Neutral Citation Number: [2020] EWHC 3373 (Admin)

Case No: CO/4133/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 December 2020

Before :

TIMOTHY MOULD QC
(sitting as a Deputy Judge of the High Court)

- -

Between :

MR SAM TINGEY	**Claimant**
- and -	
1) THE SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT	**Defendants**
2) HORSHAM DISTRICT COUNCIL	

- -
- -

Marc Willers QC (instructed by **Simkins Solicitors**) for the **Claimant**
Ned Westaway (instructed by **Government Legal Department**) for the **First Defendant**
The Second Defendant did not appear and was not represented

Hearing date: 22 July 2020

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

TIMOTHY MOULD QC

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Timothy Mould QC:

1. On 11 September 2019, an inspector appointed by the First Defendant dismissed a planning appeal against the refusal by the Second Defendant to grant planning permission for development described as a proposed settled gypsy accommodation site on land at Whiteoaks, Shoreham Road, Small Dole, West Sussex ["the site"]. By this claim, the Claimant applies under section 288 of the Town and Country Planning Act 1990 ["the 1990 Act"] for an order to quash the inspector's decision.

2. The Tingey family own the site. The Claimant, his brother and their respective partners and young children are Romany Gypsies. They have occupied caravans stationed at the site since shortly before March 2018. They wish to continue to do so.

The inspector's decision

3. In paragraph 5 of her decision letter dated 11 September 2019 ["the DL"], the inspector found on the evidence before her that the Claimant, his brother and their respective families fell within the definition of "gypsies and travellers" in Annex 1 of "Planning Policy for Traveller Sites" (2015) ["the PPTS"].

4. In DL7, the inspector identified the main issue in the appeal –

> *"7. The main issue relating to this appeal is whether the site is a suitable location for gypsy and traveller accommodation".*

5. In DL9, the inspector said that the site did not fall within any defined built-up area boundary, the closest settlement (Small Dole) being about 620 metres south of the site with the larger settlement of Henfield lying about 1.7 kilometres to the north. For planning policy purposes, therefore, the site lay within the countryside (DL12). She referred to paragraph 25 of the PPTS, which states that new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan should be very strictly limited. However, although not allocated with the development plan for new traveller site development (DL13), in DL12 she found the site not to be spatially isolated or remote from existing built development and accordingly, not to be in a location where the strict limitation stated in paragraph 25 of the PPTS should be considered to apply. She said –

> *"The countryside location does not, as such, weigh significantly against the proposal".*

6. The inspector then turned to consider the proposed development of the site against the criteria set out in Policy 23 "Strategic Policy: Gypsy and Traveller Site Accommodation" in the development plan – the Horsham District Planning Framework (excluding South Downs National Park) 2015 ["the HDPF"]. In DL13, she noted that the Second Defendant's concerns as local planning authority centred around the allegedly unsustainable location of the site, its remoteness from local services and facilities, and the limited opportunities available to occupiers of the site to access modes of sustainable transport. She said –

> *"I, therefore, consider the proposal first needs to be assessed against criteria (b) and (d) of Policy 23 of HDPF".*

7. In DL14 to DL20, the inspector carried out that assessment.

> "*14.Criterion (b) of Policy 23 requires that the site is served by a safe and convenient vehicular and pedestrian access and should not result in significant hazard to other road users.*
>
> *15. Turning firstly to vehicular safety, I am aware from those representations received that some local concern has been raised in respect of the safety of the access onto Shoreham Road. Although residents highlight incidents of accidents on this stretch of Shoreham Road, I have not been directed to any substantive evidence that would indicate that these accidents were linked to the appeal site access. West Sussex County Council, the responsible Highway Authority, has not raised any objection to the proposal. Furthermore, there is no substantive technical highway evidence before me that would lead me to conclude that the access would compromise highway safety."*
>
> *16. Turning secondly to pedestrian safety, the highway does not host pavements or street lighting. To the north, and close to the access, there is a highway bend that limits visibility of on-coming traffic. Just before the bend the speed limit changes between 40 and 60mph. I saw that both cars and large vehicles travel at speed, in both directions, along this stretch of Shoreham Road and with a high degree of frequency. Indeed, some of those making representation highlight the busy and fast-moving nature of the traffic travelling along this stretch of Shoreham Road and that the volume of traffic has increased over the years. Without pavements along the highway, pedestrians accessing or egressing the site would be faced by challenging highway traffic and this would put them at a significant safety risk, particularly on days with poor visibility, as well as during the hours of darkness.*
>
> *17. Criterion (d) of Policy 23 requires consideration as to whether the site is located in or near to existing settlements, or is part of an allocated strategic location, within reasonable distance of a range of local services and community facilities, in particular schools and essential health services. I am of the opinion that given the very limited services and facilities available at Small Dole, the closest settlement that could support the occupiers' day-to-day needs would be Henfield. However, given Henfield is around 1.7km from the appeal site it is highly likely that occupiers would be reliant on the private vehicle to access the services and facilities at Henfield.*
>
> *18. The risk to pedestrians discussed above also needs to be considered in the context of criterion (d) of Policy 23. For occupiers that do not have access to a vehicle it would be unrealistic to anticipate walking to services and facilities given the limitations of the highway to provide safe pedestrian access.*

> *Furthermore, services and facilities are some distance from the appeal site and beyond reasonable walking distance. I saw that there are bus stops serving buses in both directions just beyond Horn Lane to the south and Henfield Business Park to the north of the appeal site. However, these bus stops are also some distance from the appeal site and to access buses would require occupiers walking along the busy and heavily trafficked carriageway of Shoreham Road.*
>
> *19. I acknowledge that Policy 3 of the HDPF accepts that residents of 'Small Villages' are reliant on larger settlements to access most of their requirements. As such, residents that live close to Small Dole, including the occupiers of the appeal site, would also be reliant upon larger settlements. For occupiers of the appeal site that do not have access to a private vehicle, walking along the carriageway to the nearest bus stops would be an extremely hazardous prospect, particularly for those with young children, elderly people and those with disabilities. It would also be an unattractive prospect for those carrying heavy shopping, particularly during winter months and inclement weather. As such, this would discourage occupiers from utilising public transport. This would also increase the reliance on private vehicle to access services and facilities at larger settlements by those who have access to private vehicles.*
>
> *20. For the above reasons, the proposed development conflicts with criteria (b) and (d) of Policy 23*".

8. The inspector then assessed the proposed development against Policy 40 "Sustainable Transport" of the HDLP. She said –

> "*20. …Policy 40 of the HDLP, amongst other matters, requires development to provide safe and suitable access for pedestrians. For the same reasons, the proposal also conflicts with this policy. Although the HDPF pre-dates the revised Framework, I consider the objectives of these policies are consistent with the revised Framework. These policies are also in line with the PPTS that seeks to enable provision of suitable accommodation from which travellers can access services and facilities.*
>
> *21. I acknowledge that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. I have been advised that each of the adults that presently occupy the site are drivers and car owners. As I see it, the proposal would not limit the need to travel, even if access to schools, services and facilities would be done as part of a round trip. Furthermore, the occupiers, or future new occupiers, would not be offered genuine choice of transport modes. Therefore, the location of the site conflicts with the requirements of Policy 40 of the HDPF and the Framework that require development*

> *proposals to ensure safe and suitable access can be achieved for all users*".

9. Having briefly considered other policies of the HDPF to which the Second Defendant had referred in refusing planning permission, in DL 26 the inspector said –

> "*26. With regard to the main issue, for those reasons given further above, I conclude that the appeal site is not a suitable location for gypsy and traveller accommodation when assessed against the development plan policies, and specifically criteria (b) and (d) of Policy 23, as well as Policy 40 of the HDPF*".

10. The inspector then turned to other material considerations. At DL29 she found there to be a clear unmet need for gypsy and traveller pitches in Horsham, a factor that weighed significantly in favour of the proposed development. She found that it was not possible to identify any alternative pitch accommodation to which the Tingey family could relocate. At DL30, she said that she considered Policies 23 and 40 of the HDPF to be the most relevant policies of the development plan, that she found those policies to be consistent with the National Planning Policy Framework ["the Framework"] and the PPTS, and that those development plan policies could be given full weight. She said –

> "*I shall deal with the development plan policies and the shortage of pitch supply within my planning balance section below*".

11. In DL31 and DL32, the inspector considered the impact of the proposed development on the character and appearance of the surrounding landscape and the amenities of neighbouring occupiers. In both respects, she found the proposed development to be acceptable.

12. In DL33 to DL35, the inspector considered other appeal decisions relating to proposals for gypsy and traveller site development. She noted some similarities between those other cases and the proposed development that was before her for determination but also, on the information that she had, material differences. In DL35 she said –

> "*35. I have considered those other examples drawn to my attention at Millers Mead and Kingfisher Farm. In the case before me, because of personal safety all residents in effect would not have a choice of travel mode and would have to travel by private vehicle, which would impact most on the vulnerable and disadvantaged*".

13. In DL 39, the inspector recognised the benefits of having a settled base and the social, environmental and economic costs associated with unauthorised camping.

14. In DL40 to DL44 the inspector drew the planning balance. She referred to the duty under section 38(6) of the Planning and Compulsory Purchase Act 2004 ["the 2004 Act"]. She said that the proposed development would be acceptable in its impact on the character and appearance of the countryside. It would not harm the living conditions of existing neighbouring occupiers. It would make a valuable contribution to the supply of pitches for gypsies and travellers in Horsham District, where there was a shortage of supply. At DL42 and DL43 she said -

> "*42. I accept that the two pitches the application proposes would contribute to the pitch supply within the District. This carries significant weight in favour of the proposal, especially given the lack of a five-year supply identified by the Council and the likely level of need identified by the Inspector in the Kingfisher Farm appeal. Nonetheless, there is conflict with the development plan in relation to pedestrian safety and the occupiers' reliance upon private vehicle to access services and facilities that are some distance away in Henfield. I have found that occupiers that would not have access to a private vehicle would be required to place themselves at a significant highway risk on a regular basis in order to access public transport and the settlement of Henfield to meet their day-to-day needs and requirements. Given this, I consider that these would override the contribution made by the proposed development to the unmet need for pitches that might justify a departure from the development plan*.
>
> *43. The proposal would not comply with Policies 23 and 40 of the HDPF and, as such, the proposal would not be in accordance with the development plan when read as a whole. Furthermore, the proposed development would not comply with the aims of the PPTS for new traveller sites to be suitable accommodation from which travellers can safely access services and facilities by foot and public transport and in turn this may disadvantage the vulnerable most. In addition, as well as the personal safety of the occupiers, there would also be a considerable risk to other highway users if they collided with a pedestrian. I do not consider there to be any other material considerations of sufficient weight, either individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan. Given this significant risk to the occupiers' pedestrian and other highway users safety, as well as the site's location in terms of proximity and accessibility limitations to services and facilities, and the conflict with the development plan the appeal should not be allowed and planning permission should not be granted*".

15. In DL45 to DL47, the inspector considered whether planning permission should either be granted for a limited period or subject to a condition restricting occupation of the site to its then current occupiers, the Tingey family. She concluded that in the light of her serious concerns about pedestrian safety, neither temporary occupation of the site nor its continuing occupation by the Tingey family only was justified.

16. The inspector then addressed the question whether the interference with the Claimant and his family's rights under article 8 and article 1 protocol 1 of the European Convention of Human Rights was disproportionate. In DL50 she said-

> "*50. Both the above are qualified rights, and interference with them may be justified where lawful and in the public interest. I have concluded that the proposed development conflicts with policies within the HDPF and the PPTS. Highway safety for all*

> *highway users is an important public interest. I find the harm to the occupiers' pedestrian safety, along with the site location and the limitations of the occupiers to access services and facilities, is so significant and that the arguments advanced by the appellant and the other considerations do not clearly outweigh this harm. I have considered whether a lesser requirement would overcome the harm. For those reasons given above I have ruled out the possibility of imposing a temporary or personal/personal temporary permission. Dismissing this appeal would be an interference of the appellants' human rights but because of harm that I have identified to the occupiers this is proportionate and necessary in the public interest*".

17. Finally, in DL51 and DL52 the inspector addressed her duty under the Equality Act 2010. She acknowledged the traditional way of life of the occupiers of the site and the personal needs and circumstances of the Tingey family. In DL52 she said –

> "*52. However, I have identified that due to the harm to the occupiers' pedestrian safety the site cannot be considered a safe place for them to live and this carries significant weight against the proposal. The site is not suitable for this use and I conclude that the pedestrian safety and limitations to access services and facilities outweighs the rights of the site owner and occupiers".*

18. In DL54, the inspector concluded that the planning appeal should be dismissed.

The ground of challenge

19. In his claim form, the Claimant sought to challenge the validity of the inspector's decision on three grounds. By his order dated 29 November 2019, James Strachan QC (sitting as a Deputy Judge of the High Court) gave the Claimant permission to proceed with his claim on ground 1 in part only, but refused permission on grounds 2 and 3.

20. By ground 1, the Claimant contends that the inspector erred in law in mistakenly concluding that it is the specific aim of the PPTS that new gypsy and traveller sites should be located where their occupants can access services and facilities by foot and public transport.

21. The Claimant relies in particular upon the inspector's statement in DL43 that the proposed development would not comply with the aims of the PPTS for new traveller sites to be of suitable accommodation for which travellers can safely access services and facilities *"by foot and public transport"*. The Claimant contends that in identifying the aims of the PPTS as, in effect, requiring the suitability of a proposed gypsy and traveller site to be judged on the basis of whether it is accessible to services and facilities by foot and public transport, the inspector misconstrued the stated aims of the PPTS. Properly interpreted, so the Claimant contends, the PPTS states no such aim and imposes no such requirement.

22. The result, says the Claimant, is that the inspector drew the planning balance in DL43 on a legally erroneous basis. Had she proceeded on a proper understanding of the aims of the PPTS, she might well have drawn the planning balance in favour of allowing the

appeal, notwithstanding that she had concluded that the proposed development was not in accordance with the development plan. Moreover, she might have reached a different conclusion in DL50 on the question whether it would be proportionate to dismiss the appeal.

23. Before I consider these contentions, I should set out the relevant provisions of the HDPF, the PPTS and the Framework. I should also summarise the legal principles against which the Claimant's ground of challenge falls to be determined.

The HDPF

24. Policy 23 "Strategic Policy: Gypsy and Traveller Accommodation" of the HDPF sets out criteria to be taken into consideration when determining planning applications for gypsy and traveller site accommodation. For the purpose of the present claim, the relevant provisions are –

> "*1. The following criteria will be taken into consideration when determining the allocation of land for Gypsies, Travellers and Travelling Showpeople and any planning applications for non-allocated sites:*
>
> …
>
> *b. The site is served by a safe and convenient vehicular and pedestrian access. The proposal should not result in significant hazard to other road users;*
>
> …
>
> *d. The site is located in or near to existing settlements, or is part of an allocated strategic location, within reasonable distance of a range of local services and community facilities, in particular schools and essential health services*;
>
> …".

25. Policy 40 "Sustainable Transport" of the HDPF states a policy commitment to developing an integrated community connected by a sustainable transport system, with encouragement and support for development proposals that promote an improved and integrated transport network, with a re-balancing in favour of non-car modes as a means of access to jobs, homes, services and facilities. Policy 40 states that development will be supported if it –

> "…
>
> *9. Provides safe and suitable access for all vehicles, pedestrians, cyclists, horse riders, public transport and the delivery of goods.*
>
> …".

The PPTS

26. Paragraph 1 of the PPTS states –

> *"This document sets out the Government's planning policy for traveller sites. It should be read in conjunction with the National Planning Policy Framework…".*

27. Paragraph 3 of the PPTS states –

> "*The Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life for travellers while respecting the interests of the settled community*".

28. In paragraph 4, to help achieve that overarching aim, the Government states its aims in respect of traveller sites –

> "*To help achieve this, Government's aims in respect of traveller sites are:*
>
> *a. that local planning authorities should make their own assessment of need for the purposes of planning*
>
> *b. to ensure that local planning authorities, working collaboratively, develop fair and effective strategies to meet need through the identification of land for sites*
>
> *c. to encourage local planning authorities to plan for sites over a reasonable timescale*
>
> *d. that plan-making and decision-taking should protect Green Belt from inappropriate development*
>
> *e. to promote more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites*
>
> *f. that plan-making and decision-taking should aim to reduce the number or unauthorised developments and encampments and make enforcement more effective*
>
> *g. for local planning authorities to ensure that their Local Plan includes fair, realistic and inclusive policies*
>
> *h. to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply*
>
> *i. to reduce tensions between settled and traveller communities in plan-making and planning decisions*

> *j. to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure*
>
> *k. for local planning authorities to have due regard to the protection of local amenity and local environment*".

29. The specific planning policies in the PPTS are generally arranged in two main parts. The first main part (Policies B to G) deals with plan-making for traveller sites. The second main part (Policy H) deals with decision-taking, including the determination of planning applications for new traveller sites.

30. Under Policy B: Planning for traveller sites, paragraph 13 of the PPTS states that –

> "*13. Local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally. Local planning authorities should, therefore, ensure that their policies:*
>
> *a. promote peaceful and integrated co-existence between the site and the local community*
>
> *b. promote, in collaboration with commissioners of health services, access to appropriate health services*
>
> *c. ensure that children can attend school on a regular basis*
>
> *d. provide a settled base that reduces both the need for long-distance travelling and possible environmental damage caused by unauthorised encampment*
>
> *e. provide for proper consideration of the effect of local environmental quality (such as noise and air quality) on the health and well-being of any travellers that may locate there or on others as a result of new development*
>
> *f. avoid placing undue pressure on local infrastructure and services*
>
> *g. do not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans*
>
> h. *reflect the extent to which traditional lifestyles (whereby some travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to sustainability*".

31. Under Policy H: Determining planning applications for traveller sites, paragraphs 23 and 24 of the PPTS state –

> "*23. Applications should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies in the National Planning Policy Framework and this planning policy for travellers sites.*
>
> *24. Local planning authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:*
>
> *a) the existing level of provision and need for sites*
>
> *b) the availability (or lack) of alternative accommodation for the applicants*
>
> *c) other personal circumstances of the applicant*
>
> *d) that locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites*
>
> *e) that they should determine applications for sites from any travellers and not just those with local connections*".

The Framework

32. Paragraph 108 of the Framework states that, in assessing specific applications for development, it should be ensured that –

> "*a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;*
>
> *b) safe and suitable access to the site can be achieved for all users*
>
> …".

33. Paragraphs 109 and 110 of the Framework state –

> "*109. Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.*
>
> *110. Within this context, applications for development should:*
>
> *a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport…;*

> *b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;*
>
> *c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles…*".

Legal principles

34. By virtue of section 70(2) of the 1990 Act, in dealing with an application for planning permission a local planning authority is required to have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations. By virtue of section 79(4) of the 1990 Act, that requirement applies also to an inspector appointed to determine an appeal made under section 78(1) against a refusal of planning permission.

35. Section 38(6) of the 2004 Act provides -

> *"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."*

36. In *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447, at 1458B, 1458F-H, addressing the equivalent Scottish provision to section 38(6) of the 2004 Act, Lord Clyde said that it had introduced a priority to be given to the development plan in the determination of planning matters. Nevertheless -

> *"…the section has not touched the well-established distinction in principle between those matters which are properly within the jurisdiction of the decision-maker and those matters in which the court can properly intervene. It has introduced a requirement with which the decision-maker must comply, namely the recognition of the priority to be given to the development plan. It has thus introduced a potential ground on which the decision-maker could be faulted were he to fail to give effect to that requirement. But beyond that it still leaves the assessment of the facts and the weighing of the considerations in the hands of the decision-maker. It is for him to assess the relative weight to be given to all the material considerations. It is for him to decide what weight is to be given to the development plan, recognising the priority to be given to it…"*

37. At page 1459D, Lord Clyde said -

> *"In the practical application of section 18A it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard*

> *to a policy in the development plan which is relevant to the application or fails properly to interpret it".*

38. In *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] 1 WLR 1865, [2017] UKSC 37, at [21] Lord Carnwath JSC made the following observations on the role of the Framework in the determination of planning applications –

> *"….The Framework itself makes clear that as respects the determination of planning applications (by contrast with plan-making in which it has statutory recognition), it is no more than "guidance" and as such a "material consideration" for the purposes of section 70(2) of the 1990 Act (see R (Cala Homes (South) Ltd) v Secretary of State for Communities and Local Government [2011] EWHC 97 (Admin); [2011] 1 P & CR 22, para 50 per Lindblom J). It cannot, and does not purport to, displace the primacy given by the statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme".*

39. We are told in paragraph 1 of the PPTS that it should be read in conjunction with the Framework. In my view, Lord Carnwath's observations apply also to the role of the PPTS in the determination of applications for planning permission for gypsy and traveller sites.

40. The Supreme Court considered the correct approach to interpretation of a development plan in *Tesco Stores Ltd v Dundee City Council* [2012] PTSR 983, [2012] UKSC 13. At [18]-[19] Lord Reed JSC identified the applicable principles –

> *"18. …The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained. Those considerations point away from the view that the meaning of the plan is in principle a matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality. On the contrary, these considerations suggest that in principle, in this area of public administration as in others…policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context.*
>
> *19. That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As*

> *has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759, 780 per Lord Hoffmann)…".*

41. In the *Tesco* case, the particular development plan policy under consideration required an assessment to be made of the suitability of a site for retail development. At [21], Lord Reed said –

> *"21. A provision in the development plan which requires an assessment of whether a site is "suitable" for a particular purpose calls for judgment in its application. But the question whether such a provision is concerned with suitability for one purpose or another is not a question of planning judgment: it is a question of textual interpretation, which can only be answered by construing the language used in its context. In the present case, in particular, the question whether the word "suitable", in the policies in question, means "suitable for the development proposed by the applicant", or "suitable for meeting identified deficiencies in retail provision in the area", is not a question which can be answered by the exercise of planning judgment: it is a logically prior question as to the issue to which planning judgment requires to be directed".*

42. At [31] in the *Tesco* case, Lord Reed made the following observation as to the materiality of an erroneous interpretation of development plan policy made by a planning authority in the course of determining a planning application –

> *"31. Finally, I would observe that an error by the respondents in interpreting their policies would be material only if there was a real possibility that their determination might otherwise have been different…".*

43. In the *Hopkins Homes* case at [23], Lord Carnwath said that the approach stated by Lord Reed in the *Tesco* case should also apply to policies in the Framework. In my view, that approach is also applicable to policies in the PPTS when (as I have already noted) they are read, as is the Government's stated intention that they should be, in conjunction with the Framework.

44. At [24]-[26] in the *Hopkins Homes* case, Lord Carnwath made the following salutary observations in response to concerns raised before the Supreme Court in that case about the "over-legalisation of the planning process" –

> *"24. In the first place, it is important that the role of the court is not overstated. Lord Reed's application of the principles in the particular case (para 18) needs to be read in the context of the relatively specific policy there under consideration. Policy 45 of the local plan provided that new retail developments outside locations already identified in the plan would only be acceptable in accordance with five defined criteria, one of which depended on the absence of any "suitable site" within or linked to the existing centres (para 5). The short point was the meaning of the word "suitable" (para 13): suitable for the development proposed by the applicant, or for meeting the retail deficiencies in the area? It was that question which Lord Reed identified as one of textual interpretation, "logically prior" to the exercise of planning judgment (para 21). As he recognised (see para 19), some policies in the development plan may be expressed in much broader terms, and may not require, nor lend themselves to, the same level of legal analysis.*
>
> *25. It must be remembered that, whether in a development plan or in a non-statutory statement such as the NPPF, these are statements of policy, not statutory texts, and must be read in that light. Even where there are disputes over interpretation, they may well not be determinative of the outcome…Furthermore, the courts should respect the expertise of the specialist planning inspectors, and start at least from the presumption that they will have understood the policy framework correctly. With the support and guidance of the Planning Inspectorate, they have primary responsibility for resolving disputes between planning authorities, developers and others, over the practical application of the policies, national or local.…*
>
> *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 judgement in the application of that policy; and not to elide the two".*

45. A modern statement of the well-established principles upon which the Court determines a challenge to the validity of a planning appeal decision under section 288 of the 1990 Act is to be found in at [19] in the judgment of Lindblom J in *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government* [2017] PTSR 1283, [2014] EWHC 754 (Admin).

The Claimant's submissions

46. For the Claimant, Mr Marc Willers QC made the following submissions-

(1) The inspector had misinterpreted the Government's stated policy aims in paragraph 4 of the PPTS. In DL43, the inspector had misinterpreted the policy aims stated in paragraph 4 of the PPTS as requiring new traveller sites to be sited in locations from which their occupiers are able to access services and facilities on foot and by public transport.

(2) In particular, the inspector's reasoning in DL43 shows that she understood that both the appropriateness of a site's location for the purpose of policy aim 4h and the ability of a site to provide suitable accommodation for the purposes of policy aim 4j depended upon it being accessible by foot and public transport. Neither policy aim 4h nor policy aim 4j stated the need for a site to be accessible by foot and public transport. Nor was any such requirement identified in paragraph 13 of the PPTS, in which the Government identified those objectives that plan-making authorities should pursue in order to ensure that traveller sites promoted or identified through their development plans are sustainably located.

(3) Both policy aims 4h and 4j are, and should properly be understood to be, positive in their intent. In particular, policy aim 4j seeks to "enable" the provision of suitable sites for gypsies and travellers with a view to realising the overarching objective of facilitating their traditional and nomadic way of life. Paragraph 4 of the PPTS does not indicate that the particular policy aim stated in paragraph 4j of "enabling" suitable and accessible accommodation for travellers cannot be achieved by a site that is in reality likely to be accessible only by vehicle.

(4) That would be a surprising and highly restrictive interpretation of paragraph 4j, since the practical reality is that many sites that come forward for development as traveller sites are in rural locations where day to day access to services and facilities by foot and public transport is likely to be very limited. That is no different from the position in respect of conventional housing development in rural areas, where in reality existing and future occupiers will be principally reliant on their cars to get to and from local services and facilities.

(5) These practical considerations reinforce the argument that the inspector has adopted an impermissibly narrow approach to understanding the stated policy aim in paragraph 4j of the PPTS.

(6) The inspector's misinterpretation of paragraphs 4h and 4j of the PPTS had led her to the conclusion in DL43 that the proposed development would not comply with the aims of the PPTS. Had she not fallen into that error, the inspector might well have reached the contrary conclusion that the proposed development complied with those policy aims. Although she had found the proposed development not to be in accordance with the development plan, she might well have concluded that, in the overall planning balance, greater weight should be given to the policy aims of the PPTS and, on that basis, the appeal should be allowed and planning permission be granted. Moreover, a finding that the proposed development was in accordance with the policy aims of the PPTS might well have led her in DL50 to conclude that it was neither proportionate nor necessary in the public interest to dismiss the appeal.

The First Defendant's submissions

47. For the First Defendant, Mr Ned Westaway acknowledged that the Government's policy aims set out in paragraph 4 of the PPTS do not specify a requirement that the occupiers of new traveller sites should be able to access services and facilities by foot and public transport. Nevertheless, in that policy context "access" should properly be understood to mean all forms of access, including access by private vehicle, on foot and by public transport.

48. Mr Westaway made the following submissions –

(1) The Claimant's argument was itself founded on a misunderstanding of the purpose of the policy aims stated in paragraph 4 of the PPTS and indeed of the PPTS as a whole.

(2) In particular, the purpose of paragraph 4 of the PPTS is to state a series of broad policy aims that the Government wishes to see achieved through the plan-making process and through the process of planning decision-making. It is for decision makers in determining planning applications for new traveller sites to judge the degree to which those broadly stated policy aims will be fulfilled by the proposal under consideration.

(3) That was the correct approach of the inspector in the present case. In DL43, the inspector stated her judgment as to the degree to which the site fulfilled the policy aims of the PPTS, based on her findings about the severe limitations that she had found to arise from her appraisal of the access arrangements to the site and its location on a dangerous stretch of road with hazardous access to the nearest bus stops.

(4) It does not follow that she interpreted paragraphs 4h and 4j of the PPTS as requiring that any new traveller site must be capable of being accessed by foot or public transport in order to fulfil the aims of PPTS. Nor does it follow that suitable sites will not be found in rural areas. There is no reason to assume that the particular, severe difficulties that the inspector found to exist with access other than by private vehicle in relation to the site in the present case will be present, or present to the same degree, in any other rural location.

(5) The inspector's approach was in accordance with the PPTS. Two particular points demonstrate that to be the case. Firstly, at paragraph 24(d), Policy H of the PPTS advises that planning applications for new traveller accommodation on unallocated sites should be assessed against the local specific criteria used to guide the allocation of sites. That was the inspector's approach in the present case. Secondly, the PPTS is intended to be applied in conjunction with relevant policies in the Framework. Again, that was the inspector's approach in the present case.

(6) Even if the Claimant is correct in his contention that, in DL43, the inspector wrongly understood the policy aims stated in paragraph 4 of the PPTS to include the specific aim that new traveller sites must be accessible by foot and public transport, that error did not bear materially on her decision to dismiss

the appeal. It was unrealistic to argue that the outcome might have been different.

(7) The inspector made clear findings that the proposed development was in conflict with the applicable policies of the development plan, policies which she found to be consistent with the Framework and the PPTS and so meriting full weight. She was firmly of the view that the location of the site and the risks arising for pedestrians and other road users from its access onto a fast and hazardous stretch of Shoreham Road weighed strongly against not only permanent residential occupation of the site but also temporary occupation or continuing occupation by the Tingey family. It is clear that these considerations would have led her to determine the planning application in accordance with the development plan and to dismiss the appeal.

Discussion

49. I have no doubt that Mr Willers is correct in his contention that the Government's planning policy aims for traveller sites, stated in paragraph 4 of the PPTS, are not to be read or understood to require that the occupiers of new traveller sites must be able to access services and facilities by foot and public transport. No such specific aim or requirement is stated in paragraph 4 of the PPTS.

50. Moreover, as Mr Willers submits, policy aims 4h and 4j of the PPTS are, and should properly be understood to be, positive in their intent. There is no basis, as I see it, for inferring that the particular policy aim stated in paragraph 4j of the PPTS, of "enabling" suitable accommodation from which travellers can access education, health and other services and facilities, cannot, as a matter of policy, be achieved by a site that is in reality likely to be accessible primarily by private vehicle. As Mr Willers says, the practical reality is that many sites that come forward for development as traveller sites are in rural locations where day to day access to services and facilities by foot and public transport is likely to be limited.

51. It does not, however, follow that the ability of occupiers of a proposed traveller site safely to get to and from local services and facilities on foot and by bus, as well as (or instead of) by cycle, car or other private vehicle is irrelevant to the question whether, and to what degree, that site fulfils the policy aims stated in paragraph 4h and 4j of the PPTS. As Mr Westaway submitted, in the context of those policy aims, "access" should properly be understood to embrace all forms of access, including access by private vehicle, on foot and by public transport. Indeed I did not understand Mr Willers to dispute that.

52. At [21] in the *Tesco* case, Lord Reed said that a provision in a development plan which requires an assessment of whether a site is "suitable" for a particular purpose calls for judgment in its application. The same is true, in my view, of such a provision in the PPTS. Before making that judgment, it is necessary for the planning decision maker properly to understand the purpose for which, in that policy context, he or she is being called upon to make a judgment about the suitability of the site.

53. In the case of paragraph 4j of the PPTS, that purpose is, I think, evident from the terms in which that policy aim is expressed. It is the site's suitability for the purpose of enabling its future occupiers to access the services and facilities there mentioned –

schools, health services, places of work and similar facilities. It seems to me that there are at least three questions of judgment that a planning decision maker might reasonably consider in order to decide whether, and to what extent, that purpose is likely to be fulfilled. The first is the nature and adequacy of the range of services and facilities of that kind that are within reasonable reach of the site. The second is the degree to which the site is well served by transport choices other than the private car. For example, the planning decision maker may reasonably consider whether children living at the site would have the opportunity safely to get to and from school by bus, by cycle or on foot. The third is the question whether the access arrangements for the site cast doubt on its suitability for the purpose of giving access to the services mentioned in paragraph 4j of the PPTS, including by a range or choice of transport modes. That question may in turn be informed by questions of highway safety.

54. Essentially the same analysis applies, in my view, to the interpretation and application of paragraph 4h of the PPTS. A provision in a development plan, or a statement of national planning policy, which requires an assessment of whether a location is "appropriate" for a particular use also calls for judgment in its application. In the present case the inspector said that allowing the appeal would have increased the number of traveller pitches with planning permission and gone some way to addressing under provision in Horsham District. The question of judgment for the inspector was whether the location was appropriate for that purpose. In making that judgment, it seems to me that it was both reasonable and relevant for the inspector to look at the site's location and its access onto a busy and fast flowing road which presented, on her assessment, a real and significant hazard to occupiers going to and from the site on foot; and so limited the opportunities to make journeys to and from the site other than by private car or other vehicle.

55. Moreover, I accept Mr Westaway's submission that the purpose of paragraph 4 of the PPTS is to state a series of broad policy aims that the Government wishes to see achieved through the plan-making process and through the process of planning decision-making. It is for decision makers in determining planning applications for new traveller sites to judge the degree to which those broadly stated policy aims will be fulfilled by the proposal under consideration.

56. The PPTS gives a clear direction to planning decision makers on the approach that they should follow for that purpose.

57. Firstly, decision makers should be guided in their assessment by the "locally specific criteria" that are set out in the development plan for the assessment of planning applications for traveller site development on unallocated sites. See paragraph 24(d) of Policy H of the PPTS. That was the approach taken by the inspector in reaching her decision. Her assessment of the proposed development against policies 23 and 40 of the HDPF was central to her overall conclusions on the planning balance in DL42 and DL43.

58. Secondly, decision makers should apply the policies in the PPTS in conjunction with the Framework. See paragraph 1 of the PPTS. Of course, the degree to which it is necessary for the planning decision maker to look for assistance in the Framework will depend upon the circumstances of the planning application and the issues that arise in its determination. In the present case, for example, it is clear that in DL20 the inspector had had regard to guidance given in paragraphs 108 to 110 of the Framework as to the

need for safe and suitable access to the site to be achieved for all users. Again, her approach was in accordance with the guidance given by the PPTS.

59. The question is whether Mr Willers is correct in his contention that the inspector's reasoning in DL43 exposes a misunderstanding of the policy aims stated in paragraph 4 of the PPTS. In the light of the discussion in paragraphs 49 to 58 above, I do not think that he is correct.

60. In my judgment, in DL43 the inspector is not to be understood as importing into paragraph 4 of PPTS a specific policy requirement that, in order to fulfil the aims stated in sub-paragraphs 4h and 4j, the occupiers of any proposed new traveller site must be able to access services and facilities by foot and public transport. It is clear to me that in DL43, the inspector was exercising her planning judgment in order to assess the degree to which the site fulfilled the policy aims stated in subparagraphs 4h and 4j. In particular, the inspector made a judgment about the suitability of the site for the purpose of enabling its occupiers to access local services and facilities, in circumstances where, as she had found to be the case, the site could not safely be accessed other than by private vehicle. In mv view, the Claimant has not established that the inspector misunderstood the planning policy framework to which she referred in some detail in her decision, I am satisfied that neither her reasoning in DL43, nor indeed her decision read as a whole, supports the Claimant's contention that she has misinterpreted or misunderstood the policy aims of the PPTS.

61. For these reasons, ground 1 is not made out and this claim must be dismissed. In case the claim goes further, I should add this. Had I been persuaded that the inspector had erred as the Claimant contended, I would have accepted the First Defendant's submission that her error did not bear materially on her decision to dismiss the appeal, for the reasons that I have set out in paragraph 48(7) above.

62. It remains only to thank Mr Willers QC and Mr Westaway for their clear and thoughtful submissions, which have been of great assistance to the Court.