by reference to authority. The other modification that has to be made is in relation to paragraph 2.4, where it is agreed that Mr Karas' summary should be deleted as a whole and replaced by an extract from the headnote in PG Vallance Limited v Secretary of State for the Environment [1993] 1 PLR 74, where there is a statement per curiam set out in the headnote based on passages on page 79D to 80B. With that substitution that summary of principles is, as I understand it, acceptable to both parties and I, therefore, approach the matter in that way.

12. The first issue for the court, in my view, arises out of the need to apply the Green Belt policy, which is well established, and the policy relating to a provision for gypsy accommodation as set out in Circular 1/94. That involves consideration of both the proper interpretation of the policies and their application and of the broader issue of natural justice. The criticisms that are made turn upon the Inspector's passages dealing with these matters:

"13. For the appellants, heavy reliance was placed on Circular 1/94. On the basis of this document it was argued that the planning system has to recognise the need for accommodation 'consistent with gypsies' nomadic lifestyle'. Particular reference was made to paragraphs 9-12, and 21, of the Circular. It was pointed out that the current development plan (The Bedfordshire Structure Plan and the South Bedfordshire Local Plan) does not, in the words of the Circular, '... Identify locations suitable for gypsy sites' or set out '... clear, realistic criteria for "suitable locations, as a basis for site provision policies.'

14. That is so. However, even if the development plan were fully in accord with the Circular, it is highly unlikely that the appeal site would be among the pieces of land identified for a gypsy caravan site, either on a 'site-specific' or 'criteria' basis. That is because the Circular confirms that gypsy sites are not regarded as among the uses normally appropriate in Green Belts, so any 'allocation' of the appeal site would probably require a redrawing of the Green Belt. Therefore, as things stand in relation to the Green

Belt in Bedfordshire, any failure of the development plan to 'comply', with Circular 1/94 would not be remedied by a permission on this site.

15. The level of provision 'on the ground', as against 'in the development plan', was also discussed at the inquiry. In South Bedfordshire there are two local authority sites, on which from time to time vacancies do arise. Bearing in mind the last sentence of paragraph 21 of Circular 1/94, I would not regard these sites as a reason for refusing permission on the appeal site. If the appeal site were otherwise acceptable, the mere fact that pitches were available on existing official sites would not be a sufficient reason for rejecting the proposal.

16. There was disagreement about the overall level of need for additional gypsy accommodation in the district. Whilst I have taken the appellants' survey, and the 'traveller education report', into account, it appears to me, on the basis of the regular six-monthly official counts, that the level of need for additional authorised sites in the district is low. It follows that need in general (as against the need and circumstances of these particular appellants) is not a basis for granting permission, as an exception to the development plan.

17. A linked issue is the extent of the difficulty the appellants personally would have in finding another private gypsy caravan site, if they had to leave their present one. I accept it would be difficult to find a site in South Bedfordshire. That is mainly because the Green Belt covers most of the district's rural area. What I do not accept is the argument that because the Green Belt in the district is so extensive there should be a "greater willingness to allow exceptions to Green Belt policy. The boundaries of the Green Belt were fixed with the specific intention of limiting development within those boundaries, and the consequence is that those seeking opportunities for many types of development, including caravan sites, must be prepared to look elsewhere. The appellants are local people, but it would not be unreasonable, in my view, to expect them at least to search for sites elsewhere in Bedfordshire, or in districts bordering on South Bedfordshire.

...

20. In summary on this topic, and taking all the above into account, I conclude that alleged inadequacies in the development plan, the general need for gypsy accommodation, and the problems for the appellants in finding another site are quite inadequate to justify setting aside clear Green Belt policies. I note here also that there is nothing in the emerging 'Bedfordshire 2011' plan which would affect this conclusion."

13. On the question of the provision for gypsies Mr Jones submits that paragraphs 13 to 16 show a failure by the Inspector to recognise that the need for accommodation both for gypsies, in general, and for the Appellants, in particular, is a land-use planning matter and is a material consideration as such rather than a mere personal circumstance that could often "be given direct effect as an exceptional or special circumstance'.

14. In considering very special circumstances, as the Inspector set out to do on the basis of established Green Belt policy, it seems to me that no circumstances that are relevant are to be excluded. Therefore, it is not necessary for the court to have regard, in this context, to the extension of the definition of potential material considerations that were identified by Lord Scarman in

R v Westminster City Council v Great Portland Estates PLC [1985] 1 AC 661 at 669H to 670G. I approach the matter on the footing that any personal circumstances are capable of being relevant to the consideration of very special circumstances. Broadly, it seems to me, that that is what the Inspector set out to do and I find no fault in his approach to these matters. Mr Jones submits next that he failed to appreciate or interpret the significance of those passages in Circular 1/94 which deal with the duty of a planning authority to make provision for gypsy accommodation in their plan, and how that duty is to be carried out where the other important planning policy relating to Green Belts is also to be taken into account.

15. Mr Jones relied on the statement of the intentions of the Circular in paragraph 1, that is:

"...

- to provide that the planning system recognises the need for accommodation consistent with gypsies' nomadic lifestyle;

- to reflect the importance of the plan-led nature of the planning system in relation to gypsy site provision ...;

- to withdraw the previous guidance indicating that it may be necessary to accept the establishment of "gypsy sites in protected areas, including Green Belts."

16. The Circular says in paragraph 9:

"After the proposed repeal of this duty, local planning authorities should continue to indicate the regard they have had to meeting gypsies' accommodation needs. Repeal of the statutory duty will make it all the more important that local planning authorities make adequate gypsy site "provision in their development plans, through appropriate use of locational and/or criteria-based policies. Structure plans and Part I of unitary development plans should continue to set out broad strategic policies, and provide a general framework of site provision. Local plans and Part II of unitary development plans should continue to provide detailed policies.

...

12. Local plans and Part II of unitary development plans should wherever possible identify locations suitable for gypsy sites, whether local authority or private sites. Where this is not possible, they should set out clear, realistic criteria for suitable locations, as a basis for site provision policies. They should also identify existing sites which have planning permission, whether occupied or not, and should make a quantitative assessment of the amount of accommodation required. A tradition of sites occupied by gypsies and the demonstration of a local need will help authorities to make proposals for sites in suitable locations.

13. As a rule it will not be appropriate to make provision for gypsy sites and 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. PPG2 gives guidance on Green Belt policy."

17. The Circular goes on to consider site characteristics and services and, quite plainly, (and it is common ground) refers to sites which are suitable for multiple accommodation and sites which are appropriate for only the single or relative occupation by, perhaps, one or two people or families.

18. Mr Jones also relied upon the passage under the sub-heading of "Enforcement".

26. If planning permission is required but not obtained for a gypsy site and the local planning "authority are considering possible enforcement action, they should be guided by the policy advice in PPG 18 ('Enforcing Planning Control'). Local planning authorities should regard gypsies in the same manner as small businesses when considering possible enforcement action. The existence or absence of policies for gypsy sites in development plans could constitute a material consideration in matters of enforcement."

19. Mr Jones submits that the Respondents' intentions are as set out in the Circular. He contends that if decision-makers fail to recognise the materiality of the first main intention (paragraph 1 of the Circular) and fail to interpret correctly the policies designed to give effect to that intention, while recognising the materiality of the third main contention, an imbalance will be created which will not give effect to the overall intention of the Circular. He rightly emphasises that the principal guidance on the meeting of need is contained in paragraph 12. Local plans should wherever possible identify locations. If they do not they should set out clear, realistic criteria for suitable locations as a basis for site provision policies.

20. In this case it is common ground that the local plan did not comply with the guidance in either of those respects. It is not clear from the papers when the plans was formulated, but it seems to have been adopted in 1995, so it may well have been formulated before the Circular was issued. However, the Inspector does note, in the context of the dating of the plans in paragraph 20, "that there is nothing in the emerging 'Bedfordshire 2011' plan" which would affect his conclusion on the justification or lack of justification for setting aside the clear Green Belt policies. Plainly, the Inspector had in mind the importance of considering the date of any relevant plan.

21. Mr Jones rightly says that if a plan does not comply with the guidance for any subject, then that is a material consideration which the Inspector should take into account. In my view, on a fair reading of this letter, the Inspector did take that non-compliance into account in the consideration he gave to the question of need for gypsy accommodation. Mr Jones then submits that the correct interpretation of the Circular (paragraph 13, in particular) is as follows. He says that where the authority in its plan complies with the requirement of paragraph 12 and identifies locations for gypsy sites, the third sentence of paragraph 13 which deals with allocations of land applies and that the Green Belt land should not be allocated. Therefore, if the authority wishes, in order to meet the need, to allocate land that is in the Green Belt, it should remove it from the Green Belt. That seems to me to be a wide-ranging submission in the context in which it is made. This is a decision by an Inspector on an Enforcement Notice appeal and on an appeal against the refusal of planning permission for one site. It seems to me that the Inspector is not required to consider the question posed for the local planning authority as to where the boundary of the Green Belt should be drawn in his consideration of the material put before him at a planning inquiry. However, I need not make any further comment on the broad proposition that Mr Jones has put forward as to whether it is right or not. I simply say that the possibility of removing land from the Green Belt cannot have much bearing, if any, on the course of action appropriate for an Inspector at the inquiry in this case.

22. Mr Jones secondly contends that if the local planning authority, in its plan, has not made provision for sites but has set out criteria, then the third sentence which deals with allocation plan does not apply, but

that the second sentence of paragraph 13 should be qualified by the word "normally". Thirdly, he says, that where, as in South Bedfordshire, the plan does not either identify sites or define criteria, the third sentence does not apply and the second sentence does, but should not be read so as to negate the main intention that the planning system recognises the need for accommodation consistent within gypsies' nomadic lifestyle. In my submission, that broad proposition goes too far. I see no justification for the proposition that the third sentence in paragraph 13 does not apply. It seems to me highly unlikely that in any planning decision such as that of which I have to consider in these proceedings it would be appropriate to consider the allocation of Green Belt land as an allocation to make good what is not provided for in the local plan. To do that would, it seems to me, be wholly inconsistent with Green Belt policy. That policy starts from the recognition of a limited range of appropriate development, and if that test of appropriateness is not met, requires there to be very special circumstances before any permission is given.

23. The argument of Mr Jones goes on to assert that the first sentence of paragraph 14 of the decision letter accepts that the plan did not comply with Circular 1/94. There is no difficulty about that; the plan plainly did not. The second sentence, again accurately, Mr Jones says records that the Inspector took the view that it was highly unlikely that the appeal site would be identified for a gypsy caravan site within either limb of paragraph 12 of the Circular 1/94. The Inspector seems to me to have been justified in that comment. The criticism made is that the following sentences in the decision letter at paragraph 13 mixed the present situation, of non-compliance with the guidance in the Circular, with the future situation in which there would be compliance. That proposition does not seem to me to be consistent with a true and fair reading of paragraph 13 of the decision letter. The Inspector is saying that it is unlikely that whatever was provided for in the plan would enable this site to be either nominated or identified as an appropriate site for gypsy planning or that it would meet any likely criteria for that purpose. In my submission the distinction between the current situation, where there is no local plan provision of either sort, and some future situation which the local plan does so provide is perfectly clear. The Inspector is saying that it was not dealt with now and if it were dealt with this site would not qualify. Paragraph 13 seems to me clear and I do not find any confusion between present non-compliance and future compliance in what the Inspector had in mind.

24. The argument goes on that the Inspector in the final sentence of paragraph 14, which is --

"Therefore, as things stand in relation to the Green Belt in Bedfordshire, any failure of the development plan to 'comply' with Circular 1/94 would not be remedied by a permission on this site."

-- is saying no more than a mere statement of the obvious, using a phrase taken from authority. Mr Jones says that that shows an understandable error, that is a failure to recognise that by reducing need, permission for this one site would help to meet one of the main objectives. He says that that is a wrongful mix of policy allocation and development control. He bases that, quite plainly, on the proposition that making individual provisions for one person or one family is a meeting of need.

25. In my view, that, again, is a misconception. The Inspector is quite simply saying, "as things stand" in relation to the Green Belt, this is Green Belt land in Bedfordshire. He is therefore not going to be able to take any step towards remedying the lack of policy by giving permission for this one site. It seems to me that is perfectly clear. It is a question for his judgment as to whether the provision on one site is a meeting of need. There is nothing abstract about it at all in my view.

26. The Inspector went on to look at the level of provision on the ground in paragraph 15. He recorded in paragraph 16 that there was a disagreement about the overall level of need and he held (and, as I understand it, he is not criticised for holding) that the level of need for additional authorised sites in the district was low. Therefore, his conclusion on that aspect of the matter was that need, in general, was not a basis for granting permission as an exception to the development plan or, indeed, as an exception to the Green Belt policy. He went on to consider what he called a "linked issue", the extent of the difficulty that the Appellants personally would have in finding another private gypsy caravan site, if they had to leave their present one. He accepted that it would be difficult to find a site in South Bedfordshire. He gave a reason for that, which is easily understood and, I do not think, in any way criticised as such. He said that it is because the Green Belt covers most of the district's rural area. He then dealt with a particular argument which had been put to him in this way. He said:

"What I do not accept is the argument that because the Green Belt in the district is so extensive there should be a greater willingness to allow exceptions to Green Belt policy."

27. He pointed out that the boundaries of the Green Belt had been fixed with a specific intention of limiting development, and that the consequence was that those seeking opportunity for many types of development, including caravan sites, must be prepared to look elsewhere. He recorded, and plainly took into account, the fact that the Appellants were local people. In the context in which he was dealing with it, he said:

"... it would not be unreasonable ... to expect them at least to search for sites elsewhere in Bedfordshire, or in districts bordering on South Bedfordshire."

28. He made no finding that they had or had not made any search, and Mr Jones, perfectly properly, pointed out that it had never been part of the planning authority's case that there were sites elsewhere or that the Appellants should have looked for them. In doing so he was dealing with the natural justice aspect of the matter, but the need aspect of the matter seems to me to be perfectly clear. What is said is that the reference to "being prepared to look elsewhere" brought into play a consideration which the Appellants had no reason to expect they would have to meet and that they were not given an opportunity of dealing with that consideration.

29. In my judgment that, again, is not a fair reading of this passage in which the Inspector is dealing with the argument that he identifies. He is really saying no more than must be obvious to anyone seeking to obtain permission to develop in the Green Belt. The odds are heavily against being granted such permission, for reasons which are perfectly clear. If any case of need is being made, it is always made by reference to what is available or rather what is not available within the ordinary parameters for consideration in area and type of accommodation. It seems to me that in its context there is nothing unjust about pointing out, as the Inspector did, that where the Green Belt is extensively drawn to cover the relevant rural area within the planning authority's district. It is to be expected that adequate material should be put forward by the Appellants for planning permission, that is the Appellants should include evidence of accommodation not just within the Green Belt or within the area of the planning authority. I find no unfairness in the fact that the Inspector thought that that was a reasonable thing for the Appellants to do, notwithstanding that he had found them to be local people, as they were.

30. In my judgment, there is no error in paragraph 16 and 17 taken together, such as is suggested, either in relation to what the Appellants could reasonably have been expected to have done or to have informed the inquiry about. Certainly there is no special requirement imposed on a gypsy in relation to the argument

that was put. There are many others, besides gypsies, it seems to me, who are likely to be living in caravans or otherwise less than permanent accommodation on a small holding in the Green Belt to whom exactly the same considerations will apply. I find it difficult to follow why the consequences of the application of Green Belt policy in the way in which it is to be applied in accordance with the law should be regarded as in some way less humane for gypsy occupants of caravans than for other occupants of caravans or inadequate accommodation.

31. In my view, someone seeking to gain permission for development in the Green Belt must start by establishing very special circumstances and that may well mean, and usually does mean, the exclusion of reasonable alternatives. There is nothing unexpected in that, in my view, and I reject the criticism that is made of the Inspector's approach, both in relation to the general proposition as to need and in relation to the specific proposition that there is greater need in the case of the gypsy seeking to apply for permission.

32. The argument goes on to paragraph 20 of the decision letter where the Inspector summarised his view on the topic identified under the heading of "very special circumstances". The criticism is that he used these words:

"... I conclude that alleged inadequacies in the development plan, the general need for gypsy accommodation and the problems for the appellants in finding another site are quite inadequate to justify setting aside clear Green Belt policies."

33. Objection is taken specifically to the words "alleged inadequacies". Here, again, it seems to me, on a fair reading of the decision letter, as a whole, that the Inspector was not suggesting, by using the word "alleged", that the development plan did provide for gypsies in accordance with the Circular. He was not suggesting that it was adequate in that respect. He used the expression "alleged inadequacies" to indicate not that there was any doubt about the inadequacy of the plan, but simply to identify the criticisms made of the plan in relation to gypsy accommodation. It is quite clear from the letter, read as a whole, that those inadequacies were inadequacies that he accepted. Indeed, his whole reasoning proceeds on the basis that the plan was inadequate in that respect. It may be that he used the word "alleged" when others would use the word "asserted", but there does not seem to me to be any real substance in the criticism based on that one word. I am bound to say that to accept that sort of criticism would go against the well-established law, that one looks at the decision letter as a whole and does not latch on a single word whether one thinks it wholly appropriate or not.

34. Finally, in this context it is said that the decision letter does not contain anything to show that any attention was paid by the Inspector to the advice contained in paragraph 26 of Circular 1/94, that "... the absence of policies for gypsy sites and development plans could constitute a material consideration in matters of enforcement". I am bound to say that again is a contention that seems to me to be based on a very unfair reading of the decision letter. The consideration that the Inspector gives in these matters started from the finding that the plan did not contain what the Circular says that a modern or current plan should contain. That is quite obvious. I am bound to say that I cannot find much scope for saying more than that about it.

35. In my view, on the first issue, that is the treatment of Green Belt policy and the way in which the task of an Applicant was regarded by the Inspector in paragraph 17 of the decision letter in relation to the question of need, having regard to the both Green Belt policy and Circular 1/94, the criticism of the decision letter, as it seems to me, is not made good. On the second issue, the criticism related to the

passages in the decision letter dealing with mobile home parks and again natural justice, or the lack humanity is again not made good. The passages in question (particularly, paragraphs 26 to 28) are passages which set out to deal primarily with the arguments related to the medical condition of the Appellants. In those passages the Inspector, it seems to me, is considering primarily the character of the accommodation that would be appropriate for the Appellants, having regard to their medical condition. I do not accept that the Inspector made any finding about the availability of mobile home accommodation or sites for mobile home accommodation at all. There are two quite separate matters, it seems to me. It is clear, as I understand it from the affidavits sworn both by the solicitor for the Appellants and by the Inspector, that the plan did make provision for mobile home parks. The contention for me was related to a question put by the Inspector to the planning officer giving evidence for the planning authority. The Inspector records (and there is no dispute about this) that he was told by the planning officer, in answer to his own question, that there were seven or eight private mobile home sites in the area. It is clear from the Appellants' solicitor's affidavit that that topic was probably dealt with. I am not sure what numbers were dealt with, but there were a number of such sites, as is clear from the provisions of the plan, which were before the inquiry. The existence of such sites tells one nothing about whether or not there are vacancies on the sites and nothing about whether or not a gypsy would be accepted to fill a vacancy. The basis of the alleged want of natural justice is that the Inspector, having ascertained in answer to a question (if he was unaware from the plan) that there were such sites in the area, should have given the Appellants' representative an opportunity to further cross-examine the witness in order to establish whether or not there were vacancies, what the costs would be, whether the costs would be within the means of the Appellants and whether or not vacancies would be open to gypsies in any event. It seems to me that all those matters must have been perfectly apparent. There is nothing very special about an Inspector's question to a witness. If the witness says something that the other party is inclined to consider a surprise, it is always open to the advocate to take the point. There is nothing underhand about the answer to the question. If unfair advantage has been taken in answering an Inspector's question, that can be objected to. If it is proper to ask the question (and one assumes that Inspectors do ask relevant questions or questions seeking relevant information) and the information comes as a surprise because it introduces a new topic or an extension of the topic that was not expected, then it is common to find that a request is made and granted to explore that point further. There must have been an opportunity in this case from the Inspector's account and no such opportunity was taken. It is now said that it was wrong to take the answer into account.

36. In my view, there was no issue about the existence of the sites and there was no issue either about vacancies because that was never raised or explored. The Inspector records in paragraph 27 of the decision letter that he was not told about vacancies and costs. I see no prejudice to the Appellants in what, it is agreed, occurred at the inquiry. The Inspector was looking at, in my view, the character of the relevant accommodation rather than at its location. Accommodation of that character existed. The Inspector is quite clear that although it existed he was not told that there were vacancies or that it was within the Appellants' means. His conclusion was stated quite shortly in paragraph 28. That was a matter of his planning judgment and nothing he took into account was irrelevant, nor was there any failure to take into account a relevant matter.

37. I, therefore, reject that criticism in both its aspects, that is as misdirection, and as a matter of inhumanity or Wednesbury unreasonableness. It is quite clear from what followed that the Inspector throughout was very conscious both of the gypsy aspect of the appeal and of the broader human factor, as stated by Lord Scarman in Westminster City Council v Great Portland Estates [1985] AC 661. This

decision letter identified the relevant issues in a proper manner, applying established Green Belt policy. It contains no misdirection and there is no breach of natural justice in the manner in which the appeal was dealt with or in the conclusions arrived at by the Inspector.

38. In those circumstances, in my judgment, this application and this appeal must fail.

39. MR KARAS: In those circumstances, I would ask for a formal Order dismissing the appeals, and I would ask for an Order that the Appellants pay the first Respondents' costs?

40. MR GERALD MORIARTY QC: I think that must follow.

41. MR JONES: The dismissal of the appeals must follow, my Lord. As far as costs are concerned, each Appellant is legally aided with a nil contribution.

42. MR GERALD MORIARTY QC: Then there must been be an appropriate Order?

43. MR JONES: Indeed, my Lord. Might I mention one matter in your Lordship's judgment, just in case someone might be misled from the transcript. Your Lordship did on one or two occasions referred to me as "Mr Smith". I am afraid it is Mr Jones.

44. MR GERALD MORIARTY QC: I do apologise. The transcript will be corrected accordingly.

45. MR JONES: It is very easily done, but I was concerned about the transcript.

46. MR GERALD MORIARTY QC: I regret it took so long. I wanted to go through the skeleton arguments rather than any other formulation of the arguments.

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