Neutral Citation Number: [2022] EWHC 2406 (Admin)

Case No: CO/1755/2021

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/10/2022

Before :

MR C M G OCKELTON, VICE PRESIDENT OF THE UPPER TRIBUNAL

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Between :

Gregory Park Holding Limited	**Claimant**
- and -	
Hart District Council	**Defendant**
- and -	
Mr Johnny Lee	**Interested Party**

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- -

Mr Andrew Fraser-Urquhart, QC (instructed by **Howes Percival LLP**) for the **Claimant**
Mr Douglas Edwards, QC (instructed by **Hart District Council Shared Legal Services**) for the **Defendant**
Mr Michael Rudd (instructed by **Fulchers Solicitors**) for the **Interested Party**

Hearing date: 7 July 2022

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Approved Judgment

C M G Ockelton :

1. The Claimant is the registered proprietor of the Four Seasons Hotel, at Dogmersfield Park, Dogmersfield, Hampshire. The building housing the hotel is a Grade I listed building, and its grounds, Dogmersfield Park, constitute a Grade II listed registered park and garden. To the South West, in the Parish of Odiham, but within the boundary of the Park lies Farnham Lodge, Farnham Road, Odiham. The Interested Party applied for planning permission for a change of use of part of the land belonging to Farnham Lodge for residential purposes for two gypsy pitches, consisting of a mobile home, a touring caravan and a utility/dayroom, each together with the formation of hardstanding.

2. The Defendant is the local planning authority with a responsibility for the area. On receipt of the application for planning permission, dated 3 March 2020, the Defendant prepared a report for its planning committee. The Claimant, having had notice of the application as a neighbour, was concerned about the substance and contents of that report and obtained an Opinion from Leading Counsel, which he submitted to the Defendant. There was also an adverse response from the Defendant's own Policy Department. The report was withdrawn, and a further report was prepared. The new report, like its predecessor, recommended that planning permission be granted. The Defendant's planning committee resolved to grant planning permission, which was granted by decision notice dated 6 April 2021. The grant was subject to a number of conditions.

3. This claim, issued on 18 May 2021, challenges the grant of planning permission. Permission to apply for judicial review was refused on the papers by Neil Cameron QC sitting as a Deputy Judge of this Court. On renewal, however, permission was granted on a single ground by Eyre J. His decision, [2021] EWHC 2835 (Admin) is the basis for the claim as argued before me and for that reason I set out the relevant paragraphs of his judgment:

> "[3] Ground 1 is a contention that the Defendant failed properly to apply policy H5 of the Hart Local Plan. H5 is the policy for gypsy, travellers and travelling show people sites. The relevant part of the text of that policy is as follows. It begins with the preamble that:
>
> > "Existing permanent authorised Gypsy Traveller and travelling show people sites will be retained for the use of these groups unless acceptable replacement accommodation can be provided or it has been established that the sites are no longer required. Permission for Gypsies, Travellers and Travelling Show People sites will be supported where it has been demonstrated that the following criteria have been met:
> >
> > a) for sites located in the open countryside the applicant can demonstrate a need for the development and the size/capacity of the site or extension can be justified in the context of the scale of need demonstrated;
> > b) the potential occupants are recognised as Gypsies, Travellers or Travelling Show People;"
>
> There are then a further seven criteria set out, I need not recite those, although it is of note that those criteria are all phrased by way of criteria

> which have to be met but none of them contains a phrase to the same effect of that which is in a) where it is said that the applicant has to do so. The supporting text includes, at para 160, the following:
>
> > "Policy H5 sets out criteria against which planning applications for Traveller sites will be determined. It applies to all proposals for Traveller sites, including any for Travellers that do not meet the government definition. The Council will consider the existing level of local provision and need for sites, the availability (or lack) of alternative accommodation for the applicants, and other personal circumstances of the applicant. Subject to a need being demonstrated, sites in the countryside will be acceptable where they meet the criteria in Policy H5."
>
> [4] I can deal briefly with the reasons why permission is being given. It was common ground that the applicant did not show or, indeed, seek to show a personal need for the accommodation at this site, but the Defendant was satisfied that there was a need by reference to the [Gypsy and Traveller Accommodation Assessment] and by the assessment that there was a need in the authority area for sites for Travellers, Show People and Gypsies.
>
> [5] The Claimant's contention is that the proper interpretation of H5(a) is that where there is a site in the countryside, as the site here was, a personal need has to be shown by the Applicant. That interpretation is, I am satisfied, reasonably arguable."

4. The following sentences of Eyre J's judgment may have become slightly corrupted in transcription, but it is clear that what he had in mind was, firstly, that the preamble indicated that the criteria must be met, and apart from (a) that wording was used in each criterion, but in (a) the criterion is expressed in terms of the Applicant's demonstration of the need, and secondly that this feature of the wording applied only to sites located in the open countryside, as the site in question is.

5. The issue to be decided is therefore a point of construction of the policy. The question is whether the policy requires those seeking planning permission for a Gypsy site in the countryside themselves to demonstrate a personal need, or whether a general need for further Gypsy and Traveller sites is capable of satisfying that part of the policy. So far as legal principles are concerned, it is well established that the construction of planning policy is a matter of law for the Court (Tesco Stores Limited v Dundee City Council [2012] UKSC 13). A policy statement is to be interpreted objectively in accordance with the language used, read in its proper context. Secondly, the policy is to be construed as it stands, by reference to the words used in it. It is unhelpful to members of the public as well as to decision-makers if it is suggested that the policy can be understood only by reference to other documents or to its history. As Lindblom J (as he then was) said in R (Phides Overseas Ltd) v Secretary of State for Communities and Local Government [2015] EWHC 827 (admin) at [56],

> > "… [W]hen the court is faced with having to construe a policy in an adopted plan it cannot be expected to rove through the background documents to the plan's preparation, delving into

> such of their content as might seem relevant. One would not expect a landowner or a developer or a member of the public to have to do that to gain an understanding of what the local planning authority had had in mind when it framed a particular policy in the way that it did. Unless there is a particular difficulty in construing a provision in the plan, which can only be resolved by going to another document either incorporated into the plan or explicitly referred to in it, I think one must look only to the contents of the plan itself, read fairly as a whole. To do otherwise would be to neglect what Lord Reed said in paragraph 18 of his judgment in Tesco Stores Ltd. v Dundee City Council …. In my view, to enlarge the task of construing a policy by requiring a multitude of other documents to be explored in the pursuit of its meaning would be inimical to the interests of clarity, certainty and consistency in the "plan-led system". As Lewison L.J. said in paragraph 14 of his judgment in R. (on the application of TW Logistics Ltd.) v Tendring District Council [2013] EWCA Civ 9, with which Mummery and Aikens LJJ agreed, "this kind of forensic archaeology is inappropriate to the interpretation of a document like a local plan ...". The "public nature" of such a document is, as he said (at paragraph 15), "of critical importance". The public are, in principle, entitled to rely on it "as it stands, without having to investigate its provenance and evolution"."

6. I have set out that passage at length, because Mr Fraser-Urquhart QC took me to the history of the plan, and to the modification made by the Inspector who examined it at the Local Plan Inquiry. It does not appear to me to be right to look at the Inspector's reservations about the draft, or the reasoning behind the Main Modification he made to it; nor am I concerned with the history of the Gypsies and Travellers' Accommodation Assessments in the District, either that of 2016 which was in force when the draft plan was developed, or that of 2020, the up-to-date GTAA when the decision under challenge was made. I am concerned with construing requirement H5(a) as it stands as part of the Hart Local Plan.

7. In order to provide the context, I must set out, first, the sub-paragraphs of Policy H5 that Eyre J did not cite:

> "c) services and facilities can be suitably accessed, including schools, medical services and other community facilities;"
>
> d) it has no unacceptable adverse impact upon local amenity and the natural environment;
>
> e) it can be adequately serviced with drinking water and sewage and waste disposal facilities;
>
> f) it is of a scale that does not dominate adjoining communities;
>
> g) the site is not inappropriately screened and does not create a sense of isolation from adjoining communities;

> h) it has safe and convenient access to the highway network;
>
> i) it is of sufficient size to provide for accommodation, parking, turning, and, where relevant, the servicing and storage of vehicles and equipment.

8. The Department for Communities and Local Government's document "Planning Policy for Traveller Sites" (PPTS) has a section headed "Decision-taking", which has guidance for determining applications for Traveller sites. The passages relevant to the issues before me are as follows:

> "22. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.
>
> …
>
> 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 local 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 the 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
>
> …
>
> 25. Local planning authorities should very strictly limit new Traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local Planning Authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure."

9. The narrative commentary on Policy H5 is consistent with PPTS:

> "160. Policy H5 sets out criteria against which planning applications for Traveller sites will be determined. It applies to

> all proposals for Traveller sites, including any for Travellers that do not meet the Government definition. The Council will consider the existing level of local provision and need for sites, the availability (or lack) of alternative accommodation for the applicants, and other personal circumstances of the applicant. Subject to a need being demonstrated, sites in the countryside will be acceptable where they meet the criteria in Policy H5."

10. Mr Fraser-Urquhart's submission is that the author of the report misunderstood the meaning of paragraph H5(a), and thus misled the Council. In view of the fact that the application was approved by the bare majority supplied by the chairman's casting vote, he submits that it is clear that this feature of the report had a material impact on the committee's decision.

11. The relevant passage of the report sets out the wording of Policy H5(a), and refers to paragraph 59 of the National Planning Policy Framework (NPPF) and the requirements of PPTS. It refers to the GTAA and continues as follows:

> "The overall conclusion is that there is a need for 23 pitches for households that meet the planning definition of Gypsy/Travellers to 2034. There is a need for between 0 and 2 pitches for undetermined households and, whilst not now a requirement to include in the GTAA, there is also a need for 19 pitches for households that did not meet the planning definition.
>
> Given the findings of the GTAA (assessment of local need), it can reasonably be concluded that there is an unmet need for land to provide Travellers/Gypsy accommodation in the district, which is a significant consideration in the determination of this application.
>
> The proposed size of the proposed development is for 2 pitches, incorporating associated dayroom facilities and touring caravans, the size/capacity of the proposed development is therefore proportionate to the unmet need demonstrated by the evidence by the GTAA."

12. In dealing with sub-paragraph (b), the author of the report indicates that in the application form, the applicant simply seeks permission to meet a recognised need for such facilities in the area to facilitate a gypsy lifestyle, which does not of itself indicate who the potential occupiers would be. That difficulty, however, could be met by a condition requiring occupants to meet the definition of Gypsies/Travellers. After considering other relevant issues, the report turns to the planning balance. Amongst the factors listed as a public benefit which would arise from the proposal is the following:

> "Social benefits would arise as a result of the contribution of two Gypsy/Travellers pitches towards meeting an identified unmet need for such accommodation in the District. This is significant public benefit in favour of the proposed development."

13. In summing up that issue, the author writes that:

> "The fact that the proposal would contribute to addressing an identified need by the Council for Gypsies/Travellers' accommodation, as stated above should be attributed significant weight in this instance. The minor impacts identified above should be attributed significant weight in this instance. The minor impacts identified above would be outweighed by the benefits arising from the provision that this type of residential accommodation, for which there is a clear unmet need for the time period of the adopted HLP 32."

14. In conclusion, the author wrote as follows:

> "The proposed development would satisfy an unmet need of accommodation without causing material demonstrable harm to the countryside, heritage assets, neighbours or highways. The limited/minor landscape change resulting from introducing small scale structures on the land would be far outweighed by the substantial social public benefits and limited economic and environmental benefits arising from the proposal. As such it is recommended this application is approved conditionally."

15. Mr Fraser-Urquhart's submission is that the identification of the unmet need was simply not enough to meet the requirements of Policy H5(a). What that policy requires, he submits, is for any applicant who seeks planning permission for a Gypsy or Traveller site in the countryside to show what he calls a "personal" need. By that, he means that any application must demonstrate that the applicant has a need for the development in question. It follows that if an applicant is silent on this issue, the application cannot be approved consistently with the policy. It further follows that the mere demonstration of a general need for pitches will not suffice. What needs to be demonstrated is that there is a need for the individual applicant to have the particular proposed pitch. He said that this was consistent with what the Council's Policy Department had said, and that the Council had acted inconsistently in subsequently taking the view that Policy H5(a) was satisfied.

16. Mr Fraser-Urquhart points out that his submissions do not imply a general restriction on permission for Traveller/Gypsy sites in the District. The restriction is only imposed when the proposal is for sites in the countryside. When the site is not in the countryside, Policy H5(a) does not apply, and an applicant is not required to demonstrate a personal need. The general need for further sites, which he acknowledges exists, can be met by the provision of sites that are not in the countryside, without raising the issue that is the subject of these proceedings. To interpret the policy, and in particular, H5(a) in this way, is, he submits, consistent with paragraph 25 of PPTS. None of the difficulties that the Defendant and Interested Party suggest arise from the Claimant's proposed interpretation of the paragraph are real, when it is appreciated that the requirement in Policy H5(a) is limited to proposed developments in the countryside, and is the way in which the adopted policy implements the requirement of restricting such developments there. Indeed, the need, expressed both in paragraph 24(b) of PPTS and paragraph 160 of the commentary to the Policy, to consider the availability of alternative

accommodation for the applicants, totally negates the suggestion that it is sufficient to identify a general need.

17. On behalf of the Defendant, Mr Edwards QC began his submissions by pointing to what the report said in relation to the Council Policy Department's original submissions about the application, mentioned above. The relevant passage of the report reads as follows:

> "Policy (internal) (summary).
> Policy has made clear, their initial concerns did not represent an objection to the proposal. Additional clarification has been sought. The summarised comments are as follows:
> - Policy H5 was originally written in the context of the 2012 GTAA, the Local Planning Inspector had concerns the GTAA under-estimated needs.
> - Policy H5 was adapted to ensure that if a need is demonstrated, and provided the site is suitable in other regards (environmental, design and locational criteria) and provided it is for Travellers (which can be conditioned), Travellers' accommodation in the countryside should be permitted.
> - There is a question as to whether the applicant needs to demonstrate a need. Things have moved on since the Inspector modified Policy H5. The Council has now undertaken a new GTAA, published in March 2020, which has identified a need for 20 pitches across the District up to 2034 for Travellers that meet the definition as required by PPTS. It also identifies a need for 19 pitches for households that do not meet the definition and up to 2 undetermined households.
> - Whilst it is true that Policy H5 requires the applicant to demonstrate a need (and we might have expected the applicant to at least have referred to the latest GTAA), now that the Council has itself demonstrated a need it is arguably unnecessary for the applicant to do so and would certainly be a very weak basis for a refusal. Provided the site meets the other policy criteria and provided it is conditioned to be for Travellers, it should be permitted.
> …
> - … [A]s discussed above, the evidence of a need in the GTAA and the lack of supply means that one reaches the conclusion that it should be permitted, subject to other policy criteria."

18. It is clear, Mr Edwards submits, that the apparent reservations indicated earlier were resolved, and that the Council's position is not inconsistent.

19. Turning to the language of the Policy, Mr Edwards submitted that the difficulty with the Claimant's position is that it imposes a requirement of a "personal" need, which does not appear in the Policy at all. In the Policy, the phrase "a need" is not qualified.

A general need, he submitted, is a need. The requirement that there be a need is an appropriate restriction on developments of this sort in open countryside. It is not necessary to impose a further requirement by way of interpretation, in order to achieve that result. Interpreting Policy H5(a) as satisfied in cases where a general need is acknowledged, is both coherent and in accordance with the rest of the policy framework. Both NPPF and PPTS make it clear that the starting point is the requirement to provide sufficient sites. The various factors in paragraph 24 of PPTS are matters of consideration and balance in individual circumstances, but begin with the question of general need. Nothing in any of the material available to the Court suggest that a general need is relevant only when accompanied by a demonstration of evidence of personal needs of the applicant.

20. Mr Edwards pointed out that the Policy may work in a different way in circumstances where there is no acknowledgement for general need for further accommodation. If that is the case, an applicant for a site in the countryside will have the task of demonstrating a need which, *ex hypothesi*, is a particular need not a general need, the latter having been already satisfied.

21. Mr Edwards also pointed out that, if the Claimant's interpretation is the correct one, it would lead to a number of difficulties in relation to meeting the general need. A developer could not obtain planning permission for a Traveller site in the absence of an identified occupant with an identified need; and the local authority could not make the general provision which PPTS requires it to make. Further, no provision could ever be made in the countryside for transit sites. To Mr Fraser-Urquhart's point that such proposals, and such sites, only have those difficulties if they are in the countryside, Mr Edwards points out that it is in the nature of Gypsy and Traveller sites to be in the countryside, partly because of the nature of travelling life, and partly because of the increased expense of sites within urban developments.

22. On behalf of the Interested Party, Mr Rudd adopted Mr Edwards' arguments. He referred in particular to the general needs identified in both NPPF and PPTS as requiring to be satisfied. He pointed out that nothing was mentioned there about personal needs. The very nature of travelling, in his submission, meant that there would not be any settled identification of the proposed occupants: the requirement was simply that they met the requirements of being Gypsies or Travellers. The interpretation adopted by the Defendant was in accordance with the wording of the Policy, clearly sound and non-discriminatory, and consistent with the National Frameworks.

23. There are two aspects to the phrase under consideration. One is the requirement for a need. The other is that the applicant can demonstrate the need. They are linked: the need is one which the applicant is to demonstrate.

24. Eyre J noted that the phrasing of this paragraph of Policy H5 is different from the other paragraphs of the Policy. In my judgment, that is not very much help in construing paragraph (a). Paragraph (b) is a pure matter of unchangeable fact. Paragraphs (c) to (i) are matters of assessment in context and of planning judgment. Paragraph (a) relates to something different. It relates only to developments in the open countryside. For such a development it is a precondition. It is not unchanging. It is not in any real sense a matter of planning judgment, though there is an assessment to be made. Because of these differences it is not surprising that the phrasing is different from the other paragraphs.

25. It is convenient to begin with the requirement that the need (whatever that may mean) must be demonstrated by the applicant. The Claimant's case is that that means that if the applicant does nothing or adduces nothing by way of evidence of the need, the development cannot be allowed. I do not think that can be right. It seems to me that the words have the effect of the imposition of a burden of proof. If there is doubt about the matter, the application will be refused: it is for the applicant to demonstrate the need, not for anybody else to show that there is no need. But if there is a need, the application may be granted, whatever the source of the information about the need. It would not be sensible for an application to be subject to mandatory refusal as a consequence of non-compliance with Policy H5(a) if the need were clear. Besides, if the need had been demonstrated by other material, it would be absurd to require the applicant to go through the process again.

26. What has to be shown is a need for the development. I am not at all persuaded that the words should be glossed as the Claimant suggests, by the insertion of the word "personal", or any other requirement that the need should be a need experienced by the applicant. The applicant has to show that there is a need, not that he (or she) has a need. As a matter of ordinary language, a wealthy person may be able to demonstrate a need for more to be done to relieve poverty; a person who has no interest in sports may recognise a need for sports facilities.

27. It does not follow from that, however, either that there is no difference between the consideration of applications for sites in the countryside or elsewhere, or that developments in the countryside are not restricted and thus that the Policy does not respect the special nature of open countryside as required by PPTS paragraph 25.

28. The word "need" itself "has a protean or chameleon-like character", as Richards LJ remarked in R (Cherkley Campaign Limited) v Mole Valley District Council [2014] EWCA Civ 567 at [28]. A chameleon changes according to its surroundings, but Proteus changed his shape from time to time. Both characteristics are of importance in understanding the meaning of Policy H5(a). The need for poor relief will never be satisfied, but the need for Gypsy sites within the Defendant's area is a finite and quite limited need and comes nearer to being satisfied in general by every grant of planning permission for such a site. The Policy itself is supposed to be effective for some years into the future, and the GTAA sets out the needs until 2034, as assessed in 2020. The concept of the "need" for gypsy sites will change over that period.

29. It may be that at the present time the need for such developments is obvious: it is apparent from the figures in the GTAA. As time goes on, and more sites within the District obtain permission, the need will reduce. There will come a point where any application for a site in open countryside will need to be considered in the light of any existing other plans for sites which may reduce the 'need' for that under consideration. Finally, if the Defendant fulfils its duty by granting permission for sufficient sites to meet the identified needs, a site in the open countryside will only be permitted if the application shows the need for an additional site at the very place proposed. The process of consideration will thus change over time: but at each point it will be the same wording that is applied; it is the need that will have changed.

30. The overall consequence in the context of some of the examples given at the hearing is that Policy H5(a) interpreted in this way allows permission to be granted for sites in the countryside more freely when there is a general need, and less freely when the

general need has been satisfied. The local authority itself can reduce the availability of sites in the countryside by providing sites in other places. That is a coherent and sensible result, with no inconsistencies or contradictions.

31. I therefore hold that on its true construction Policy H5(a) is capable of being satisfied if the local planning authority consider that there is a need for gypsy sites which the proposed development will help to meet. It follows that the decision under challenge was not unlawful. The application for Judicial Review is dismissed.