SPENCER BENJAMIN HEDGES and HEATHER MARIA HEDGES v. SECRETARY OF STATE FOR ENVIRONMENT v. EAST CAMBRIDGESHIRE DISTRICT COUNCIL [1996] EWHC Admin 240 (15th November, 1996)

IN THE HIGH COURT OF JUSTICE CO 1548/96

QUEEN'S BENCH DIVISION
(CROWN OFFICE LIST)

Royal Courts of Justice
Strand
London WC2

Friday, 15th November 1996

B e f o r e:

MR MORIARTY QC

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SPENCER BENJAMIN HEDGES and HEATHER MARIA HEDGES

-v-

THE SECRETARY OF STATE FOR THE ENVIRONMENT

-and-

THE EAST CAMBRIDGESHIRE DISTRICT COUNCIL

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MISS M THOMAS (instructed by Lance & Co., Berkhamsted, Herts HP4 1AG) appeared on behalf of the Appellant.

MR T MOULD and MR T MORSHEAD [TODAY ONLY] (instructed by the Treasury Solicitor, London SW1H 9JS) appeared on behalf of the Respondent, the Secretary of State.

THE SECOND RESPONDENT did not appear and was unrepresented.

J U D G M E N T
(As approved by the Court)
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Friday, 15th November 1996 .

1. MR MORIARTY QC: In this application, under section 288 of the Town and Country Planning Act 1990, the Applicants seek to quash the decision of the Secretary of State by his Inspector in a letter of 4th April 1986. The Inspector, having held a local inquiry into an appeal, dismissed the Applicants' appeal against the decision of the second Respondents to refuse retrospective planning permission for retention of a mobile home on land known as "Highlands", Whitecross Road, Wilburton, Ely. The Applicants, Mr and Mrs Hedges, are gypsies but have lived on the site for several years. Mr Hedges was born in this area.

2. The Notice of Motion sets out three grounds:

(i) error in law in failing to consider the evidence of
need for additional gypsy sites in the area, and
whether that need overrode any perceived harm
caused by the retention of the mobile home.

(ii) error in law in failing to give any or any
adequate reasons for the decision, in failing to
deal properly or at all with the important
evidence of need and lack of provisions of any
alternative site.

(iii) error in law in arriving at the decision, which
was one that no reasonable Inspector could have
"come to, that the mobile home was visually
intrusive.

There is a fourth ground alleging breach of natural justice and substantial prejudice to the interests of Applicants, but this ground seems to me to be consequential on the three grounds that I have set out.
The decision letter, in paragraph 3, starts with the definition of the main issue, namely:
"... the effect of the development on the rural character of the area, having particular regard to policies concerning development in the countryside and the special consideration be given to gypsies."

3. The Inspector then noted that there had been two earlier planning appeals, and concluded paragraph 3:

"I shall also consider whether there have been any material changes in circumstance since those occasions which warrant me reaching a different decision."

4. In paragraph 4 the Inspector described the site and the surrounding area. In paragraph 5 he identified the relevant countryside policies and concluded that the development did not meet the strict terms of the policies. In paragraph 6 he summarised the aims of the policies and considered whether the landscaping condition would adequately shield the mobile home from view from Whitecross Road. He concluded that the mobile home was visually intrusive in the open rural area. In paragraphs 7, 8 and 9 he considered the Applicants' status as gypsies which was not disputed by the

5. Council. He concluded in paragraph 9:

"Although some compromise of the strict development plan policies for protection of the countryside is inevitable, if locations away from areas of existing housing are to acceptable for gypsy development, a key element of determination will continue to be the minimisation of harm to the rural character of the area. I have already concluded that your clients' mobile home is visually intrusive in this rural area."

6. In paragraph 10 he considered the Applicants' personal circumstances and in that immediate context he wrote:

"I am also mindful that there are no pitches available on council traveller sites in the district and that the options open to your clients are limited, bearing in mind their traditional gypsy lifestyle. These are considerations to which I give appropriate weight."

7. In paragraph 11 he found that permitting development might establish a precedent and that that was a material consideration. In paragraph 12 he wrote:

"Overall, my conclusions are as follows. The development plan and national policies for protection of the countryside are clear and consistent. Your clients' mobile home does not meet the criteria for development which is generally permissible in the open countryside and contravenes development plan policies for the protection of the character of this rural area. Following the change in legislation for gypsy sites in 1994 and the government advice issued at that time, development policies for gypsy sites in the Local Plan are under review. However, your clients' site does not meet the criteria specified in the Council's recent consultation note on planning guidance for gypsy sites. Furthermore, if permission were granted, it would set a precedent for development in this area and severely weaken the Council's case for enforcement actions against several other unpermitted developments nearby. Taken as a whole, these factors considerably outweigh your clients' personal circumstances, many of which are consequences of unauthorised residence on the appeal site for several years."

8. In paragraph 13 he went on to consider the changes of circumstances since the earlier appeals in 1992 and 1994, and concluded:

"Overall, these material changes in circumstance are of limited significance and do not warrant my reaching a different conclusion from those of the earlier appeals."

9. Finally, in paragraph 14, he returned to the question of possible planning conditions, but concluded that:

"... they would not overcome the essential harm to the countryside which the development causes."

10. Miss Thomas presented her case with great care. She addressed the first of the particulars to ground one of the Notice of Motion, and drew my attention to the evidence that demonstrated that there were no available residential pitches for gypsies within the District, either on Council sites, or on tolerated sites, or on private sites. Mr Mould for the Secretary of State did not challenge the references to this evidence or the conclusion that there were no pitches available. That was common ground.

11. On the second of the particulars to the first ground of the Notice of Motion she relied on Structure Plan Policy SP4/6, and referred to the District Council's Draft Supplementary Guidance document. These policies seem to me to follow the guidance provided by the Secretary of State in Circular 1/94, so far as they go. It is, however, clear that the Local Plan Policy for the area, adopted in 1993, is out of date in relation to gypsies. It is also out of the date and inconsistent with the advice in Circular 1/94 and indeed with the Structure Plan adopted as recently as December 1995.

12. The Supplementary Guidance contains the relevant criteria for the assessment of sites for gypsy pitches, namely Impact on the Countryside, Location and Site Requirements and Access and Amenity. Those are to be found in section 7 of the guidance document. However, the document does not make, and indeed does not seek to make, provisions for gypsies by identifying suitable locations for residential and emergency stopping places in the District. That provision will fall to be made through the Local Plan Process. The Inspector noted in paragraph 9 that "... 1999 was estimated to be the earliest date the revised Local Plan might be adopted..."

13. It seems to me, therefore, that there was a substantial hiatus in the Local Plan provisions for the District and that the Supplementary Guidance on the evaluation of sites was only a partial interim policy statement. It did not cover the other aspect of national policy, namely the provision of sites. The Inspector held that the supplementary guidance carried little weight, rightly in my view. But he went on to hold that the development was not in accordance with the draft guidelines (that is, for the location of gypsy sites) without apparently noticing that those guidelines were, in any event, only a partial compliance with SP4/6.

14. I was told that the District Council had in fact refused a proposed allocation made at the instance of the County Council and supported by the District Council's officers for a gypsy site in the area, that the County Council seemed to be satisfied that there was a shortfall of provision of gypsy sites and pitches and that the District Council would no doubt deal with that matter in the course of the revision of their Local Plan. But until that process is brought to completion, or close to completion, the position is that national policy cannot be said to be carried through to the level of the Local Plan.

15. On the basis of the factual and policy matters, identified in the first and second particulars, Miss Thomas submitted, first, that the Inspector's definition of the main issue in paragraph 3 of the decision letter was defective because it failed to identify the question of need, or the extent of need, for gypsy sites in the area. She said that the formulation of the main issue made it clear that the Inspector was concentrating on the effect of the development on the rural character of the area in accordance with the policies for development in the countryside, and that his incorporation of the phrase "special consideration to be given to gypsies" was not an adequate statement to identify the issue of need or importance of need in the Appellants' case. She submitted that this limited definition of the main issue made it difficult for the Inspector to treat "need" as a material consideration of any sort and to put that

material consideration into the balance against the non-compliance of the proposed development by retention of the mobile home on the site.

16. She pointed out that in the summary of the policy in paragraphs 5 and 6 of the decision letter, the Inspector did not make any reference to the question of need, in the sense of anticipating the question of need as a material consideration to be balanced against that non-compliance with countryside policy. She made the same point in relation to the Inspector's analysis of policy on gypsies in paragraph 7 of the decision letter. In paragraph 8 it is to be noted that the identification of the intentions of the Council in relation to the provisions of sites for gypsies is limited to the provision of private sites only and, further, that it is apparently limited to the provision of private sites only in the context of the 1993 Local Plan policy which contained a presumption against such sites.

17. In relation to paragraph 9 of the decision letter Miss Thomas again pointed out that the Inspector's reference to "need" in the Draft Guidance document did not go on to make any assessment of the extent of need demonstrated in that document. Miss Thomas further pointed out that in paragraph 10 of the decision letter the Inspector was considering personal circumstances as a material consideration and that the reference to need is not only subordinate to the question of personal circumstances but is both indirect and incomplete, in that in this paragraph (paragraph 10), by contrast to the reference in paragraph 8, the Inspector refers only to the non-availability of pitches on Council sites. Miss Thomas also points to the statement that the options open to the Applicants are limited, whereas on the evidence there is no option open to them to live on a gypsy site in the area because the evidence is perfectly clear that there are no sites in any category that are available to them in this District.

18. Again, in relation to paragraph 11, on the question precedent, Miss Thomas points out that there is no reference to the question of need. Finally, on the conclusion to be found in paragraph 11 of the decision letter, Miss Thomas points out that whereas a number of material considerations are put into the balance against the development and are mentioned specifically, the only material consideration put into the balance against them in favour of the development is that identified in both the statement of the issue and in the intervening consideration of the facts, that is to say the Applicants' personal circumstances. Thus, there is no reference to the question of need or the extent of need which undoubtedly form a most substantial part of the Applicants' case.

19. I shall deal with the third head of the particulars to the first ground of the Notice of Motion later. The fourth head relied on by Miss Thomas is the allegation that the Inspector misdirected himself in paragraph 9 of the decision

letter. In the second sentence:
"It recognises [the Supplementary Planning Guidance] the special needs and requirements of gypsies and that the extent of 'need' is an important, but not overriding, planning consideration."

20. Miss Thomas submits that that summary differs from the text of the guidance which reads, in paragraph 5.04:

"Each case will be determined on its own merits, solely in relation to land use considerations. The extent of 'need' for additional sites will represent an important but not necessarily overriding material planning consideration that will be taken into account when this Council is being asked to set aside its normal policies of control in response to the residential needs of gypsies."

21. The point is quite short: the Inspector's summary omits the word "necessarily" and Miss Thomas submits that that omission indicated that the Inspector was not directing himself accurately on the policy, even so far as it goes in relation to the need for additional sites in the context of setting aside normal policies.

22. Miss Thomas, in relation to those matters, relied on the passages to be found in the judgment of Brooke J in MJT Securities Ltd v Secretary of State for the Environment and Chelmsford Borough Council 72 P&CR at 342. The headnote identifies points that Miss Thomas relied on, conveniently in this sentence:

"In the context of a small inquiry a material consideration will qualify for the fuller treatment demanded of a principal important controversial issue than it would in the context of a major inquiry. ... In the present case, the fact that the appeal site was the only site available was a material consideration and a principal important controversial issue."

23. At page 344 Brooke J was summarising the Applicants'

case and said:
"They say that their case at the public local inquiry was a double-barrelled one on the issue of need: first, that the need for an additional petrol filling station to serve the area existed, and, secondly that the appeal site was the only suitable and available site capable of meeting this need since there was no such alternative site within the area. It is not in dispute that the local planning authority, when asked, was unable to identify any other such site. In these circumstances the applicants contend that the Inspector's decision was not within the powers of the Act, alternatively that the relevant requirements of the Act have not been complied with and that their interests have been substantially prejudiced by this failure."

24. At page 345, towards the bottom of the page, Brooke J said:

"After reciting the main provisions of the Development Plan the Inspector said that he considered that the main issues in this case were (i) whether there was demonstrated lack of facilities in the area to justify an exception to the normally strict control of development in the countryside set out in Development Plan and other policies; and (ii) the effect of the proposal on the character and appearance of the area. Mr Nardecchia [who appeared for the Applicants] did not quarrel with this formulation but he complained that because the Inspector concentrated too narrowly on Development Plan issues he lost sight of another material consideration which he should have borne in mind pursuant to section 70(2), namely that no suitable alternative site for a new petrol filling station existed."

25. At page 346 Brooke J went on:

"The Inspector therefore concluded that there was a demonstrated lack of facilities in South Woodham Ferrers which could justify an exception to establish policies for the protection of the countryside."

26. Towards the bottom of that page Brooke J said:

"Nowhere in a comparatively short decision letter did the Inspector make any express reference to "the applicants' argument that not only was there an unfulfilled need for a further petrol filling station to serve the area of South Woodham Ferrers but that their site was the only suitable site available to meet that need."

27. Again, at page 347, Brooke J said:

"It was not in issue at the hearing before me that the unchallenged view that there was only one suitable site to meet any need for an additional petrol filling station in the South Woodham & Ferrers area was a material consideration to which the Inspector should have had regard pursuant to his obligations under section 70(2) of the 1990 Act."

28. Then, at page 348, in relation to the speech of Lord Lloyd in the second Bolton case, which, at that stage, was reported in [1995] JPL 1043, Brooke J cited the words of Lord Lloyd in this way:

"Lord Lloyd expressly disapproved any suggestion that a decision-maker had to refer to each material consideration. He said at p.1046:

'What the Secretary of State had to do was to state his reasons in sufficient detail to enable the reader to know what conclusion he had reached on the "principal important controversial issues". To require him to refer to every material consideration, however insignificant, and to deal with every argument, however peripheral, would be to impose unjustifiable burden.'

29. Brooke J commented on that, saying:

"In my judgment, it is necessary to keep things in prospective. In that case the House of Lords was concerned with the decision of the Secretary of State on a planning proposal of major regional importance. He had two full reports before him from his Inspector, and there is no suggestion that they did not deal at an appropriate level of detail with the material considerations that were presented to the Inspector at the two stages of his inquiry. He had also received voluminous submissions about the matters which had occurred, or not occurred, since the Inspector had stopped "receiving submissions on particular issues."

30. At page 350, Brooke J continued:

"I remind myself that judgments in the higher Courts must not be interpreted as if they contained the words of the statute. For instance, where Lord Lloyd says that it would impose an unjustifiable burden if the Secretary of State had to refer to every material consideration, however insignificant, it is doubtful that he has in mind the definition of a relevant consideration as formulated by Glidewell LJ in the first Bolton case. Alternatively, it is much more likely that in the context of a small inquiry a material consideration will qualify for the fuller treatment demanded of a principal important controversial issue than it will in the context of a major inquiry."

31. Then, at page 351, Brooke J said:

"As I have already said, the Inspector made no express mention of a matter which was common ground, that if a need for a new filling station was established, there was no other site for it. In my judgment he made no implied reference to this, either. It was a material consideration, and I simply do not know if the Inspector had regard to it or not. I could certainly understand it if he took the view that the needs of passing motorists should not take precedence over the integrity of the country landscape.

...

If the Inspector had grappled with this issue I suppose he might have dealt with this argument in one of three ways."

32. Brooke J took that matter further and concluded, as I have indicated from the headnote, that the Inspector should have dealt specifically with the points in issue: the question of need and the only available site.

33. Plainly the facts of that case differ from the facts of this case, but Miss Thomas seems to me to be justified in those references. The important element in any formulation of an Inspector's decision-making duty is that he should grapple with the main issues. The question of need, as to whether or not the need existed, was not in issue; it was common ground. The significance of need and the extent of need was clearly an important part at the Appellant's case at the inquiry. That important part of the Appellants' case was dealt with by the Inspector in the way that I have indicated, in summarising his decision letter.

34. Miss Thomas goes on to rely on Simplex GE (Holdings) Ltd and Another v Secretary of State for the Environment and Another [1988] 3 PLR 25 . I need not refer to the facts of that case. The passage Miss Thomas relied on is a short one, at page 42, at the end of the judgment of Purchas LJ, where he says:

"It is not necessary for Mr Barnes to show that the minister would, or even probably would, have come to a different conclusion. He has to exclude only the contrary contention, namely that the minister necessarily would still have made the same decision."

35. I now turn to the second ground in the Notice of Motion. There are two particulars given under that ground which is in relation to the contention that the Inspector did not give adequate reasons. Miss Thomas submitted: (i) that it is not clear what need the Inspector took into consideration or what weight he gave to that need; (ii) that it is not clear whether the absence of provision of sites in the area was taken into consideration; (iii) it is not clear when or where pitches were likely to be provided to meet the accepted need for gypsy sites or pitches on gypsy sites, and that the lack of clarity on those matters stems from the absence of reference to the question of need in the formulation of the main issue by the Inspector in paragraph 3. Miss Thomas says further that it is not clear to what extent he either did or did not take into account policy 16 of the approved adopted Local Plan, the 1993 Plan, which, as I indicated, has been superceded by the Supplementary Planning Guidance in following on National and Structure Plan policy. In the last sentence of paragraph 8, the Inspector said:

"It is material therefore to consider the intentions of the Council towards making provision for private residential gypsy sites, particularly in view of the existing Local Plan policy of presumption against such sites."

36. That suggests, Miss Thomas said, that he was, in some measure, seeking to apply the presumption in Policy 16 of the Local Plan, notwithstanding the change in National and Structure Plan policy. Another point Miss Thomas submits is that there is obscurity in paragraph 9 of the decision letter as to the extent or weight that the Inspector is giving to the draft guidelines. He says that they carry little weight, and goes on:

"... in my judgment your clients' development is generally not in accord with the draft guidelines."

37. Again, in paragraph 10, she submits that it is not sufficient for the Inspector to have referred, as he did, only to the fact that no pitches were available on Council traveller sites.

38. Mr Mould, in response to Miss Thomas' submissions on both those grounds, dealt with the matter in his usual persuasive way. In his skeleton, from which it is convenient to take his arguments, he points out that the logic of the decision letter is founded quite clearly upon the formulation of the main issue in paragraph 3. He goes on to point out accurately that, having concluded in paragraph 6 that the development fails to comply with countryside planning policy and causes demonstrable harm to the countryside in which it is sited, the Inspector proceeds to address the policy and other considerations which flow from the Applicants' gypsy status. He submits that the Inspector's analysis takes in both national and local policy for development by gypsies and the particular needs and circumstances of the Applicants and gypsy site provision of the area. He submits that having drawn the overall conclusion as to where the balance lies in respect of the development on this issue in paragraph 12, the Inspector, mindful of the need to determine the issue consistently with the previous decisions in respect of the site, considers the incidence and effect of any material change in circumstances since those decisions were taken in paragraph 13; and finally, considers conditions, as it were, again, in paragraph 14.

39. In summary, his case is that the Inspector did have regard to each of the material considerations which he was apparently asked to take into account. He relies on the case of Bolton MDC v Secretary of State for the Environment [1996] 7 P&CR 309 HL. Mr Mould then goes on to address the particular points raised in the Applicants' Notice of Motion and in the skeleton argument. He submits that the Inspector did take the account of adopted Development Plan on this issue, identified its shortcomings by reference to the latest national policies in Circular 1/94 and the draft Local Policy which he submitted sought to update the Development Plan policies. He relies on paragraph 7 to 9 and points out that it is for the Local Planning Authority to decide what sites are appropriate in the area, and that quite clearly this appeal site is not an appropriate site. He referred me to the local plan and its objectives, particularly in paragraph 1.03:

"The District Council is anxious to achieve appropriate provision of gypsy sites to meet the needs of those families who have recognisable ties with East Cambridgeshire. It is important however that this should be achieved through the planning system and in a way that recognises the important concerns of landscape protection, high safety and the need to protect the amenities of existing residents within East Cambridgeshire. Gypsies are strongly advised to consult with the Planning Department prior to making an application for planning permission, or before purchasing land that they might consider to be suitable for accommodation."

40. Mr Mould submits that the Inspector recognised, as a matter of policy, that the needs and requirements of gypsies were to be taken into account, and were taken into account in paragraph 9. Again, that in paragraph 10 the Inspector had had regard to the consequences of accepting the "need" case to balanced against the planning objectives in paragraph 12. In relation to reasons Mr Mould submitted that each of the matters that Miss Thomas alleged had not been dealt with adequately was properly dealt with: the Development Plan was properly had regard to and explained and the limited weight to be attached to the draft guidance was expressly mentioned. He rightly contends that the weight to be attached to the policy considerations was a matter for the Secretary of State. In that context, he relies on the decision of the Court of Appeal in South Somerset District Council v Secretary of State for the Environment & another [1993] 1 PLR 80 and the passages in Hoffmann's LJ judgment, at page 82, where he cites the relevant provisions of the Act and, at page 83, where Hoffmann LJ cites the decision of Forbes J in the Seddon Properties Ltd v Secretary of State for the Environment [1978] 42 P&CR 26 at p.28 as follows:

"... it is no part of the court's duty to subject a decision letter to the kind of scrutiny appropriate to the determination of the meaning of the contract or a statute. Because the letter is addressed to the parties

who are well aware of all the issues involved and of the arguments deployed at the inquiry it is not necessary to rehearse every argument relating to each matter in every paragraph."

41. In that case, as the headnote indicates, the Court of Appeal took the view that Sir Frank Layfield QC, sitting as a Deputy Judge in this court, had been in error in apparently substituting his own views on the planning merits for those of the Inspector that, of course, was not permissible and consequently that decision was reversed.

42. Mr Mould goes on to say that it was quite clear in the decision letter that both the need for additional gypsy accommodation and the lack of alternative sites were taken into account in paragraphs 10 and 11, and that the criticisms made particularly in relation to the omission of the word "necessarily" in the reference to the terms of the guidance, are matters really of grammar and do not indicate that the Inspector was in any way at fault in his view of the effect of the policy.

43. Mr Mould rightly emphasised that the Inspector concentrated on the countryside policies and held incontrovertibly that the Applicants' development did not comply with those policies. Miss Thomas did not wish to challenge that in any way, except in the sense that I shall mention in dealing with ground 3 of the Notice of Motion. Mr Mould contended that in paragraphs 9 and 12 of the decision letter the Inspector incorporated the question of need in his consideration of personal circumstances as a material consideration, and that it was not necessary for him to look more widely at the question of need for the provision of need as a matter of policy. He contends that the Inspector acknowledged the general need in paragraph 10 and, in essence, that those matters were not relevant to the consideration of the fate of one site. He dealt with the reasons points, as I have indicated. Those points follow, in substance, from the points made on the first ground of the Notice of Motion.

44. In relation to the fourth head of particulars (that is, the question of direction) Mr Mould said that the Inspector was simply saying that each case had to be decided on its merits. This was a case in which what was at issue was a development on one site and that it would be wrong for this court to seek to arrive at a decision which appeared to substitute the view of the court on the merits for that of the Inspector on the merits. He says, quite shortly, that the Inspector considered need, did not need to consider the Local Plan process, did identify the effects of Local Plan policy 16, adopted in 1993, based his decision on the guidance document to some extent, but principally followed the National and Structure Plan policy.

45. In relation to those arguments, one way or the other, my view is that it is important to start with the National policy, as set out in Circular 1/94. I do not propose to cite from that document; it is well known and the relevant passages are not in doubt; they must be read as a whole. I go on to consider Structure Plan policy 4/6. Again, there is no question but that that is a very recently adopted policy; it is clear and it has the two limbs that have been established in the course of these proceedings as being relevant, that is to say the protection of the countryside, broadly, and the provision of sites for gypsies.

46. In my judgment the Local Plan Policy of 1993, policy 16, has been rendered out of date by the changes in National and Structure Plan policy. In my view, the draft guidance paper conforms to National and Structure Plan policy, as far as it goes. It deals with the protection of the countryside, and it considers the extent of "need" and it sets out the relevant criteria. However, what it does not do is to address the question of making provision for gypsy sites and pitches. There is the Inspector's note in paragraph 9 if the decision letter that there is no real prospect of much assistance on that aspect of the matter until 1999, some two or three years ahead. Secondly, in my view, "need" was one of the main points and certainly

formed a very substantial part of the Applicants' case, as is apparent from the evidence to which I have been referred. Thirdly, the Inspector did not identify "need" as an issue in its own right. He did not do so expressly when he was formulating his main issue in paragraph 3. Fourthly, the Inspector seems to me to have failed to identify the limitations of the guidance, that is to say he does not refer to the fact that it does not concern itself with the identification of sites (that is making of the provision), nor, indeed, does he identify the question of non-availability of sites, except to a limited extent in the context of the personal circumstances.

47. It seems to me that if one is seeking to administer national policy it is necessary to look at the question of provision. The effect of the Inspector's decision is, to use the graphic phrase which Mr Mould did not seek to demur from, to put out on the road Mr Hedges who has been a resident, (albeit a resident on a site in which his development did not conform with the policy) for some years and who is a person who was born in the area.

48. Fifthly, the Inspector rightly applied the countryside policies, in my view, but he failed to follow, either the guidance of the Circular or Structure Plan, because he failed to consider the need for provision of sites for gypsies generally or, indeed, the personal needs for accommodation, independently of the question of personal circumstances or hardship to the family. The question of need for sites is, in my view, an independent issue. It was so presented on the evidence and that issue was not a matter that the Inspector sought to grapple with. In my view, it is not enough to treat the question of "need" simply as part of a personal circumstances case. The reference to "need", as part of the personal circumstances case, although perfectly consistent with the Inspector's definition of the issue, had the effect of omitting reference to an important part of national policy, that is the need for the provision of sites. In that sense the Inspector did not deal adequately with the Applicants' case.

49. As far as the misdirection is concerned, it seems to me that this point does not add greatly or detract from the conclusions I have reached on the question of need. It does suggest, and so indeed does the formulation of the issue, that the Inspector did not regard the question of need as being something that had to be looked at in its own right.

50. One thing that seems to me perfectly clear is that the circumstances of this case are to be distinguished from those the South Somerset case. This court is not in a position to make in any judgment as to the ultimate rights and wrongs of the planning issues. All that this court can do is to identify the main elements in the decision and to look at those elements in relation to the case made by the Applicant at the inquiry.

51. In both respects, in my judgment, therefore, the remarks of Purchas LJ in the Simplex case apply. Miss Thomas has, in my view, shown what she has to. She does not have to show that the Minister would, or even probably would, have come to a different conclusion. She has only to exclude the possibility that he would necessarily have arrived at the same decision had the question of need been considered independently.

52. In the course of my consideration of the decision letter it has become apparent that there are points on which the reasoning is not clear and broadly I accept Miss Thomas' submissions, but that is a consequence of my view on the main point, which was that the Inspector did not adequately consider the question of need as part of the Applicants' case.

53. I turn then to the third head of the first ground of the Notice of Motion, which is put in this way. It is alleged that the Inspector failed to have any or any adequate regard to the rights of Applicants derived from Article 8 of the Convention on Human Rights and Fundamental Freedoms. Miss Thomas did not elaborate on that contention and I accept Mr Mould's submissions. It seems to me that there is no substance in that contention. I do not propose to go into the cases of R v Home Secretary, ex parte Brind [1991] 1 AC 696 and Buckley v UK [1996] ECHR, Transcript 25th September 1996 that he relied upon.

54. The third ground of the Notice of Motion, complains that the Inspector was wrong in law, and that he came to a decision that no reasonable Inspector could have come to, in deciding that the development was visually intrusive. In my view that decision was entirely a matter for the Inspector's planning judgment. He, in fact, arrived at the same planning judgment in relation to the development set against the countryside policies, namely that it did not conform, as had been arrived at by two Inspectors on earlier appeals. As I have indicated, it is not for the court to substitute its judgment on that matter, even if the material were available. In my view, that ground is quite hopeless.

55. In the result, in my judgment the decision must be quashed. It is not for the court to anticipate what course the Secretary of State will seek to take if it is thought appropriate to reconsider the matter, but it does seem to me difficult to apply either Circular 1/94 or the Structure Plan Policy 4/6 in the interim period until the local plan is adopted, in about 1999, without at least some indication in an interim planning document of what provision will or might be made in the interim as well as in the long term. That is a matter for the Secretary of State and, I suppose, for the District Council. It is quite clear that the County Council have sought to deal with the matter but the matter is ultimately one for the District Council. I cannot usefully say any more on that.

56. The application succeeds and the decision will be quashed.

57. MISS THOMAS: My Lord, may I ask for an Order for costs in favour of the Applicants, and an Order for legal aid taxation, as both of them are legally aided?

58. MR MORSHEAD: My Lord, yes, costs must follow.

59. MR MORIARTY QC: Yes, I think that they must.