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Case No: CO/2010/2020
CO/2012/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/03/2021

Before :

Timothy Mould QC
(sitting as a Deputy Judge of the High Court)

- -

Between :

BRAINTREE DISTRICT COUNCIL	**Claimant**
- and -	
SECRETARY OF STATE FOR HOUSING COMMUNITIES AND LOCAL GOVERNMENT	**Defendant**
-and-	
MR MARK NICHOLLS	**Interested Party**

- -
- -

Ashley Bowes (instructed by **Sharpe Pritchard LLP**) for the Claimant
Heather Sargent (instructed by **Government Legal Department**) for the Defendant
The Interested Party did not appear and was not represented.

Hearing date: 10 November 2020

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Approved Judgment

Covid-19 Protocol: This judgment has been handed down by the judge remotely by circulation to the parties' representatives by way of e-mail, and by release to Bailii. The date and time for hand down will be deemed to be 2pm on Thursday, 18 March 2021.

Timothy Mould QC:

The claim

1. By a decision letter dated 6 May 2020 ["the DL'], an inspector appointed by the Defendant allowed an appeal by the Interested Party against an enforcement notice issued on 25 January 2019 by the Claimant. The inspector granted planning permission, subject to conditions, for the development to which the enforcement notice related. The inspector quashed the enforcement notice. By a separate decision letter also dated 6 May 2020 ["the CDL"], the inspector made an award of costs to the Interested Party.

2. By this claim, the Claimant challenges the validity of those decisions. Pursuant to section 289 of the Town and Country Planning Act 1990 ["the 1990 Act"], the Claimant appeals against the decision to allow the enforcement appeal and quash the enforcement notice. Pursuant to section 288 of the 1990 Act, the Claimant applies to quash the grant of planning permission on the application deemed to have been made under 177(5) of the 1990 Act. The Claimant also applies to quash the decision to award costs to the Interested Party.

3. Following an oral renewal hearing on 23 July 2020, I gave permission for the claim to proceed.

4. The Claimant raises two grounds of challenge to the inspector's decision to quash the enforcement notice and to grant planning permission –

    (1) The inspector misinterpreted policies RLP2 of the Local Plan and CS5 of the Core Strategy and their true effect in combination with the other relevant policies of the development plan.

    (2) The inspector failed to give legally adequate reasons for concluding that the development to which the enforcement notice related was in accordance with the development plan.

5. The Claimant raises the following ground of challenge to the decision to award costs –

    (1) Contrary to section 250(5) of the Local Government Act 1972 ["the 1972 Act"], the inspector failed to specify in the costs order that part of the Interested Party's costs which the Claimant is required to pay.

The factual background

6. The Interested Party and his family are gypsies. In April 2016 the Interested Party purchased land at Gulls Meadow, Woodhouse Farm Road, Tumbler's Green, Braintree, Essex ["the appeal site"]. The appeal site had previously enjoyed planning permission for the siting of a mobile home for use as an agricultural workers dwelling. Following his purchase of the appeal site, the Interested Party replaced the existing mobile home, brought a further mobile home onto site for use as a day room and laundry, and began to occupy the site with his family as their home and settled base.

7. On 25 January 2019 the Claimant, acting as local planning authority, issued the enforcement notice. The alleged breach of planning control was without planning permission, the unauthorised change of use of the appeal site for residential purposes, involving the siting of three mobile homes together with storage containers and non-agricultural vehicles. The enforcement notice required the use of the appeal site for residential purposes to cease, and the removal of all mobile homes, storage containers and non-agricultural vehicles from the land. A period of three months was given for compliance with these requirements.

8. On 27 February 2019, the Interested Party appealed against the enforcement notice under grounds (a), (f) and (g) in section 174(2) of the 1990 Act (although the appeal under ground (f) was later withdrawn).

9. On 25 February 2020, the inspector held a hearing which was attended by the Interested Party and his agent, and by planning officers of the Claimant. The inspector also visited the appeal site. On 6 May 2020 she issued both the DL and the CDL.

Relevant policies of the development plan

10. At the date of the inspector's decisions, the statutory development plan consisted of the Braintree District Local Plan Review (2005) ["the Local Plan"] and the Braintree District Core Strategy (2011) ["the Core Strategy"].

11. Policy RLP2 of the Local Plan is headed "Town Development Boundaries and Village Envelopes". The policy states –

> "*New development will be confined to the areas within Town Development Boundaries and Village Envelopes. Outside these areas countryside policies will apply. Exceptions may be made to this policy for affordable housing schemes, which fully comply with the criteria set out in Policy RLP6. Housing sites with a capacity of 12 or more dwellings are shown on the Proposals Map and are listed in Appendix 1*".

12. Chapter 4 of the Core Strategy sets out the Claimant's spatial strategy for its district. Paragraphs 4.23 to 4.25 are headed "The Countryside". Paragraph 4.24 states –

> *"Development will be severely restricted, unless it is necessary to support traditional land based activities such as agriculture or forestry, or leisure and recreation based uses, which require a countryside location and which contribute to rural economies and/or promote recreation in or enjoyment of the countryside. Development should be well related to existing patterns of development and of a scale, siting and design sympathetic to the rural landscape character".*

13. The Core Strategy's Glossary describes "Countryside" as –

> *"The area outside town development boundaries and village envelopes. Can include a number of small hamlets".*

14. Chapter 5 of the Core Strategy sets out the Claimant's planning policies to provide for housing in its district. Under the heading "Gypsies and Travellers and Travelling Showpeople", paragraph 5.27 states –

> *"There is a need for additional sites to meet the needs of gypsies and travellers in the District and in the East of England at present".*

15. Following a series of paragraphs concerned with the process of identifying the extent of that need at regional, sub-regional and district level, paragraph 5.36 of the Core Strategy states –

> *"The requirements will either be met by identifying sites and plots in the Sites Allocations Development Plan Document, or through development control decisions, when appropriate sites or plots come forward, which may include rural exception sites. Sites should be provided in sustainable locations, which are not at risk of flooding and have access to health, education and other community facilities. Funding for the provision of sites and plots may be sought as part of developer contributions".*

16. Policy CS3 of the Core Strategy is headed "Gypsies and Travellers and Travelling Showpersons". It states –

> "*Provision will be made for a minimum of 50 authorised residential pitches for gypsies and travellers caravans by 2011 and a minimum of 67 authorised residential pitches by 2021. This will require an additional provision of 23 authorised pitches by 2011 and a further 17 authorised pitches by 2021.*
>
> *"Provision will also be made for 5 transit pitches for gypsies and travellers by 2013 and a total of 6 transit pitches by 2021 and for a minimum of one additional plot for travelling showpeople (in addition to the existing provision) by 2021.*
>
> *The Council will identify gypsy and traveller sites and a travelling showpersons plot, to meet this provision, in the Allocations DPD, or through the planning application process in accordance with the following criteria:-*
>
> - *Sites should be well related to existing communities and located within reasonable distance of services and amenities such as shops, schools and medical facilities*
> - *Sites should be located, designed and landscaped to minimise their impact on the environment*
> - *Sites should have safe vehicular access to and from the public highway*

- *Sites should be located within areas not at risk of flooding*

- *Sites should be capable of being provided with drainage, water supply and other necessary utility services*

- *Sites should be of an appropriate size to provide the planned number of caravans, parking, turning and servicing of vehicles, amenity blocks, play areas, access roads and structural landscaping. In addition, the travelling showpersons plot should be large enough for the storage and maintenance of showpersons rides and equipment*".

17. Chapter 6 of the Core Strategy sets out the Claimant's planning policies to provide for the economic needs of its district. Under the heading "Rural Area", paragraphs 6.22 to 6.24 state –

> "*6.22 The Core Strategy objectives relating to the rural area (which covers all of the District apart from the three main towns) are:-*
>
> *Rural Area*
>
> *To maintain and support services, community facilities and appropriate employment in the rural communities to meet their local needs.*
>
> *Sustainability*
>
> *To ensure that all development is sustainable and minimises the use of scarce natural resources and addresses the causes and potential impacts of climate change, encourages renewable energy, and promotes the development of previously developed land and urban regeneration to limit the extent of greenfield land required and concentrates new growth at the most sustainable locations. To ensure that development avoids flood risk areas and reduces future flood risk where possible. To prevent a deterioration in water quality and where possible to take measures to improve it.*
>
> *6.23 Braintree District covers a large rural area, which contains nearly 50% of its residents. The Council supports protecting the countryside and maintaining the viability of agriculture, small businesses, farm diversification and rural tourism and seeks to expand rural enterprise in line with the recommendations of the Essex Rural Commission Report in 2009.*
>
> *6.24 The scope for economic development will be limited by the need for sustainable development and to protect the countryside and environment. However, there is a need to secure a sound sustainable future for the rural economy, which continues to contribute significantly to the economy of the District as a whole through tourism, agriculture and local small businesses.*

> *Policies relating to farm diversification, rural enterprise and rural tourism will be set out in the Development Management DPD as well as details of uses, which are appropriate in the countryside. Employment sites will be identified within development boundaries in the Site Allocations DPD.*
>
> *Main Issues*
>
> - *Protecting the environment, landscape character and biodiversity of the countryside*".

18. Policy CS5, headed "The Countryside", states –

> "*Development outside town development boundaries, village envelopes and industrial development limits will be strictly controlled to uses appropriate to the countryside, in order to protect and enhance the landscape character and biodiversity, geodiversity and amenity of the countryside*".

The inspector's decisions

19. In DL6, the inspector corrected the enforcement notice so that it accurately reflected the development that was taking place at the appeal site when the notice was issued. So corrected, the breach of planning control alleged in the enforcement notice was without planning permission, the material change of use of the land to a mixed use for the keeping of animals, as a residential caravan site for one gypsy family with a total of three caravans and one storage container and for storage purposes. The question raised for the inspector to decide under the ground (a) appeal (and on the deemed planning application) was whether planning permission should be granted for that unauthorised development of the appeal site.

20. In DL15, the inspector stated the main issue to be considered in order to answer that question –

> "*15. The parties agree that the site is situated in a rural area outside of any development boundary where, in general, residential and business uses are restricted by policy to being within particular parameters. This is clear from the planning history of the site. The main issue is therefore whether the development represents an acceptable form of development having regard to the following matters:*
>
> - *the objectives of the development plan in respect of gypsy and traveller accommodation:*
>
> - *the character and appearance of the area; and*
>
> - *whether any harm arising from the above matters is outweighed by any other material considerations*".

21. In DL16 to DL28, the inspector considered the appropriateness of the development to its location. In DL16, she found the appeal site to lie within the open countryside outside

the village envelope of the nearest settlement, Stisted. In DL17, she identified the statutory development plan as consisting of the Local Plan and the Core Strategy. In DL18, she summarised the substance of policy RLP2 of the Local Plan and policy CS5 of the Core Strategy –

> "*Policy RLP2 of the LP states that new development will be confined to within town boundaries and village envelopes. Outside these areas, countryside policies will apply. Policy CS5 of the CS states that development will be strictly controlled to uses appropriate within the countryside. ELP Policy LLP1 maintains the Council's position set out in Policy RLP2. These policies were adopted before the publication of the National Planning Policy Framework (the Framework). The approach to development in these policies though is consistent with the Framework*".

22. In DL20 the inspector turned to policy CS3 of the Core Strategy –

> "*23. Policy CS3 of the CS deals with gypsy and traveller development and sets out various criteria such as the requirement that the development should be well related to existing communities. Development should also be located within a reasonable distance of services such as shops, schools and medical facilities. Sites should also be designed to minimise their impact on the environment, have safe vehicular access, not be at risk from flooding, be capable of being provided with utilities and be appropriate in size. Although the definition of gypsies and travellers has changed since this policy was adopted, I find that it is consistent with national policy as contained in the Framework and [Planning Policy for Traveller Sites]. These state that applications should be assessed and determined in accordance with the presumption in favour of sustainable development. In addition, Councils should very strictly limit new traveller site development in the open countryside that is away from existing settlements*".

23. In DL22-DL28, the inspector carried out her planning assessment of the development of the appeal site as a gypsy site accommodation against the criteria set out for that purpose in policy CS3 of the Core Strategy. In DL25, she found the use of the appeal site as a gypsy and traveller site was appropriate, having regard to the site's relationship with Tumbler's Green hamlet and Stisted village and the distance from the site to services and facilities. In DL28 she concluded as follows –

> "*In all, I find no conflict with Policy CS3, in terms of the location of the site and the criteria set out in the policy. I therefore give this finding substantial weight*".

24. In DL29-DL37, the inspector turned to assess the impact of the development on the character and appearance of the surrounding area. In DL34, she found that conditions were necessary in order to thicken certain sections of boundary hedge, to control the internal layout of and to limit storage activities at the appeal site. In DL37, she

concluded that, subject to the imposition of those conditions, the development did not have an adverse effect on the character and appearance of the surrounding area. The development was therefore in accordance with Policies CS8 (Natural Environment and Biodiversity) and CS9 (Built and Historic Environment) of the Core Strategy, a conclusion that also attracted substantial weight.

25. In DL39, the inspector drew the planning balance. She said –

> "*39. I have found no conflict with the development plan read as a whole. For decision taking this means approving development proposals that accord with the development plan. Within their submissions and at the Hearing the parties addressed other material considerations including the need for gypsy and traveller sites, personal circumstances, Human Rights and equality considerations. These are not matters that I need to address as I have concluded that the proposal accords with the development plan. The appeal on ground (a) therefore succeeds and the appeal on ground (g) does not need to be considered*".

26. In DL45, the inspector stated her overall conclusion –

> "*45. For the reasons given above I conclude that the appeal should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation*".

27. The Interested Party applied for an order that the Claimant should pay in full his costs of the enforcement appeal. In CDL2-CDL3, the inspector recorded the three grounds on which the Interested Party pursued his costs application –

> "*2. The claim is made on several grounds. Primarily, it is submitted that the Council failed to carry out adequate prior investigations before the notice was issued. There was a failure to properly consider the planning circumstances which applied to Mr Nicholls and his family and to provide any consideration of the rights of a family. The Council's actions were hasty and were not reviewed when the appeal was made. In addition, the Council failed to support the reasons for issuing the notice at appeal, failed to respond to the appellant's grounds and introduced a new reason for opposing the development based on a Protected Lane policy.*
>
> *3. The Council also cast aspersions on the integrity of Mr Nicholls' professional agent*".

28. In CDL4-CDL8, the inspector summarised the Claimant's response to these complaints. In CDL9, she directed herself by reference to the familiar and established principles for the award of costs in planning and enforcement appeal proceedings –

> "*9. The Planning Practice Guidance (the Guidance) advises that costs may only be awarded against the party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense all [sic] wasted expense in the appeal process*".

29. The inspector then considered each of the Interested Party's three complaints in turn. She dealt with the Interested Party's first ground in CDL10-CDL16. She found that the Claimant had failed to carry out adequate investigations into the personal circumstances of the Interested Party and his family, into his status as a gypsy and the possible impact of taking enforcement action on his children. The Claimant had made no proper allowance for the Claimant's poor literary skills. In CDL16, the inspector concluded –

> "*16. I find the Council's serious failings in this matter amount to unreasonable behaviour, which meant Mr Nicholls incurred wasted expense dealing with this point in the preparation of his appeal and at the Hearing. This could have been avoided and the notice would not have had to be corrected if the investigation had been more thorough*".

30. In CDL17-CDL18, the inspector rejected the Interested Party's second and third complaints as not justifying a finding of unreasonable behaviour against the Claimant. Her overall conclusion and formal order are stated at CDL19-CDL20 as follows –

> "*Conclusion*
>
> *19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Guidance has been demonstrated and that a partial award of costs is justified.*
>
> *Costs Order*
>
> *20. In the exercise of the powers under section 250(5) of the Local Government Act 1972 and schedule 6 of the Town and Country Planning Act 1990, as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Braintree District Council shall pay to Mr Nicholls the partial costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the senior courts costs office if not agreed*".

Relevant legislation and legal principles

31. Section 174(2) of the 1990 Act provides –

> "(*2) An appeal may be brought on any of the following grounds –*
>
> *(a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the conditions or limitations concerned ought to be discharged.*

…".

32. Section 177(5) of 1990 Act states –

> "*(5) Where –*
>
> *(a) an appeal against an enforcement notice is brought under section 174, and*
>
> *(b) the statement under section 174(4) specifies the ground mentioned in section 174(2)(a),*
>
> *the appellant shall be deemed to have made an application for planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control".*

33. Section 38(6) of the Planning and Compulsory Purchase Act 2004 Act states -

> *"(6) 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."*

34. Section 250(5) of the 1972 Act states –

> "*(5) The Minister causing an inquiry to be held under this section may make orders as to the costs of the parties at the inquiry and as to the parties by whom such costs are to be paid, and every such order may be made a rule of the High Court on the application of any party named in the order*".

35. In *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447, at 1459D, addressing the equivalent Scottish provision to section 38(6) of the 2004 Act, 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*".

36. 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)…*".

37. At [25]-[26] in *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] 1 WLR 1865, [2017] UKSC 37, Lord Carnwath said–

> "*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*".

38. At [36] of *South Bucks DC v Porter (No 2)* [2004] 1 WLR 1953, Lord Brown summarised the required legal standard for reasons in planning appeal decisions-

> "*36. The reasons must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need only refer to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision*".

The Claimant's submissions

39. In support of ground 1, Dr Bowes submitted on behalf of the Claimant that the inspector's conclusion in DL39, that the development was in accordance with the development plan, was erroneous in law. On a proper interpretation of the relevant development plan policy framework, there were clear and inescapable conflicts with both the Local Plan and the Core Strategy. The appeal site was located within the countryside. Use as a residential caravan site for one gypsy family and for storage purposes was not within the limited class of uses identified as appropriate to the countryside for the purposes of policy RLP2 of the Local Plan and policy CS5 of the Core Strategy. The inspector's conclusions in DL39 demonstrated that she had misinterpreted those relevant policies of the statutory development plan.

40. Counsel submitted that policies RLP2 and CS5 must be read and understood in combination. They establish a clear policy framework for the strict control of new development in the countryside throughout Braintree District. That strict control is established by policy CS5, which limits new development outside town development boundaries, village envelopes and industrial development limits to uses appropriate to

the countryside. The restricted categories of uses that are appropriate to the countryside are identified in paragraphs 4.24 and 6.22 to 6.24 of the Core Strategy. The identified categories of uses appropriate to the countryside embrace activities that are necessarily located in the open countryside, such as agriculture, forestry, rural leisure, recreation and tourism and farm diversification. Neither the use of land as a residential caravan site for gypsy families nor its use for storage purposes are identified as uses appropriate to the countryside for the purpose of policy CS5. Moreover, neither of those uses is stated as an exception to the application of countryside policies under policy RLP2 of the Local Plan.

41. The inspector had clearly interpreted and applied policies RLP2 and CS5 on her understanding that the question whether development proposes a use or uses appropriate to the countryside is a matter of planning judgment in the circumstances of each case. The inspector's approach is erroneous in law. The question whether development proposes a use or uses appropriate to the countryside is resolved by the terms of policies RLP2 and CS5 and the supporting paragraphs of the Core Strategy (paragraphs 4.24 and 6.22 to 6.24). The inspector failed to follow that correct approach.

42. As a result, in DL39 the inspector reached the legally erroneous conclusion that use of the appeal site for a gypsy caravan site and for storage purposes was in accordance with the development plan read as a whole. She had failed to make a proper interpretation of the relevant provisions of the development plan and so failed to fulfil her duty under section 38(6) of the 2004 Act: see *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447, at 1459D.

43. Turning to ground 2, Dr Bowes relied on essentially the same analysis to support the submission that the inspector had failed to give legally adequate reasons for her conclusion in DL39. She did not explain why, notwithstanding the clear terms of policies RLP2 and CS5, she was nevertheless able to conclude that the use of the appeal site for a gypsy caravan site and for storage purposes was in accordance with the development plan read as a whole. That was plainly a principal important controversial issue for her to resolve. Given the policy of strict control, and that such uses are not identified in the development plan as falling within the limited categories of uses that are appropriate to the countryside, it is not possible to understand from the inspector's stated reasons how she reached the conclusion that there was no conflict with development plan read as a whole. The Claimant as local planning authority is substantially prejudiced by the inadequacy of the inspector's reasoning in handling future planning applications for similar forms of development in the countryside.

44. Turning to the costs decision, Dr Bowes submitted that the inspector's costs order in CDL20 was legally defective. It was not possible to identify that part of the Interested Party's costs of the enforcement appeal proceedings that the Claimant must pay. The costs order is incapable in practice of being enforced, since the costs assessor simply does not know the part of the Interested Party's costs that he or she is required to assess. Counsel relied upon *Scrivens v Secretary of State for Communities and Local Government* [2013] EWHC 3549 (Admin) at [36], which indicates that a costs order should specify with sufficient certainty that part of the receiving party's costs which are to be paid by the paying party. Counsel also relied upon the observation of Holgate J at [165] in *Mayor of London v Secretary of State for Housing, Communities and Local Government* [2020] EWHC 1176 (Admin) that a paying party and a receiving party are

both entitled to a decision from the Secretary of State on what he considers the nature of the wasted costs to be.

45. Dr Bowes submitted that section 250(5) of the 1972 Act requires the costs order itself to specify the nature of the costs to be paid. If the costs order fails to do so, that defect is not to be remedied by reference to the supporting reasons given earlier in the costs decision. In any event, in this case, the inspector's reasons do not resolve the defect in the cost order. The reasons given in CDL9-CDL16 do not enable the reader to understand or to identify the actual scope of the partial award of costs made by the inspector in the Interested Party's favour in this case.

Discussion

46. It is clear that the inspector had the policy of strict control imposed by the development plan on development in the countryside well in mind. In DL16, she found that the appeal site is located within the open countryside outside any village envelope. In DL18, she gave an accurate summary of policies RLP2 of the Local Plan and CS5 of the Core Strategy. The inspector plainly recognised and understood the effect of those policies, that the development of land situated outside defined town development boundaries and village envelopes will be strictly controlled to uses appropriate to the countryside.

47. In DL39, the inspector concluded that use of the appeal site for a residential caravan site for a single gypsy family and for storage purposes raised no conflict with the development plan read as a whole. The basis upon which she did so is apparent from her reasoning in DL20-DL37. In summary, in those paragraphs she found the use of the appeal site for those purposes to be in accordance with the criteria stated in policy CS3 of the Core Strategy for the evaluation of proposed gypsy and traveller sites. She also found those uses not to have an adverse impact on the character and appearance of the surrounding countryside and so to be in accordance with policies CS8 and CS9 of the Core Strategy.

48. The Claimant's core submission is that, properly understood, policies RLP2 and CS5 themselves define the limited categories of use that are appropriate to the countryside. That definition is to be found in paragraph 4.24 of the Core Strategy, read together with the first stated objective in paragraph 6.22 and the categories or types of use expressly identified in paragraphs 6.23 and 6.24 of the Core Strategy. It was not open to the inspector to find, as a matter of planning judgment, that a use or uses falling outside those limited, identified categories was nevertheless appropriate to the countryside. Otherwise, the policy of strict control would be fatally undermined.

49. I do not accept that the Claimant's interpretation of policies RLP2 and CS5 is correct. In my view, those policies are not properly to be understood as limiting uses appropriate within the countryside only to those particular uses that are mentioned in paragraphs 4.24 and 6.22 to 6.24 of the Core Strategy. Neither policy RLP2 nor policy CS5 is expressed in terms that justify that restrictive interpretation. Policy RLP2 states that, outside town development boundaries and village envelopes, countryside policies will apply. It does not itself seek to circumscribe development that is acceptable under the applicable countryside policies. Policy CS5 does so to the extent of stating that such development will be strictly controlled to uses appropriate to the countryside. Nevertheless, policy CS5 does not prescribe or identify such uses. Nor does policy CS5

give any indication that any particular use is necessarily to be regarded as inappropriate in the countryside.

50. Paragraphs 6.22 to 6.24 of the Core Strategy do not set out to define or to identify exclusive categories of development or use that are appropriate to the countryside. Paragraph 6.22 simply states broad policy objectives. Paragraph 6.23 expresses the Defendant's support for rural economic activity and enterprise within its policy of protecting the countryside from inappropriate development. Paragraph 6.24 states that the scope for sustainable economic development in the countryside will be limited by the need to protect the countryside and rural environment and gives an indication of forms of economic activity that are likely to be appropriate within that planning balance.

51. Importantly, paragraph 6.24 of the Core Strategy states that details of uses which are appropriate in the countryside will be set out in a Development Management Development Plan Document (DPD). Notwithstanding that statement, as Ms Heather Sargent pointed out on behalf of the Defendant, the Claimant has not adopted a Development Management DPD. The Claimant has not provided, for development management purposes, the description of uses appropriate to the countryside under policy CS5 that is foreshadowed by paragraph 6.24 of the Core Strategy.

52. In my view, in the light of these provisions of the development plan, the inspector was correct to interpret and to apply policies RLP2 and CS5 as requiring her to make her own planning judgment whether use of the appeal site as a gypsy caravan site and for storage purposes was appropriate in the countryside. Neither policy RLP2 nor policy CS5, nor paragraphs 6.22 to 6.24, exclude the proper exercise of planning judgment in the particular circumstances of a given development proposal. It seems to me that policy RLP2 is an obvious example of the kind of broadly stated policy that Lord Reed JSC mentions at [19] of *Tesco Stores Ltd v Dundee City Council* [2012] PTSR 983. Moreover, policy CS5 is the kind of policy that Lord Reed will have had in mind when he referred to provisions of development plans which are framed in language whose application to a given set of facts requires the exercise of judgment. The question whether a proposed use is appropriate to the countryside will call for the exercise of planning judgment in the light of the decision maker's assessment of the development against the relevant provisions of the development plan.

53. Paragraph 4.24 of the Core Strategy does not support the Claimant's argument. From a spatial planning perspective, that paragraph emphasises the importance of testing the justification or need for new development to be located in the countryside outside town development boundaries and village envelopes. At the development management stage, CS5 enables that issue to be considered in assessing the appropriateness of proposed development within the countryside. Paragraphs 6.23 and 6.24 show that policy CS5 embraces wider considerations than need, but it certainly includes consideration of that issue. Again, such considerations call for a necessary element of planning judgment to be applied to the circumstances of the given proposal, rather than seeking to discern a prescribed and limited class of appropriate uses from those supporting paragraphs of policy CS5.

54. It seems to me that the Claimant's interpretation of policies RLP2 and CS5, if correct , would create considerable uncertainty in the application of policy CS3 of the Core Strategy. Policy CS3 provides a clear and comprehensive set of criteria for evaluating the performance and acceptability of proposed locations for gypsy and traveller sites in

Braintree District, whether proposed by the Claimant in an Allocations Development Plan Document or through an application for planning permission. Neither policy CS3 itself nor the explanatory paragraphs 5.35 and 5.36 rule out such sites being identified or brought forward in locations outside town development boundaries and village envelopes. On the contrary, the first stated criterion in policy CS3 plainly contemplates that locations outside town centre boundaries and village envelopes may fulfil the requirements of policy CS3, provided that they are well related to existing communities and located within reasonable distance of services and amenities such as shops, schools and medical facilities.

55. In other words, it is in accordance with the policy of the Core Strategy that is particularly concerned with the location of new gypsy caravan sites to propose such a site in a countryside location. Yet on the Claimant's argument, that proposed use will always be in conflict with policy CS5 of the Core Strategy, because use as a gypsy and traveller site is not expressly identified as a use that is appropriate within the countryside in paragraphs 4.24 and 6.22 to 6.24 of the Core Strategy. That conflict will remain, notwithstanding the fact that (as was found by the inspector in the present appeal) the site is found to satisfy each of the criteria in policy CS3; and not to give rise to harm to the character and appearance of the surrounding countryside, thus fulfilling the requirements of policies CS8 and CS9.

56. Counsel submitted that the court should seek to discern the sensible meaning of the relevant policies of the development plan in their full context and in the light of their true effect in combination. He referred to the observations of Lindblom LJ at [21] and [31] in *Canterbury City Council v Secretary of State for Housing, Communities and Local Government* [2019] PTSR 1714. I agree. As I have sought to explain in the foregoing paragraphs, read in the context of the relevant policies of the development plan and in combination with those policies, neither policy RLP2 nor policy CS5 may sensibly be understood to specify an exclusive class of uses appropriate within the countryside. Nor may policy RLP2 and CS5 sensibly be understood to exclude the judgment that use of the appeal site as a residential caravan site for one gypsy family and for storage purposes was appropriate to the countryside.

57. It may well be that use of land for storage purposes would not ordinarily be judged to be an appropriate use within the countryside for the purposes of policy CS5. Gypsy and traveller sites, however, may need to accommodate not only the occupants' residential mobile homes or caravans, but also those activities that the occupants pursue in their nomadic habit of life. In the present case, as the inspector records in DL5, the Interested Party gave evidence that he required space at the appeal site for vehicle storage and storage of other goods. The inspector was satisfied that the Interested Party had a nomadic habit of life for economic purposes, for the reasons that she gave in DL13-DL14. Just as it was a proper interpretation of policy CS5 that use of the appeal site for a gypsy caravan site for a single family was appropriate to this countryside location, so was the judgment that use of the appeal site for storage activities associated with the Interested Party's nomadic habit of life and his residential occupation of that site with his family as gypsies, was an appropriate use for the purposes of that policy.

58. For these reasons, I am not persuaded that the inspector's conclusion in DL39 was founded upon a misinterpretation of policy RLP2 of the Local Plan and policy CS5 of the Core Strategy. In my judgment, her overall conclusion in DL39 that use of the appeal site as a residential caravan site for one gypsy family and for storage purposes

gave rise to no conflict with the development plan read as a whole was not erroneous in law. Ground 1 must be rejected.

59. Ground 2 may be dealt with much more briefly.

60. Having referred to policies RLP2 and CS5 in DL18, the inspector did not return to them, nor did she mention those policies expressly, when she stated her overall conclusion on the planning balance in DL39. Nevertheless, it is clear that the inspector founded that overall conclusion upon her favourable assessment of the development of the appeal site against policies CS3, CS8 and CS9 of the Core Strategy. The inspector's reasons in DL16 to DL37 are sufficient to explain why she was able to conclude that use of the appeal site for a residential caravan site for a single gypsy family and for storage purposes was appropriate to the countryside, in accordance with the policy of strict control stated by policy CS5 and in accordance with the development plan read as a whole. In short, development of the appeal site that fulfilled the requirements of policy CS3 of the Core Strategy and gave rise to no adverse effects on the character and appearance of the surrounding countryside was judged to be appropriate to its countryside location. That straightforward assessment, supported as it is by detailed reasons in DL16 to DL37, gives rise to no substantial prejudice to the Defendant in handling future planning applications for gypsy and traveller site development. Ground 2 also fails.

61. Turning to ground 3, I agree with Counsel for the Claimant that it is good practice for partial awards of costs in planning and enforcement appeal proceedings to specify that part of the receiving party's overall costs to which the order relates. I also accept that, in the present case, the costs order itself in CDL20 might have been more specific in defining that part of the Interested Party's costs that the Claimant is obliged to pay.

62. It does not, however, follow that the costs order is legally defective. Counsel's primary submission was that section 250(5) of the 1972 Act imposes a legal duty on the decision maker to specify the nature of the costs to be paid in the formal costs order itself. He submitted that it was legally impermissible to look to the supporting reasons in the cost decision letter for the purpose of obtaining clarification as to that part of the Interested Party's costs to which the costs order relates.

63. I cannot accept those submissions. I can see no basis for them in the terms of section 250(5) of the 1972 Act. The material parts of that enactment empower the Defendant to make orders as to the costs of the parties and to specify the parties by whom such costs are to be paid. There is nothing in section 250(5) of the 1972 Act to indicate that such orders must be strictly self-contained in their specific terms and effect in the way contended for by the Claimant.

64. The Claimant's argument appears to derive no support from authority. Neither *Scrivens v Secretary of State for Communities and Local Government* [2013] EWHC 3549 (Admin) nor *Mayor of London v Secretary of State for Housing, Communities and Local Government* [2020] EWHC 1176 (Admin) is authority for the proposition that uncertainty or lack of clarity in the costs order itself, as to that part of the receiving party's costs which the paying party must pay, may not lawfully be resolved by reference to the reasons given by the Defendant for making a partial award of costs. Such a restrictive approach would be contrary to the well-established principle that planning and enforcement appeal decisions must be read as a whole.

65. If as I conclude to be the correct position in law, it is legitimate to resolve any such uncertainty or lack of clarity by reference to the reasons given in the costs decision letter, this particular case presents no insuperable difficulty. As Ms Sargent submitted, it is clear from the inspector's reasoning in CDL10 to CDL16 that she awarded only that part of the Interested Party's costs incurred as a result of the Claimant's failure to carry out proper prior investigations as to the Interested Party's status as a gypsy, his and his family's personal circumstances and the needs of children living at the appeal site. In particular, the inspector found that the Claimant had acted unreasonably in placing the onus on the Interested Party to provide that information. The Interested Party had engaged the professional assistance of a planning consultant in the preparation and presentation of his appeal against the enforcement notice. It is that part of the Interested Party's overall costs of the appeal which he incurred in addressing those matters that the Claimant, acting reasonably, ought itself to have investigated which is to be reimbursed by the Claimant in accordance with the order made in CDL20.

66. I accordingly reject the Claimant's challenge to the inspector's costs decision.

Disposal

67. For the reasons I have given, none of the grounds of challenge to the enforcement appeal decision or the costs decision succeeds. Both the application under section 288 of the 1990 Act and the appeal under section 289 of that Act are dismissed. I am grateful to Counsel for their assistance both in writing and in oral submissions.