Gypsy and Traveller Casework

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Responsibility of	**Subject Lead for Gypsy and Traveller**
This replaces the Wales Inspector Guidance of the same title, dated July 2018. .	

Key legislation and policy

Legislation	• Town and Country Planning Act 1990 (as amended) • Housing (Wales) Act 2014 (s101-107) • Caravan Sites and Control of Development Act 1960 (as amended) • Caravan Sites Act 1968 (as amended) – including by the Mobile Homes (Wales) Act 2013 • Human Rights Act 1998 • Equality Act 2010 • Well-being of Future Generations (Wales) Act 2015 • Criminal Justice and Public Order Act 1994
National policy and guidance	• Planning Policy Wales, Edition 10 – in particular paragraphs 4.2.35 • Circular 005/2018: Planning for Gypsy, Traveller and Showpeople Sites (June 2018) • Circular 016/2014: The Use of Planning Conditions for Development Management (October 2014) • Technical Advice Note 15: Development and Flood Risk • Designing Gypsy and Traveller Sites Guidance (May 2015) • Managing Gypsy and Traveller Sites Guidance (May 2015) • Undertaking Gypsy & Traveller Accommodation Assessments (2015) • Gypsy and Traveller Plan – 'Enabling Gypsies, Roma and Travellers' (June 2018)
Judgments	• See Annex A

Contents

Introduction

1. This guide provides practical advice for Inspectors undertaking casework to assist them in carrying out their role consistently and effectively. It will be updated periodically to reflect the changing legislative, policy and legal context. As Inspectors make their decisions on the basis of the evidence before them, they should, where justified by the evidence, depart from the advice given in this document.

2. By the time that an Inspector comes to write a decision on an appeal for the use of land as a Gypsy, Traveller or Travelling Showpeople's site, the aim should be to have all the information necessary to determine:

    a. Whether, or to what extent, the development complies with the development plan and with national policy set out in Planning Policy Wales (PPW).
    b. What harm is, or would be, caused by the development and the scope of conditions to make it acceptable.
    c. The need for sites in the area, plus current and likely future levels of provision.
    d. The accommodation needs of the appellant and alternative accommodation options realistically available to them.
    e. Personal circumstances which are relevant to the decision.
    f. If necessary, whether the intended occupants are 'Travellers' or 'Travelling Showpeople' for planning purposes.
    g. The relevant factors to take account of in the human rights balance, including the best interests of the child(ren).
    h. The aims of the public sector equality duty.
    i. Whether a temporary and/or personal permission should be granted, and the length of time appropriate for a temporary permission.
    j. Whether a split decision should be considered for the proposed pitches.

Legislative and policy context

Statutory requirements

3. The Housing (Wales) Act 2014 (HWA) requires local authorities in Wales to assess the accommodation needs of gypsy and travellers, gain Ministerial approval for the needs assessment undertaken and meet those needs through the provision of sites. Key sections are:

S.101 – Assessment of Accommodation Needs

(1) A local housing authority must, in each review period, carry out an assessment of the accommodation needs of Gypsy and Travellers residing in or resorting to its area.

S.102 – Report following Assessment

(2) A local housing authority must submit the report to the Welsh Ministers for approval of the authority's assessment.

(3) The Welsh Ministers may:

(a) approve the assessment as submitted;

(b) approve the assessment with modifications;

(c) reject the assessment.

S.103 – Duty to meet assessed needs

(1) If a local housing authority's approved assessment identifies need within the authority's area with respect the provision of sites on which mobile homes may be stationed, the authority must exercise its powers in section 56 of the Mobile Homes (Wales) Act 2013 (power of authorities to provide sites for mobile homes) so far as may be necessary to meet those needs.

Well-being of Future Generations (Wales) Act 2015

4. Section 4 of the Well-being of Future Generations (Wales) Act 2015 identifies national well-being goals relevant to gypsy and traveller casework. In particular the goals of achieving 'a Wales of cohesive communities' and 'a Wales of vibrant culture' emphasise the importance of decision-makers supporting viable, safe, diverse and well-connected communities (see para 7 of Circular 005/2018).

Policy Considerations

5. Circular 005/2018 'Planning for Gypsy, Traveller and Showpeople Sites' (June 2018) which covers development plan examinations and development management. It confirms that the definition of "gypsies and travellers" is as set out in Section 108 of HWA:

(a) *Persons of a nomadic habit of life, whatever their race or origin, including –*

(i) *Persons who, on grounds only of their own or their family's or dependant's educational or health needs or old age, have ceased to travel temporarily or permanently, and*

(ii) *Members of an organised group of travelling show people or circus people (whether or not travelling together as such); and*

(b) *All other persons with a cultural tradition of nomadism or of living in a mobile home.*

6. Thus, persons could fall within the definition of “gypsies and travellers” if they have ceased to travel permanently. Although a distinction between temporary and permanent cessation is not drawn, it would be prudent to consider the issue if they are relevant to the merits of a particular appeal.

Assessing Gypsy and Traveller status

7. Annex B provides background information on the various types of Traveller groups, establishing their status and understanding culture. Whilst the planning definition of gypsy and traveller status has changed in recent years in England that is not the case in Wales. The definition of ‘gypsies and travellers’ in Circular 005/2018 also applies to ‘travelling showpeople’ – see para 4 of the Circular.

8. At the outset of an appeal the main parties will be requested to provide additional information in response to this type of casework - the appellant on personal circumstances and efforts to secure alternative accommodation and the Local Planning Authority on the demand and supply of pitches and suggested conditions (see Annex G). Inspectors should satisfy themselves that they have all the information necessary for their decision. Even where the traveller status of the appellant/prospective occupiers is not disputed by the LPA, in cases where it is relevant, it is incumbent on the Inspector to satisfy him/herself on this point. The extent of such questioning should be proportionate to the circumstances of the case (Annex E).

The Use and Occupation of Land

Caravan Sites

9. The siting of a caravan is normally undertaken to facilitate a material change of use of the land. For a structure to be considered a caravan it must be movable and meet the size and other requirements set by the Caravan Sites and Control of Development Act 1960 (CSCDA60) and Caravan Sites Act 1968 (CSA68). See Annex C and the Enforcement and Enforcement Case Law Chapters for more information.

Gypsy and Traveller sites

10. Gypsies and Travellers generally live on residential ‘pitches’, each of which is typically occupied by one household (an individual or couple with or without children) with a static and a touring caravan. Some private sites contain two+ pitches to enable Travellers to live in extended family groups.

11. Utility or dayrooms may be needed on Traveller sites, not least to provide separate washing places. Travellers may also seek to develop pitches next to land that can be used for the keeping of horses, as is traditional in Traveller culture, or (other) purposes related to their nomadic work. See Annex C for more information on sites, including Transit Sites, Temporary Stopping Places, Negotiated Stopping and Travelling Showpeople’s Sites.

Common Planning Issues

Sustainability

12. PPW has a presumption in favour of sustainable development. Factors to be taken into account in establishing the sustainability of sites are set out in paragraph 37 of Circular 005/2018. Paragraphs 38 and 39 advise that first consideration should be for sustainable locations within or adjacent to existing settlement boundaries with access to local services, and that sites in the countryside away from settlements can be considered if there is a lack of sustainable locations. An over rigid application of national or development plan policies that seek a reduction in car borne travel in order to effectively block proposals for any Gypsy and Traveller Site in a countryside location would be inappropriate. Both PPW and the Circular recognise that there are wider economic, social and environmental dimensions to sustainability.

Flooding

13. Paragraph 37 of Circular 005/2018 recognises the particular vulnerability of caravans to flooding and cross-references Technical Advice Note 15 'Development and Flood Risk'. Caravan parks are described as highly vulnerable development. Such development should be refused in zone C2 and should only be considered in zone C1 following the application of the tests in sections 6 and 7 and appendix 1 of TAN 15.

Rural Character & Appearance of the Countryside

14. The extent of, and weight attached to, any harm to the character and appearance of a rural area should be based on an assessment of the scale, characteristics and visual impact of the development in its context, rather than a generalised objection to caravans urbanising the countryside.

15. On travelling showpeople's sites, it will be necessary to make provision for the secure storage and repair of equipment as an integral part of the whole development. If this cannot be properly assimilated into its surroundings, the entire development may be regarded as unacceptable; the scale and visual impact of the use will be one of the main issues in almost every case.

Green Belt

16. There is a general presumption against inappropriate development in green belts/wedges and new gypsy and traveller sites are likely to be inappropriate development. Planning permission should not be granted for inappropriate development except in very exceptional circumstances where other considerations clearly outweigh the harm that such development would do to the green belt or green wedge. See paragraph 55 of Circular 005/2018 and paragraphs 3.60-3.74 of PPW.

17. Any Traveller site is liable to cause some loss of openness in the Green Belt since it will be likely to result in the (sometime) presence of caravans on the land. It will normally be necessary to address the extent of any loss of openness for the purposes of the planning balance – but PPW is also clear that any harm to the purposes of Green Belt/wedge designation carries substantial weight.

18. Factors that may be relevant to loss of openness include:

- The number of caravans on the land, and how many (if any) would be static;
- If there would be a mixed use and, if so, whether the purpose of any non-residential use(s) would conflict with the purposes of the Green Belt;
- The likely vehicular parking, with regard to the number of pitches and any other use(s);
- The nature and extent of any operational development that is proposed or likely to be needed;
- The likelihood of domestic 'paraphernalia' on the site;
- Whether any existing structures on the land which reduce the openness of the Green Belt would be removed;
- The openness of the immediate surroundings, or the impact of the development on spatial openness in its context; and
- The impact of the development on the visual openness of the Green Belt within the surrounding area.

Living Conditions and Community Integration

19. Matters relating to neighbours' living conditions should be considered in the same way as for any residential development, including whether any harm can be overcome by imposing conditions. Mixed use developments will require consideration of noise and disturbance from associated business activities and vehicle movements.

20. Paragraph 37 of Circular 05/2018 seeks the promotion of a peaceful and integrated co-existence between the site and the local community.

21. As in any other casework, fear of crime is only material if there is some reasonable, cogent evidential basis linking the proposed use or occupiers with criminal activity. It was held in *Smith v FSS & Mid Bedfordshire BC [2005] EWCA Civ 859* that unjustified fear motivated by prejudice can never be a material consideration; it follows that unsupported submissions which raise fear of crime because of the characteristics of future occupiers would never justify any refusal of permission for a Traveller site.

Loss of a Traveller site

22. Applications for a change of use from a Gypsy, Traveller or travelling showpeople's site may conflict with any development plan policy that specifically seeks to safeguard such sites, or which generally seeks to safeguard residential uses or floorspace. Even

if there is no such conflict, you may need to have regard to evidence of the need for and supply of the relevant kind of Traveller site – and then weigh in the balance the benefits of the proposed development against the loss of the pitches or plots.

Other Issues

23. It is sometimes necessary to address whether the appellant or intended site occupants are living in structures which meet the statutory definition of a caravan as set out in s29(1) of the CSCDA60 and s13(1) and s13(2) of the CSA68; see Annex C.

24. It is normally expected that Travellers will occupy a caravan in order to facilitate a nomadic lifestyle. Paragraph 10 of Circular 05/2018 explains that the purposes of the Circular a Gypsy and Traveller site does not include a dwelling. If there are concerns or it seems to you that what is on the site is not a caravan it may be necessary to invite representations on whether the structure is a caravan and, if not, whether the appeal should be determined on the basis of what is there, or as if for a caravan site, assuming that the latter was the basis of the (deemed) planning application.

25. It is not unusual for local authorities or residents to raise fears that allowing an appeal would set an undesirable precedent and thus limit the ability of the authority to control development on other sites, particularly in the Green Belt. As in any casework, it is necessary to show that any decision to allow the appeal is made strictly on the merits of the case.

26. Situations may arise, however, where it will appear that the circumstances could be closely replicated elsewhere, for example, because the appeal concerns one or a small number of potential or unauthorised pitches on a larger site, or there are similar sites close by.

27. In such cases, it will be necessary to consider the cumulative impact of your decision with respect to the analogous pitches or sites. In *Holland & Smith v SSCLG & Taunton Deane DC [2009] EWHC 2161 (Admin)*, a challenge was rejected to an Inspector's 'unimpeachable' finding that precedent and cumulative impact were decisive considerations, justifying dismissal of the appeals on four out of 16 pitches on the site.

28. Appeals may be made for bricks and mortar houses, perhaps for a Traveller family to settle in. It would rarely be reasonable to restrict occupation of any such dwelling to Gypsies or Travellers, since the provision of such accommodation would be inconsistent with the nomadic habit or cultural tradition.

The Provision of and Need for Gypsy and Traveller Sites

Provision of & need for gypsy & traveller sites in the area

29. The need for and supply of Traveller sites is a main issue or consideration in almost all Traveller appeals concerning the change of use of land.

30. It is necessary to distinguish between and deal separately with the 'general' need for sites by the authority, and the 'personal' need of the appellant(s) and/or site occupier(s). The key matters to test at hearing or inquiry and address in the appeal decision are:

- The need for pitches (and/or plots) over the relevant period;
- The supply of land for pitches or plots;
- Whether there is a shortfall of sites to meet existing needs, or unmet need and, if so, the broad extent of the shortfall;
- Whether there is a supply of specific deliverable sites sufficient to meet any shortfall in a timely fashion;
- Any proposals from the authority to redress any shortage of sites through the development plan process or other means.

31. It may be necessary to have regard to need over a wider geographical area than just the local authority boundaries[1]. Some authorities co-operate when carrying out the assessments of need and supply described below.

Accommodation needs assessments

32. Section 101 of the Housing (Wales) Act 2014 requires local housing authorities to assess Gypsy and Traveller housing needs every 5 years. WG's 'Undertaking Gypsy and Traveller Accommodation Assessments' (2015) provides guidance which local authorities should have regard to when preparing Gypsy and Traveller Accommodation Assessments (GTAAs). Para 16 of Circular 005/2018 confirms that GTAAs will be a key part of the evidence underpinning and informing development plans. The most recent GTAA, if prepared in line with the WG guidance and in consultation with the local community, is also likely to provide robust evidence of need (or lack of it) in appeal casework.

33. The GTAA will for the most part, contain the best evidence of need and supply in the local area. Any arguments that deficiencies in the assessment are such that there will be a materially greater or different need for pitches or plots than the authority has anticipated will need to be addressed.

34. While considerable evidence may be presented, bear in mind that it is not necessary – and may indeed be inappropriate – to go into extensive detail on these issues in an appeal decision. You will only need to give reasoning to support conclusions as to:

    - Whether the Council's assessment is broadly accurate or there is likely to be a greater or lesser need for pitches or plots;
    - Prospects and timescales for the anticipated supply coming forward.

35. On the whole, it can be more straightforward to assess need for Travelling Showpeople's sites than for Gypsies or Travellers, because there is little doubt about their status through their membership of trade associations.

36. However, since there are relatively few Travelling Showpeople, and they are traditionally concentrated across widely scattered districts, assessments may not be useful unless carried out by authorities co-operating across regions. Wide variations between numbers of showpeople in adjoining authorities, leading to localised needs

[1] *Linfoot v SSCLG & Chorley BC* [2012] EWHC 3514 (Admin)

for additional, alternative or enlarged sites are a frequent aspect of showpeople distributions.

37. If your findings in respect of need and/or supply would differ from those set out in the assessment relied on by the authority, it may be prudent to state that your conclusions are made on the evidence before you and are only for the purposes of this appeal decision, so as to avoid tying the hands of the authority or other Inspectors in future proceedings.

Other Evidence and 'Need on the Ground'

38. Other evidence pertaining to the need for or supply of Traveller sites may be given at appeal, as well as or instead of the authority's assessment. Country-wide bi-annual gypsy caravan counts are also conducted on behalf of WG. It is a record of occupation, best regarded as a snapshot of the number of caravans present in that area on those dates. It may indicate general (patterns of) need over time, and whether there is likely to be any 'need on the ground'.

39. Information may also be submitted with regard to changes in circumstances that have occurred since the base date of the assessment, for instance planning permissions granted, progress of LDP allocations, and evidence of need based on unauthorised encampments. These should be considered when addressing the reliability of the GTAA.

Unmet Need

40. The Council's assessment and/or other evidence, including that of need on the ground, may show that the local authority does not have sites available to meet the current needs of Travellers residing in or resorting to the district. This situation may be variously described as a 'backlog of need' or 'unmet need' or 'shortfall of sites'.

41. It is normally necessary in an appeal decision to make a finding as to whether there is an outstanding need for pitches or plots and, if so, the broad scale of that unmet need relative to the Traveller population.

42. Inspectors should be aware that unmet need can indicate an immediate and pressing need for Traveller sites. As with any material consideration, however, the actual weight attached to unmet need is a matter for the decision-maker with regard to all the evidence

Land Supply Issues

43. The results of the GTAA, which must be undertaken at least every 5 years, make it possible for local authorities to identify the number of Gypsy and Traveller households which require additional pitches immediately, within 5 years, and over the development plan period.

44. Other matters which may need to be addressed when considering whether an authority has a five year supply include:

- Whether the supply includes a mix of public and private, large and small sites;
- Whether the Council intends to allocate existing unauthorised sites or sites with temporary permissions – which would ensure deliverability but only address the needs of the existing site occupants;
- Evidence of the deliverability of new sites;
- Whether there is a provider of and funding for any proposed affordable pitches;
- The acceptability of the sites for residential use, with regard to the development plan;
- Constraints such as the need for or cost of environmental mitigation work;
- Clarity over what would be delivered by who and when, if it is proposed that pitches would be provided within mixed residential allocations;
- Whether allocations would meet identified needs for different Traveller groups.

45. As with unmet need, it is not necessary to describe the Council's supply of sites with arithmetical precision. In Swale BC v SSHCLG & Maughan & Others [2018] EWHC 3402 (Admin), it was held that an Inspector did not err in law in deciding to grant temporary planning permission for a Traveller site partly on the basis of there being a 'substantial shortfall' of pitches.

Emerging Plans

46. If there is an emerging local development plan you should seek to establish the stage it has reached, and whether it contains any policies and/or allocations that are proposed in order to bring forward a supply of Traveller sites. Other questions to address may include:

- Whether there is or will be a new accommodation needs assessment;
- Whether the Council accepts that there is a need for more Traveller sites;
- The likelihood of and timescales for the plan being adopted in its current form;
- The prospects of and timescales for any proposed allocations being granted planning permission and made available for occupation.

The Appellant's Need for a Site and Alternative Accommodation Options

Local Connections

47. With regard to location/area, local connections are not a pre-requisite – see paragraph 65 of Circular 005/2018. Some LDPs may contain policies on gypsy and traveller 'rural exception sites' which may require applicants to demonstrate local connections; however, unlike its predecessor, Circular 005/2018 does not endorse such an approach.

The suitability of alternative accommodation

48. Whether an appellant relies on general need, personal need or both, there is no requirement for them to prove a need to live specifically on the appeal site, or that no other site is available. The Court of Appeal held in South Cambridgeshire DC v SSCLG & Brown [2008] EWCA Civ 1010 that:
'In seeking to determine the availability of alternative sites for residential Gypsy use, there is no requirement in planning policy, or case law, for an applicant to prove that no other sites are available or that particular needs could not be met from another site. Indeed such a level of proof would be practically impossible…'

49. However, the existence of otherwise of alternative sites is typically a material consideration in Traveller appeals for two reasons:
    - Evidence that there are some, or that there are no, alternative sites may assist in understanding the general position in relation to the supply of sites.
    - Evidence that the appellant has conducted an unsuccessful search for an alternative site – or evidence from others that alternative accommodation options are limited can add weight to the case for an appeal.

50. See Annex D for more detail on dealing with alternative sites advice, including suitability, affordability, availability and acceptability, and weighing up the options.

'Policy Failure'

51. It is sometimes argued by appellants that 'policy failure' on the part of the local authority should be treated as a material consideration in favour of an appeal for a proposed Traveller site. Whether that is the case and, if so, the weight to be attached to the consideration will, as always, depend on the evidence and be for the judgment of the decision-maker.

52. There must be more to policy failure than giving a different name to any existing unmet need or shortfall on supply of pitches or plots. For a claim to be supported, there must be evidence of a persistent failure of the authority to put policies or other measures in place to meet the accommodation needs of Travellers and of a corresponding long-standing unmet need for sites[2]. There has been an expectation on local authorities to meet the accommodation needs of gypsies since the first duty was imposed by the CSA68.

53. There may be scant information as to whether or how the authority has planned to meet Traveller needs, and how long there has been any backlog of need. However, if the appellant pursues a case based on policy failure, they may submit evidence in the form of historic development plan documents, GTAAs and/or appeal decisions.

Personal circumstances

[2] The report (5 April 2019) of the House of Commons Women and Equalities Select Committee inquiry into 'Tackling inequalities faced by Gypsy, Roma and Traveller communities' criticised a 'persistent failure by both national and local policy-makers to tackle inequalities in any sustained way', albeit with regard to policy issues other than those related to Traveller sites or encampments.

54. Personal circumstances are often prayed in aid of an appeal for a new Traveller site – and were a key factor in the judgment of the House of Lords in *South Buckinghamshire DC v SSTLR & Porter (No. 2) [2004] UKHL* to uphold an Inspector's decision to grant planning permission, subject to a personal condition, for a Traveller site in the Green Belt. When addressing personal circumstances at hearing or inquiry, and in the decision, bear in mind that you will need to have regard to the best interests of the child(ren) in your overall conclusion; see below.

55. Annex E provides advice on dealing with personal circumstances including the facts to try to establish and the approach to dealing with people when hearing evidence and recording sensitive information. The Annex also covers human rights.

The Planning Balance

56. The overall conclusion in Traveller appeals will normally involve carrying out a balancing exercise in the usual way, starting with the planning balance before carrying out any human rights and/or equality assessments.

57. If you have considered and rejected, a grant of permanent permission, it will be necessary to undertake a second balancing exercise as to whether a grant of a temporary and/or personal permission would be justified, bearing in mind:

- The substantial weight to be attached to any harm to the Green Belt is the same for a temporary as for a permanent permission;
- Any reduced harm in respect of other matters, perhaps to the character of the area, from the limited period of the permission;
- Any reasonable expectation of a change in planning circumstances, such as alternative sites becoming available through the plan process within the period;
- What would happen to the occupiers once evicted[3].

Other Considerations

Best interests of the child

58. Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. Article 3(1) applies to decisions made by Inspectors and your reasoning on Article 8 of the Human Rights Act should be in the context of Article 3(1).

59. In *Stevens v SSCLG [2013] EWHC 792 (Admin)*, the judge derived key propositions from case law which apply to planning appeal decisions; these were confirmed in *Collins v SSCLG [2013] EWCA Civ 1193*.

[3] *Moore v SSCLG & Bromley LBC* [2012] EWHC 3192 (Admin)

60. To be a 'primary' consideration means that no other consideration can be inherently more important than the best interests of the child[4], that is, the need to safeguard and promote their welfare[5]. However, the importance or weight given to the best interests of child and any other consideration will depend on all of the circumstances in the case[6]; their interests can be outweighed by other factors when considered in context.

61. In examining all material considerations, and whether or not this has been raised by the parties, you must keep the best interests of the child at the forefront of your mind. It is expected that the health, education and general welfare needs of children are properly addressed as part of the reasoning and in the overall balance. You must assess whether any adverse impact of a decision on the interests of the child is proportionate, and this again is a duty of substance rather than form.

62. Further advice is given on the best interests of the child in the Human Rights and Equality ITM.

Human Rights

63. Article 8 of the European Convention on Human Rights is frequently engaged in Traveller casework, particularly in relation to loss of home and the resultant effects on family life, and the respect for private and family life. Annex E provides more detail on the Article 8 and other Articles that may arise in such casework.

Equality, Race Relations and the Public Sector Equality Duty

64. Additional advice on the application of the Equality Act 2010 (EA10) is provided in the Human Rights and Equality ITM.

65. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race under s149(7) of the EA10. The appellant and/or intended site occupants may have other or additional protected characteristics that could be relevant to the public sector equality duty (PSED) in the circumstances, such as age, disability, pregnancy and maternity and/or sex.

66. As with human rights, equality issues must be dealt with as an integral part of the reasoning that leads to the final decision. It must be clear that due regard to the three aims of the PSED, as set out under s149(1) of the EA10, has been had before a decision is made; consideration of equality principles must underlie the decision as a whole.

67. The three aims as set out under s149(1) are to:

    a. eliminate discrimination, harassment, victimisation and any other conduct prohibited under the act;

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[4]In this respect, planning decisions made with regard to the Humans Rights Act 1998 differ from proceedings under the Children's Act 1989 where the child's welfare shall be the court's paramount consideration.
[5] ZH (Tanzania) v SSHD [2011] UKSC 4
[6] Dear v SSCLG [2015] EWHC 29 (Admin)

b. advance equality of opportunity between persons who share a protected relevant characteristic and persons who do not;

c. foster good relations between persons who share a relevant protected characteristic and persons who do not.

68. Additional advice on the application of the Equality Act 2010 (EA10) is provided in the Human Rights and Equality ITM.

Conditions

Temporary Permissions and Extended Periods for Compliance

69. The lack of a supply of sites will be a material consideration, whether or not a permanent or temporary permission is being considered. Paragraph 60 of Circular 05/2018 explains that, as providing for a need identified in a GTAA would warrant the grant of a permanent permission, it should be rare to grant a temporary permission. The timescale for any proposed other contributions to undersupply can be material in relation to the consideration of temporary permissions.

70. Specific advice on conditions relating to temporary permissions and to gypsy and travellers is given in Circular 016/2014. Further advice on the matters to take into account is included in Annex F.

Restriction on occupancy of site

71. Where permission is granted for the use on the basis of the special accommodation needs of Travellers a condition should be imposed to restrict occupation to persons with Traveller status.

72. In the event that a decision is taken to grant planning permission for a travelling showpeople's site which requires a restriction on occupancy, the following condition could be used following consultation with the parties: 'The occupancy of the site shall be solely by members of a group organised for the purposes of holding fairs, circuses or shows (whether or not travelling together as such) including such persons who on the grounds of their own or their family's or dependant's more localised pattern of trading, educational or health needs or old age have ceased to travel temporarily or permanently'.

Personal conditions

73. Paragraph 5.83 of Circular 016/2014 states that conditions restricting occupancy should be used only where sound planning grounds can be demonstrated. If personal circumstances would be critical to the decision to grant planning permission it should be granted subject to a personal condition which refers to the names of the beneficiaries and their un-named dependants.

74. Where a personal permission is granted, imposing both the 'traveller' and 'personal' conditions could lead to enforcement difficulties if a named occupier ceases travelling

and loses Traveller status. Yet there can be instances where it is reasonable and necessary to impose both conditions, perhaps on multi-pitch sites where some occupants have Traveller status, and a general need for Traveller sites lent weight to a grant of permission – but there would also be occupiers who do not meet the definition. In these cases, the conditions may need to be adapted to ensure compatibility. See Annex F for more detail.

Other Conditions

75. Since the grant of permission will generally be for the use of the land as a residential caravan site, it is usually necessary to impose a condition specifying either the maximum number of caravans, or the maximum pitches together with maximum number of caravans per pitch. The condition may also need to specify the types of caravan; typically there will be a minimum of one static caravan and one touring caravan per pitch.

76. If it is necessary to control the position of caravans within the site, perhaps for visual reasons, this should be achieved by imposing a condition which ties the permission to the approved plans or requires details to be submitted to the Council for approval. Site licensing regulations require minimum distances between caravans for reasons of fire safety.

77. Amenity or toilet blocks, and day or utility rooms may also be required for site licensing reasons, as well as to meet the appellant's own needs. If these are needed but not shown on submitted plans, a condition may again need to be imposed which requires the submission and approval of details.

78. Other matters which often need to be controlled by condition for Traveller sites, including through the submission of further details, include:

- Hard and/or soft landscaping
- Boundary treatments
- External illumination
- The means of access into the site
- The layout and surfacing of parking and turning areas
- Foul and surface water drainage, including sustainable drainage.

79. Travellers are less likely than in the past to need space for business activities, but where this is needed and acceptable – particularly in cases pertaining to Travelling Showpeople, conditions may need to be imposed covering the extent of work areas, the height and/or nature of outdoor storage, hours of operation and/or controls on noise, odour and burning.

80. In some cases, Travellers will accept conditions to the effect that no commercial activity takes place on the site. If there is no such proposed use, however, and the grant of permission would only be for residential use, you should carefully consider the necessity of the condition bearing in mind the Council's powers to enforce against a material change of use.

81. Travellers often own vehicles larger than domestic scale, for towing a caravan, transporting horses or working away. It is customary to impose a condition which limits the weight of vehicles and the number of large vehicles that may be parked or stored

on a Traveller site. The usual upper weight limit is 3.5 tonnes, but sometimes a higher upper limit of 7.5 tonnes is accepted depending on the occupiers' needs and any concerns regarding character and appearance, living conditions and/or highway safety.

82. When planning permission is to be granted for a transit site or transit pitches on a permanent site, conditions must be imposed to specify the length of time any occupier may reside on the site, and the interval before which they may be permitted to return, and how such occupation is to be monitored by the local planning authority.

Gypsy and Traveller Provision in Development Plans

Overview

83. Section 101 of the Housing (Wales) Act 2014 ('the HWA') requires local housing authorities to produce a Gypsy and Traveller Accommodation Assessment (GTAA) at least once every 5 years. In drawing up GTAAs, WG advocates the use of 'Undertaking Gypsy and Traveller Accommodation Assessments' (2015), which provides detailed guidance for local authorities. GTAAs prepared in this manner can provide robust evidence of locally arising needs during development plan examinations.

84. National planning policy and guidance has, since 2014, been amended to align with the HWA. Circular 005/2018 emphasises the role and importance of GTAAs in plan making, either at the level of the local authority or on a regional basis.

85. Circular 005/2018 (paragraph 14) notes that s103 of the HWA places a statutory duty on local housing authorities to exercise their powers under the Mobile Homes (Wales) Act 2013 to meet any needs identified in the GTAA. It is clear from the thrust of the Circular and other WG guidance that the planning system, and the development plan in particular, has a key role to play in helping a local housing authority to fulfil its statutory duty. If an unmet need identified in a GTAA is not being met by an LDP's site allocations then this is very likely to be a key soundness matter. However, bear in mind that the Inspector's role is to assess the soundness of the development plan, and not to reach a judgement on whether a local housing authority has discharged its statutory duty under the HWA.

86. Whilst Circular 005/2018 only refers to 'pitches' and does not separately distinguish 'plots' for accommodating travelling showpeople, it is recommended that the term 'plots' is used in relation to sites for travelling showpeople.

Assessment of Need

87. Consistent with Circular 005/2018, paragraphs 248 and 249 of the 'Undertaking Gypsy and Traveller Accommodation Assessments' guidance:

- Stresses the importance of GTAAs in providing robust evidence for LDPs, and

- Emphasises that local authorities should demonstrate that unmet needs will be met through the planning system; specifically in development plans via site-specific proposals and criteria-based policies.

88. Paragraph 146 of the GTAA guidance states that local authorities should not include households on 'tolerated' sites within the supply unless it is shown that no enforcement action will be taken over the next 5 years period.

Creating a future supply of sites

89. Development plans should include site allocations to meet the identified pitch requirements associated with both permanent and transit sites over the entire plan period. It should be demonstrated that allocated sites are suitable within the context of the advice in Circular 005/2018. Specifically, LPAs should first seek to provide sites in or adjacent to existing settlement boundaries, with sites in the countryside considered only if other options are lacking. An over-rigid application of national or LDP policies that seek a reduction in car borne travel is not appropriate.

90. Paragraph 42 states that permanent pitches should be for residential purposes only, but that the provision of working spaces in designated areas may be acceptable where there is a demonstrable reason why specific on-site facilities need to be provided.

91. Paragraph 35 explains that LPAs will need to demonstrate that sites are suitable and deliverable in the identified timescales. This is likely to apply not only to site allocations but also to sites with planning permission ('commitments') where these are fundamental to meeting needs arising during the plan period. When allocating sites, paragraph 40 indicates that LPAs will need to have regard to relevant WG guidance, for example to ensure that sites have the capacity to accommodate the required number of pitches. Standards for private, rather than public, sites are set out in WG's 'Model Standards 2008 for Caravan Sites in Wales'.

92. Paragraph 48 advises that, exceptionally, where an LPA is unable to meet all assessed future needs through 'specific site locations', the LDP should include a reasoned explanation of why that has not been possible, supported by relevant evidence. It is likely that such evidence would need to give convincing assurance of how, specifically, the need would be met by the actions of the local housing authority outside the ambit of the LDP.

93. In addition to site allocations, LDPs should include a criteria-based policy for assessing 'windfall' applications. Annex B of Circular 005/2018 sets out both good practice guidance and also includes examples of unacceptable policy criteria. The circular provides no explicit support for Gypsy and Traveller 'exception site' policies.

Other relevant Manual chapters

94. Other Manual chapters which may be of particular relevance:

a. Hearings
b. Inquiries
c. LDP examination
d. The approach to decision-making
e. Flooding
f. Green Belt
g. Rural
h. Enforcement
i. Enforcement Case Law

ANNEX A: Case Law on Planning for Gypsies, Travellers and Travelling Showpeople

These summaries of important judgments should be used with caution; they do not purport to provide more than a brief outline of the key points as a quick reference. The facts of individual cases vary, and you should consult a transcript of the judgment if you seek to rely on it in a decision.

Please also note:

This Annex does not provide a conclusive or exhaustive list of all case law on planning for Gypsies, Travellers or Travelling Showpeople.

Care should be exercised in relying on older judgments since there may be more recent case law, legislation and/or policy.

A court is bound by the decisions of a court above it, and so a House of Lords or Supreme Court decision on a given issue has more status than a High Court or Court of Appeal decision on the same point.

If judgments are to be cited in decisions, they should not come as a surprise to the parties.

Greenwich LBC v Powell [1989] 1 AC 995, (1989) 57 P&CR 49 (UKHL)

This case concerned whether the occupiers of a Traveller site set up pursuant to the duty under s6 of the CSA68 were 'protected' – or had security of tenure – for the purposes of the **Mobile Homes Act 1983** (MHA83). The Powell family had a permanent base on the site but were absent for four to five months of the year when they travelled to undertake seasonal fruit picking, and at such times lived in a caravan with no fixed abode or home.

The House of Lords held that **a person of only seasonal nomadic habit, settled for part of the year, remained within the definition of a Gypsy** set out in the CSA68 – and was not protected for the purposes of the MHA83.

The MHA83 was amended by the Housing Act 2004 following *Connors v UK* (2005) 40 EHRR 9, and again by the Housing and Regeneration Act 2008 to give security of tenure to Travellers living on local authority, as well as privately-rented sites.

R v South Hams DC ex parte Gibb [1994] QB 158 (Court of Appeal)

Cited in Circular 18/94 as the basis for refining the statutory definition of 'gipsies' in the CSCDA60. The CoA held that the CSA68 **definition does not apply to persons who move without any connection between the movement and their means of livelihood**. Neill LJ identified the following matters as relevant to a decision on whether or not any particular group is composed of Gypsies:

1) The links between members of the group and between the group and other groups who are either at or visit the site (provided under s6 of the CSA68); living and travelling together is a feature of nomadic peoples.

2) The **pattern of journeys** made by the group. While Gypsies may have a permanent residence as per *Greenwich*, a nomadic habit of life necessarily involves travelling from place to place.

3) The **purpose of the travel**; in the context of Pt II of the CSA68, the s16 definition of 'Gypsies' imports a requirement for some recognisable connection between the group's travelling and the means of making their livelihood.

While *South Hams* remains relevant, it is not necessary for a Gypsy to travel as part of a group, see *Maidstone* below.

Maidstone BC v SSE & Dunn [1995] HC CO/2349/94

The Court upheld an Inspector's decision that the appellant, whose main source of income was from landscape gardening, but who also bred horses and travelled to horse fairs for up to two months in the year, had Traveller status. His travelling had a pattern and a purpose connected to his livelihood. **It is possible to lead a nomadic life seasonally by visiting the horse fairs**.

'Mr Dunn had remained a Gypsy, in the sense that he continued his nomadic life seasonally, albeit he had managed to achieve a degree of stability for his children's education and medical attention.'

The Court also rejected the Council's argument, based on *South Hams*, that the appellant could not be a Gypsy because he was not part of a cohesive group.

More recently, in *Basildon District Registry v FSS & Cooper* [2004] EWCA Civ 473, the CoA accepted that Mrs and Miss Cooper, who travelled to and sold craft items at traditional Gypsy fairs in the summer months, were Gypsies for planning purposes.

Buckley v UK [1996] ECHR 39, (1996) 23 EHRR 101

The European Court of Human Rights dismissed a claim that an Inspector and the Secretary of State had not correctly addressed **the appellant's rights under Article 8** in refusing planning permission and upholding an enforcement notice preventing continued residential use.

Proper regard had been had to the appellant's predicament under the terms of the regulatory framework, which contained adequate procedural safeguards, and by the responsible authorities when exercising their discretion. It was not the Court's task to sit in appeal on the merits of that decision. The reasons relied on by the responsible authorities were relevant and sufficient, for the purposes of Article 8, to justify the interference with the exercise by the appellant of her right to respect for her home.

Article 8 is not limited to respect for the home; see *Chapman v UK* [2001] ECHR 43.

Hedges v SSE & East Cambridgeshire DC [1996] EWHC Admin 240

The Inspector erred by failing to **consider the general need for the provision of sites for Gypsies independently of the question of personal circumstances**, contrary to Circular 1/94 and the Structure Plan.

Hearne v SSW & Carmarthenshire CC [1999] EWHC 494 (Admin), [2000] JPL 161 (Court of Appeal)

The Inspector found that although the appellant had fallen within the statutory definition of a Gypsy before moving to the site, his stated intention to settle on the land and abandon his nomadic way of life meant that he had given up his Gypsy status. The Inspector thus considered the deemed planning application on the basis of general rather than Traveller planning policies. He dismissed the appeal, refused permission and upheld the enforcement notice.

The High Court and CoA upheld the decision; the Inspector was entitled to find, on the evidence, that **the appellant had given up Gypsy status on moving to the land, and policies concerning Gypsy caravan sites were not appropriate**. Circular 1/94 was aimed at applications to provide accommodation for Gypsies; it did not apply to applications which were not for Gypsy use.

Basildon DC v SSETR & Others [2000] CO/3315/2000 (HC)

The SoS had concluded that the substantial harm to the Green Belt was clearly outweighed by the families' personal circumstances and need for more Gypsy sites in the area. He gave these factors considerable and significant weight, more so than the Inspector, who had recommended dismissal of the appeal.

Ouseley J held, in dismissing the challenge, that the needs of these Gypsy families were material because they had a need for the development in this location. **The SoS did not have to find that the personal circumstances of these families were exceptional** among the population at large or among Gypsies in particular; **the weight to be given them was for the SoS in the specific circumstances**.

It was not irrational for the SoS to give such weight as he had to the personal circumstances. That other Gypsy families might claim similar circumstances simply meant that very special circumstances might arise again; that was a matter for assessment on a case by case basis. The imposition of 'personal' rather than 'temporary' conditions was not irrational or inconsistent.

The Council's concern regarding **precedent** did not arise from the adequacy of the reasoning but its consequences; that was not a matter of law.

Chapman v UK [2001] ECHR 43

The European Court of Human Rights unanimously held that a decision to dismiss an appeal for a Traveller site, when no obvious alternative accommodation was available, had not violated the appellant's rights under Articles 6 or 14, or Article 1 of the First Protocol. The majority of the judges found the same with respect to **Article 8** – but a minority found (paragraph 130 onwards) that there had been a violation of the Mrs Chapman's Article 8 rights.

Chapman is notable for its approach to Article 8. In *Buckley*, where retrospective planning permission had been refused for a Traveller site, the ECHR had held that the case concerned the appellant's "home", and so it was unnecessary to consider whether it also concerned her "private" or "family life". In Chapman, the court **did** address this point and held that:

'[T]he applicant's occupation of her caravan is an integral part of her ethnic identity as a Gypsy, reflecting the long tradition of that minority of following a travelling lifestyle…Measures which affect the applicant's stationing of her caravans have therefore a wider impact than on the right to respect for home. They also affect her ability to maintain her identity as a Gypsy and to lead her private and family life in accordance with that tradition'.

Chapman remains the leading case for consideration of human rights in Gypsy cases, because of its European dimension and the detail in which it addresses matters. The judgment summarises site provision and policy in the UK, past failed initiatives, the European approach to Gypsies/Roma and the facts of the case in question. On the facts, or perhaps because no information was available to the court as to any efforts Mrs Chapman had made to find alternative sites, her financial situation, or on the qualities a site must have to be suitable, the majority took a notably hard line on the availability of alternative accommodation.
Mrs Chapman was successful on a fresh planning appeal four years later.

Egan v SSTLR [2002] EWHC 389 (Admin)

Challenge that there had been a failure to **adopt a two-tiered approach to dealing with Article 8** issues was dismissed; both the Inspector and the FSS had correctly considering not merely the question of whether dismissing the appeal was necessary, but also whether it would place a **disproportionate** burden on the appellants. The **lack of an identified alternative site** does not automatically make dismissing an appeal disproportionate in Article 8 terms.

R (oao Clarke) v SSTLR & Tunbridge Wells BC [2002] EWCA Civ 819

The Inspector gave inadequate reasoning in finding that an offer of bricks and mortar housing detracted from the appellant's contention that the only alternative to the appeal site was a roadside pitch.

'If it can be established that the Gypsy and/or his family subscribe to the relevant tenet or feature of Gypsy life – proscription of, and/or an aversion to, conventional housing, then conventional housing if offered will be unsuitable. ***It would therefore be contrary to Articles 8 and 14 to expect such a person to accept conventional housing*** *and to hold it against him/her that he/she has not accepted, or is not prepared to accept it, even as a last resort. What the Inspector must do is carefully examine the objections of this Gypsy*

family to living in conventional housing in order to determine the extent to which Article 8 is truly engaged…'

Clarke-Gowan v SSTLR & North Wiltshire DC [2002] EWHC 1284 (Admin)

The High Court upheld an Inspector's decision that **the appellant did not have Gypsy status, since he travelled only to pre-arranged work** as a bricklayer and stonemason, although some trips necessitated staying away in a caravan.

'…there was not that essential connection between wandering and working…[he is] in fact permanently resident at the appeal site and his work related travel is no different in character to that undertaken by many people looking for work in the building trade who are manifestly not Gypsies in any sense of the word.'

Coyle v FSS & Kingston upon Thames RBC [2003] EWHC 816 (Admin)

While the relevant development plan policy, on the face of it, was not wholly compliant with Circular 1/94, that did not mean that the application for a Traveller site in the Green Belt should be permitted.

Wrexham BC v NAW & Berry [2003] EWCA Civ 835

The appellant had not travelled for three years due to ill-health; medical advice was that his condition was unlikely to improve. The Court of Appeal held that whether the appellants were Gypsies for planning purposes depended on whether they were of a nomadic way of life, and this was a functional test to be applied at the time the decision was to be taken.

Being temporarily confined to a permanent base through illness did not necessarily deprive an appellant of Gypsy status. **If they retired permanently from travelling for whatever reason, they were no longer of a nomadic habit of life**, although that was not to say that they could not recover it later.

This judgment influenced the revised definition of Gypsies and Travellers for planning purposes in Circular 1/06 which specifically included those who had ceased travelling for reasons of health needs or old age.

Moss v FSS & South Cambridge DC [2003] EWHC 2781 (Admin)

Case involving eight conjoined s78 appeals, each for a separate Traveller pitch within a single encampment that had been developed at the same time and shared a common access. The Inspector concluded that the development as a whole would harm the rural character of the Fenland area, and the personal circumstances of the appellants – who wanted to live together – did not justify the number of caravans proposed and resulting harm.

Held that the **Inspector erred in describing personal circumstances globally and generally**. It is difficult to be sure what the result would have been if the Inspector had addressed whether it would have been possible to allow some of those whose personal

circumstances were the most compelling, for example, where education would be disrupted by having to move on.

Lee v FSS & Dartford BC [2003] EWHC 3235 (Admin)

The **FSS erred in failing to address requests for temporary permission** to allow time for an alternative site to be sought or the children's education to be finished. The Inspector had concluded on the latter but not former request. The FSS had made no explicit conclusions on either, or on the related issue of proportionality in human rights.

The redetermined appeal decision was also challenged; see EWHC 2549 (Admin) below.

South Buckinghamshire DC v SSTLR & Porter (No. 1) [2003] UKHL 26

The High Court granted injunctions under s187B of the TCPA90 to evict Gypsies from unauthorised sites. The Court of Appeal quashed three of the injunctions, having set out and then applied an approach for the courts to follow, so that applications for injunctions are considered in a way that is consistent with the duty of the courts under s6 of the HRA98 to act compatibly with Convention rights. The House of Lords unanimously supported the CoA approach.

South Buckinghamshire DC v SSTLR & Porter (No. 2) [2004] UKHL 33

The Inspector found that the lack of an alternative site within the area and the chronic ill-health of Mrs Porter, which had worsened since a previous appeal in 1998, clearly outweighed harm to the Green Belt and thus amounted to **very special circumstances** which justified a grant of personal planning permission.

The House of Lords held that the Inspector's **reasoning was clear and ample**. Not everyone would have reached the same decision, but there was no mystery as to what had moved the Inspector. It was not clear why the CoA had thought some fuller explanation was demanded; the principle was that the standard of reasoning required was not dependent on the importance of the issues involved.

It was impossible to say that the unlawfulness of the use of the site could never be a material consideration – but **the appellant had not relied on continuing unlawful occupation as constituting part of the claim of hardship**. It was of little, if any materiality in the circumstances of the case, and in any event, the Inspector had clearly been aware of the nature and extent of the unlawful use, which had not given rise to a main issue in dispute.

FSS & Doe & Yates & Eames v Chichester DC [2004] EWCA Civ 1248

The CoA upheld a decision to grant permission to the three named Gypsy families. The Inspector had not imposed a non-existent and impermissible duty on the Council to exercise its planning powers to help achieve the end of providing an adequate number of Gypsy sites.

The Inspector found that the Council had not made adequate provision for Gypsies in accordance with national policy, and the consequence was little credible prospect of any private Gypsy site being permitted by the Council. The Inspector was entitled to take these factors into account and weigh them in the **Article 8** equation in the appellants' favour.

Dartford BC v FSS & Lee [2004] EWHC 2549 (Admin)

The site included pitches occupied by the appellant and his brothers with their respective wives and children. The FSS found, after seeking further information, that there was a strong case for the appellant to remain in the area because of the special **educational needs** of his children. He also concluded that personal circumstances plus the need for Gypsy sites in the area clearly outweighed the harm to the Green Belt. He allowed the appeal and granted permission subject to a 'personal' condition naming the appellant, his brothers and their families.

A challenge that the permission should have been personal to the appellant only, since the brothers' children did not have special educational needs, was dismissed. The Council had not raised this issue during the appeal.

'Once some members of the extended family had been shown to have particular needs…then, absent any representations to the contrary, it was not unreasonable for the [SoS] to proceed on the basis that ***the extended family should be permitted to remain together****, absent any obvious planning advantage in requiring them to split up…Each case is bound to be fact sensitive…'*

Basildon BC v FSS & Temple [2004] EWHC 2759 (Admin)

Personal permission had been granted on appeal for a single-family Gypsy site in the **Green Belt** on the basis of various considerations. The Council challenged the decision on the basis that each factor relied upon in a finding that there are '**very special circumstances'** must itself be of a quality that can reasonably be called 'very special'. Sullivan J held, in rejecting the claim, that there is no reason why a number of factors that are ordinary in themselves cannot combine to create something very special; the weight to be given to any particular factor will be a matter of degree and planning judgment.

On **precedent**, it was held that the balancing exercise required will be specific to each case; a combination of factors which might clearly outweigh the harm that would result from development on one site might be insufficient to justify a grant of permission for a site that would be more harmful in planning terms.

South Cambridgeshire DC v FSS & McCarthy & O'Rourke [2004] EWHC 2933 (Admin)

Having found that **the appellant no longer had Gypsy status**, as they had ceased travelling, the Inspector erred in considering the development under a draft Local Plan policy explicitly intended to apply to sites for those to exercising a nomadic lifestyle for the purpose of making or seeking their livelihood.

The Inspector should have more rigorously considered which were **the relevant development plan policies**. Where appellants do not have Gypsy status, regard may still be had to their **personal circumstances**, but they should have been weighed against the conflict with countryside not Gypsy site policies.

Smith v FSS & Mid Bedfordshire DC [2005] EWCA 859

The Inspector refused permission for a Gypsy caravan site, taking account of the local residents' **fear of crime** as a discrete and important issue. The CoA held that the **evidence** before the Inspector did not suffice to establish real concern of the kind required for that concern to enter into the planning judgement.

'*…the fear and concern must have some reasonable basis...and the object of that fear and concern must be the use, in planning terms, of the land…**a caravan site is not like a polluting factory or bail hostel, likely of its very nature to produce difficulties for its neighbours**…the concern as to future events was or may have been based in part on the fact that the site was to be a Gypsy site. It cannot be right to view land use for that purpose as inherently creating the real concern that attaches to an institution such as a bail hostel.'*

FSS v Simmons [2005] EWCA Civ 1295

The CoA upheld the decision of the SoS to dismiss an appeal for a Traveller site in the Green Belt. The appellant had made no real effort to find an **alternative site** despite the fact that his pattern of travel took him to areas of the country that were not within the Green Belt.

But see *South Cambridgeshire DC v SSCLG & Brown* [2008] EWCA Civ 1010

R (oao Green on behalf of the Friends of Fordwich and District) v FSS & Canterbury CC & Jones [2005] EWCA Civ 1727

The Inspector granted permission for the development alleged in the enforcement notice: 'the use of the land for the stationing of three units of mobile living accommodation and ancillary storage', subject to a condition requiring that no more than three units falling with the statutory definition of a caravan shall be stationed on the land.

On the ground that **a person had to live in a caravan to qualify as a Gypsy**, the CoA made it clear that there is no such requirement in the statutory (CSA68) or policy (Circular 1/06) definition of 'Gypsy'.

With regard to **whether the structures were caravans**, the Inspector had dealt comprehensively with one but not the other units – when the second had a timber extension, and the third consisted of two static caravans linked by a timber structure. The CoA agreed with the High Court that:

'…for the purposes of framing the planning permission which she was to grant and the condition which she was to impose, the Inspector was…bound to enter into and determine this question as to the status of units 2 and 3.'

Hughes v FSS & South Bedfordshire DC [2006] EWCA Civ 838

The Inspector recommended a grant of temporary permission for a Gypsy site in the Green Belt with regard to a short-term need for sites in the area in the short term, a lack of available alternative sites, and the disruption to education and healthcare. The FSS noting (but not spelling out) **the legal obligations of the local education authority** to make appropriate educational provision for school age children resident within its area, found that appropriate education would be available to the children notwithstanding a refusal of permission and a lack of immediately available alternative sites; the appeal was dismissed.

The appellant's challenge succeeded in the High Court, but the appeal decision was reinstated by the CoA. In his planning judgment, the FSS had to strike a balance between the interests of the community at large, and the interests of the applicants and their families. The FSS differed from the Inspector in the **weight that he gave to educational needs** in the overall balance, but he did not take account of any matters other than those to be found in the Inspector's report or differ from the Inspector on any material fact.

Doncaster MBC v FSS & Smith [2007] EWHC 1034 (Admin)

Challenge that the Inspector ought to have granted temporary rather than personal permission for a ten pitch Gypsy site, to avoid long-term harm to the openness of the Green Belt and character of the area, and to comply with Circular 1/06. The judge upheld the Inspector's finding that **temporary permission** is only justifiable where there is likely to be a material change in circumstances, in particular a realistic likelihood of suitable, affordable and acceptable **alternative accommodation becoming available** before the end of that time; this was 'entirely in accord with the policy…and with *Chapman*'.

R (oao Dowling) v SSCLG & Others [2007] EWHC 738 (Admin)

An Inspector granted permission for a Gypsy site subject to a condition that no more than six caravans, with no more than four static caravans, could be stationed on the site at any time. The decision was challenged on the basis that the application had been for the siting of four mobile homes, and **the condition unlawfully enlarged the proposed development**.

Held that the condition, rather than enlarging the permission, had the effect of regulating and controlling it since any number of caravans could otherwise have been brought onto the site not unlawfully, provided this did not constitute a change of use. Circular 01/06 referred to Gypsies having one caravan to live in and another for travelling to enable a nomadic lifestyle.

The Inspector did not err in finding that a literal reading of a **Local Plan policy** which required that Traveller sites 'do not detract from the undeveloped and rural character and appearance of the countryside' would virtually render the policy unworkable:

'…it is difficult to conceive in practice and reality that there would be any kind of development with regard to Gypsies which would not, at least in some way, detract either

from the character…appearance or from both of the countryside…it is reasonable to construe the policy as embracing detractions in the sense of detractions which are perhaps significant or material. That would still give the policy real purpose and bite and at the same time would make it workable.'

Clee v FSS & Stafford BC [2008] EWHC 117 (Admin)

The only 'obligation' on the decision-maker is to 'give consideration' to whether to grant **temporary permission**. The Inspector had done so in this case.
despite dealing with the matter in brief.

R (oao Baker) v SSCLG & Bromley LBC [2008] EWCA Civ 141

Unsuccessful challenge, notable mainly for the then novel ground considered in the CoA concerning **race equality and s71(1) of the Race Relations Act 1976**, which required the decision-maker to have due regard to the need: (a) to eliminate unlawful racial discrimination; and (b) to promote equality of opportunity and good race relations between persons of different racial groups.

While neither the Act nor issue of race equality had been raised at the inquiry, this did not remove the s71(1) duty on the Inspector. However, s71(1) did not impose a duty to achieve a result, but rather to have due regard to the need to achieve the statutory goals. There was no breach of the duty; the Inspector 'was alive to the plight of Gypsies and Travellers and the disadvantages under which they labour as compared with the general settled community.'

Wychavon v SSCLG & Butler [2008] EWCA Civ 692

A **Green Belt** case concerning the adequacy of the Inspector's approach to and reasoning on **very special circumstances**. Lord Carnwath in the CoA found that it was wrong for the High Court judge to treat the words 'very special' as the converse of 'commonplace'. The word 'special' connotes not a quantitative test but a qualitative judgment as to the weight to be given to the particular factor for planning purposes. Whether or not any particular factor or factors are sufficient to justify the grant of permission in any case is a balance which involves issues of 'complexity and sensitivity' and a judgment of policy not law.

R (oao Smith) v South Gloucestershire DC [2008] EWHC 1155 (Admin)

This challenge was to the Council's adoption of Local Plan Policy H12 which provided that 'Gypsy sites will not be appropriate within the Green Belt or the Cotswolds AONB', on the basis of an earlier Structure Plan prepared when Circular 1/94 was extant. The High Court noted that there was a change in emphasis in Circular 1/06 in that "**there is still a presumption against such development in the Green Belt and AONB but it is not an absolute prohibition**…the absolute prohibition in Policy H12 is no longer appropriate."

South Cambridgeshire DC v SSCLG & Brown [2008] EWCA Civ 1010

The CoA held that **there is no requirement for the appellant to prove that alternative sites are not available** before planning permission can be secured contrary to development plan policy. The Inspector was entitled to come to the conclusions she did as to the realistic availability of alternative sites.

'The position is governed by s38(6)…the Development Plan is determinative unless material considerations indicate otherwise. There is no burden of proof on anyone. It is a matter for the planning authority, or in this case the inspector, to decide what are the material considerations and, having done so, to give each of them such weight as she considered appropriate. That, so it seems to me, is a matter of planning judgment.'

Coyle & Others v SSCLG & Basildon DC [2008] EWHC 2878 (Admin)

The High Court rejected this challenge to an Inspector's finding that, while the education and health needs were significant, they only carried limited weight:

'*Whether or not the Inspector's description…could be criticised…**it was for him to judge the weight** that should be attached to these matters. It is only if it can be shown that he failed to have regard to a material matter that a claim such as this could succeed…'*

Bromley LBC v SSCLG & Friend [2008] EWHC 3145 (Admin)

The Inspector did not refer to *Circular 11/95: Use of Planning Conditions* but still gave adequate reasoning to justify the grant of **temporary permission**. The Inspector referred to relevant advice in Circular 1/06 and identified an expected **change in planning circumstances** at the end of the temporary period.

Langton & McGill v SSCLG & West Dorset DC [2008] EWHC 3256 (Admin)

In considering whether to grant **temporary permission**, with regard to paragraph 46 of Circular 1/06, the Inspector had to ask: (a) Was there an unmet need for pitches? (b) Was there any available alternative provision? (c) Was there **a reasonable expectation that any new sites were likely to become available** at the end of that period in the area which would meet that need.

R (oao Jordan) v SSCLG & Thurrock BC [2008] EWHC 3307 (Admin)

The Inspector erred by not considering whether to grant temporary permission, although the appellant had not asked her to:

'There are some issues that are only material if a point has been made about them…there are other matters which are material…because of their intrinsic nature. [Article 8] is relevant…by operation of law…a temporary permission would have permitted the claimant and his wife to live for longer in the dwelling than…if permission were refused…As the Inspector did accept that Article 8 rights were engaged…she did have to consider whether

or not there was a means short of a full planning permission whereby they could be protected.'

However, the challenge did not succeed since, in the circumstances, it was 'inconceivable' that the Inspector would have granted temporary permission.

R (oao Massey) & Derbyshire Gypsy Liaison Group v SSCLG & South Shropshire DC [2008] EWHC 3353 (Admin)

The Inspector granted personal permission for a Travellers' site to individuals found to have **Traveller status** under Circular 1/06. The challenge was made by other occupiers who the Inspector had found did not meet the definition.

It was held that the Inspector had correctly applied the *South Hams* tests to determine whether the individuals had a nomadic habit of life. To be considered as a Traveller who had ceased travelling for the purposes of Circular 1/06, a **nomadic habit of life must have previously been established**. On the facts before him, the Inspector found that it had not; the reasons why the claimants may not have been travelling at the time of the determination were immaterial.

South Staffordshire DC v SSCLG & Dunne [2008] EWHC 3362 (Admin)

The Inspector granted **permanent permission** since there was '**no degree of certainty that new sites were likely to become available**…within a reasonable timescale…' The decision was consistent with paragraph 45 of Circular 1/06. The Inspector was entitled to look at the evidence of delivery, the date of the intended delivery and the place.

Stanley v SSCLG & Rother DC [2009] EWHC 404 (Admin)

The Inspector **rejected the possibility of granting temporary permission** for a Traveller site on the basis that harm to the AONB outweighed the personal circumstance of the claimants. Held that the Inspector had properly considered paragraph 45 of Circular 1/06 and found there was no 'reasonable expectation' of sites becoming available in the foreseeable future. The Inspector was also entitled to give the weight he did to personal circumstance of the claimant.

Rafferty & Jones v SSCLG & North Somerset DC [2009] EWCA Civ 809

The appellants' rights under Article 8 were engaged although they did not live on the site. Had that not been the case, Article 8 would only have been in issue if the appellants had used the land unlawfully. The appellants' home was their caravans and their right to carry on their private lives from it was being infringed whether or not were already on the land.

Peters v SSCLG & Surrey Heath BC [2009] EWHC 1125 (Admin)

The Inspector refused temporary permission for a **travelling showpeople's** site on the basis of harm to the Green Belt; likelihood of a significant adverse effect on a **Special**

Protection Area (SPA), and there being no reasonable prospect of **alternative sites** becoming available in the area within 3-5 years.

The High Court held, in dismissing the challenge, that the Inspector did not restrict consideration of sites to the local authority area but looked at the mater more widely in accordance with Circular 4/07. The Inspector was entitled to find that special local circumstances meant the authority could rely on lack of sites, despite their failures to make provision or respond to evidence of need.

The Inspector did not err in his approach to the SPA; he dealt with the measures proposed but decided that the combined effect of residential developments surrounding the SPA was likely to have a significant effect upon it; it would have been difficult for him to decide otherwise in the light of English Nature's advice.

R (oao Holland & Smith) v SSCLG & Taunton Deane DC [2009] EWHC 2161 (Admin)

A challenge was rejected to an Inspector's 'unimpeachable' finding that **precedent and cumulative impact** were decisive considerations, justifying dismissal of the appeals on four out of 16 pitches on the site.

Smarden Parish Council v SSCLG & John Lawson's Circus [2010] EWHC 701 (Admin)

The Inspector granted permanent permission for a **travelling showpeople's** site, giving reasons for *not* imposing conditions that would restrict occupation either to named persons or to certain months of the year. The Parish Council challenged the decision on the basis that the application had been for "**winter quarters**" and, by allowing for year-round occupation, the Inspector had enlarged the scope of the permission.

Held that the Inspector granted what was applied for; the appellant had made it clear that, while the circus would not likely be on the site between March and October each year, there would be occupation by children, elderly relatives and those involved in their care outside of the winter months. The Inspector had also referred to Circular 4/07 in deciding it would be unreasonable to preclude summer occupation.

Medhurst v SSCLG [2011] EWHC 3576 (Admin)

The Inspector's finding that the appellant did not have an established nomadic lifestyle or sufficient periods of travelling to have **Traveller status** was rational and based on the evidence. The Inspector did not need to deal with each and every piece of evidence. Moreover, although Circular 01/06 did not apply the Inspector went on to consider the general unmet need for caravan sites, the personal circumstances of the family and the wish to avoid returning to bricks and mortar but found that this did not clearly outweigh the Green Belt harm.

Moore v SSCLG & Bromley LBC [2012] EWHC 3192 (Admin)

An Inspector's **decision to refuse temporary permission for a Gypsy site was irrational and unreasonable**, because he had applied the same reasoning to this question as he had

to the question of whether to grant permanent permission, when the (Green Belt) balancing exercise would have changed.

The harm arising from inappropriate development would be limited in time and so carry reduced weight. Circular 01/2006 advised that substantial weight should be attached to the level of unmet need for sites in the area when considering a temporary permission, in contrast to the Inspector's finding that "some weight" should be attached to this matter in relation to permanent permission.

Further, the vulnerable position of Gypsies and the special consideration to be given to their needs had a particular focus when considering temporary permission; *Wychavon* applied. The Inspector had appeared to recognise the best interests of the children, in particular their health and education, as important factors. The question of whether there was likely to be suitable alternative accommodation went directly to the balancing exercise required under Article 8 when considering temporary permission.

It was incumbent on the Inspector to make clear findings as to what would happen once the appellant was evicted and whether it was more likely than not that she and her children would have to move to roadside existence, or whether they would be offered accommodation on a suitable alternative site.

Linfoot v SSCLG & Chorley BC [2012] EWHC 3514 (Admin)

Another successful challenge against a **refusal of temporary permission** for a Traveller site. The Inspector focused on the prospect of sites becoming available in the local authority's area, when temporary permission had been requested on the basis of **a reasonable expectation of alternative sites becoming available in the wider area**. The Inspector failed to address whether the circumstances would change in the wider area within the time for which temporary permission was sought. There was a real possibility that consideration of that matter would have made a difference to the decision.

But see also *Beaver v SSCLG & South Cambridgeshire DC* [2015] EWHC 1774 (Admin) and *Sykes v SSHCLG & Runnymede BC* [2020] EWHC 112 (Admin)

Hughes v SSCLG & Sedgemoor DC [2012] EWHC 3743 (Admin)

The Inspector was entitled to refuse permission for a Traveller family to remain on the site, on the basis that visual and highway safety harm outweighed the family's best interests. The Inspector could not be criticised for taking the view that it would be unwise to rely for remediation of the harm on county council powers set out under **other legislation**, namely s79 of the Highways Act 1980. He did not address the provisions of s154 of the same Act but, had he done so, he would probably have approached it as he had approached s79.

The Inspector also plainly had regard to the appellant’s family situation; it was mentioned in seven paragraphs of his decision. In substance, he accorded primacy to the **rights of the children** but, in balancing those rights against the other factors, he concluded that permission should not be given.

Collins v SSCLG & Fylde BC [2013] EWCA Civ 1193

The Secretary of State dismissed planning and enforcement appeals for a site for 78 Travellers. The claimant submitted that the SoS was required to – but did not, in substance or form – treat the **best interests of children** as a primary consideration, which would involve deciding whether any of the other factors, either individually or collectively, outweighed that consideration.

The CoA referred to *ZH (Tanzania) v SSHD* [2011] UKSC 4 as authority for the proposition that the need to safeguard and promote the welfare of children requires that the relevant authorities treat the best interests of children affected as a primary consideration – but this did not mean that identifying their best interests would lead inexorably to a decision in conformity with those interests.

The failure of the SoS to identify the interests of children as being a primary consideration was not material because he took that approach as a matter of substance. Neither the SoS nor the Inspector treated the considerations which pointed towards a refusal as inherently more significant than the interests of the children. There was no failure to consider Article 8 as an integral part of the decision-making process.

The Inspector's report described the circumstances and accommodation needs of the occupiers; the number of children; and problems including lack of a settled base from which to access health facilities and education. The approach of the decision maker was consistent with that contemplated in *ZH*; following a fact sensitive analysis of the relevant considerations, the SoS concluded that the negative factors cumulatively outweighed the best interests of the children.

The CoA also referred to and endorsed (paragraphs 10-11) the list of propositions given in *Stevens v SSCLG & Guildford BC* [2013] EWHC 792 (Admin) as an accurate and helpful summary of the impact of the principle of considering the best interests of children on the approach to be taken by a planning decision-maker.

Dear v SSCLG & Doncaster MBC [2015] EWHC 29 (Admin)

The **weight** to be attached to a particular consideration in a planning appeal, including the **best interests of the children**, is for the decision maker.

Moore & Coates & the Equalities and Human Rights Commission v SSCLG & Bromley LBC & Dartford BC [2015] EWHC 44 (Admin)

The Secretary of State's approach to the recovery of two Traveller appeals was in breach of Article 6 and the public sector equality duty because it prevented the appeals being determined in a reasonable time.

Winchester CC v SSCLG & Others [2013] EWHC 101 (Admin), [2015] EWCA Civ 563

A grant of planning permission for the use as a '**Travelling Showpeople's site'** was a limited grant of permission for that use. It could not be interpreted as permission for a residential caravan site; no conditions were necessary for the authority to enforce against use by people who were not Travelling Showpeople.

Beaver v SSCLG & South Cambridgeshire DC [2015] EWHC 1774 (Admin)

Paragraph 46 of Circular 01/2006 provided a justification for the grant of **temporary permission** for Gypsy sites where it was expected that, at the end of the period, the **planning circumstances would change in relation to the provision of permanent sites**. The Circular did not permit unrealistic or false assumptions to be made simply because the planning authority had failed to meet the need for sites in the past.

Linfoot did not support a contention that the Inspector ought to have considered the wider area. The shortfall of sites in this case arose in the area of the District Council; whether or not it arose in other areas was not relevant to the argument about the right approach to the likelihood of changes in planning circumstances.

O'Brien v South Cambridgeshire DC & SSCLG [2016] EWHC 36 (Admin)

An Irish Traveller challenged the local authority's decision to exercise their powers under s70c of the TCPA90 to decline to determine her planning application. The claim failed but the judgment includes useful analysis on the underlying statutory purpose of the power and the question of proportionate enforcement action under Article 8.

Allen v SSCLG & Bedford BC [2016] EWCA Civ 767

The appellant made an appeal under s73 for use of land as a Traveller site without complying with conditions limiting the use to a temporary period of three years. The Inspector recommended allowing the appeal, but the Secretary of State refused permission. The High Court upheld a challenge that the SoS did not give **adequate reasons**, but that decision was overturned by the CoA.

The SoS' reasons were "proper, adequate and intelligible"; they expressed and explained his conclusions on the "principal important controversial issues". They made it clear to the appellant why the appeal was lost and the application for planning permission was refused; *Porter* applied.

Swale BC v SSHCLG & Maughan & Others [2018] EWHC 3402 (Admin)

As with unmet need, it is not necessary to describe the Council's supply of sites with arithmetical precision. The Inspector did not err in law in deciding to grant temporary planning permission for a Traveller site partly on the basis of there being a 'substantial shortfall' of pitches.

Bromley LBC v Persons Unknown & London Gypsies and Travellers & Others [2020] EWCA Civ 12

The CoA addressed the High Court's refusal '*to grant a "de facto boroughwide prohibition of encampment…in relation to all accessible public spaces in Bromley except cemeteries and highways"…it was common ground that the injunction was aimed squarely at the Gypsy and Traveller community*'.

The HC judge granted a restricted '*injunction prohibiting fly tipping and disposal of waste…*' but held that the prohibition of encampment did not strike a fair balance and was not proportionate.

The CoA rejected Bromley's appeal, holding '*that **the Gypsy and Traveller community have an enshrined freedom not to stay in one place but to move from one place to another**. An injunction which prevents them from stopping at all in a defined part of the UK comprises a potential breach of both the Convention and the Equality Act, and in future should only be sought when, having taken all the steps noted above, a local authority reaches the considered view that there is no other solution to the particular problems that have arisen or are imminently likely to arise*'; paragraph 109.

In paragraph 104, Coulson LJ outlines considerations that 'should be at the forefront of a local authority's mind' when considering whether to seek a *quia timet*[7] injunction that is directed against the Gypsy and Traveller community, in order to ensure that proportionality is met. He described such injunctions as 'inherently problematic' (paragraph 105) but rejected submissions that they should never be granted, offering guidance instead (paragraph 108):

a) *'When injunction orders are sought against the Gypsy and Traveller community, the evidence should include what other suitable and secure alternative housing or transit sites are reasonably available. This is necessary if the nomadic lifestyle of the Gypsy and Traveller community is to have effective protection under article 8 and the Equality Act.*

b) *If there is no alternative or transit site, no proposal for such a site, and no support for the provision of such a site, then that may weigh significantly against the proportionality of any injunction order.*

c) *The submission that the Gypsy and Traveller community can "go elsewhere" or occupy private land is not a sufficient response, particularly…in circumstances where multiple nearby authorities are taking similar action.*

d) *There should be a proper engagement with the Gypsy and Traveller community and an assessment of the impact of an injunction might have, taking into account their specific needs, vulnerabilities and different lifestyle…the carrying out of a substantive [Equality Impact Assessment]…should be considered good practice, as is the carrying out of welfare assessments of individual members of the community (especially children) prior to the initiation of any enforcement action.*

[7] "Because he fears" or to quiet present apprehension of probable future injury to property.

e) *Special consideration is to be given to the timing and manner of approaches to dealing with any unlawful settlement and as regards the arrangements for alternative pitches or housing'.*

The judgment refers to but makes no express finding on the compatibility of blanket injunctions with PD rights set out under Schedule 2, Part 5 of the GPDO 2015.

Sykes v SSHCLG & Runnymede BC [2020] EWHC 112 (Admin)

This challenge to an Inspector's to refuse permission for a traveller site was not contested by the SSCLG but successfully defended by the Council. The Inspector did not err in failing to take account of the likelihood of the appellants being able to find suitable accommodation elsewhere within the County. On the facts, the case was comparable to *Beaver* and not *Linfoot*; the appellants had claimed there was unmet need in the Borough and that was the focus of the appeal.

The Inspector did not fail to properly consider whether to grant permission for fewer than 13 pitches on the site. The appellants had not presented a proposal for a reduced number of pitches/households, and so the Inspector was entitled to deal with the issue in general terms. He 'gave careful and conscientious consideration to the personal circumstances of the members of the Group, both on an individual basis and collectively' – and gave due consideration to interference with Article 8. His assessment of the planning balance was intelligible and adequately explained.

ANNEX B: Traveller Groups, Status and Culture

Traveller Groups and Traveller Status

6 This chapter concerns the land use and accommodation requirements of the following groups of people:

- Romany or ethnic Gypsies[8];
- Irish Travellers or other ethnic Travellers[9];
- 'New Age' and other Travellers;
- Travelling Showpeople, being members of a small but tight knit community of self-employed people travelling the country to hold circuses or amusement or entertainment fairs and/or to run rides or kiosks at shows, festivals, markets, community fetes or even shopping centres.

7 Romany Gypsies and Irish Travellers are ethnic minorities subject to the public sector equality duty (PSED); see below. Use initial capitals when referring to an ethnic group or someone as a member of such a group.

8 Gypsies and Travellers of different ethnic backgrounds or traditions often do not want to share the same site, but it is not unknown for Irish Travellers to marry into Romany Gypsy families and vice versa. It is uncommon but not unknown for Gypsies or Travellers to join Travelling Showpeople.

Travellers, Caravans and Traveller Culture

9 Gypsies, Travellers and Travelling Showpeople usually live in caravans as an integral and necessary part of their nomadic lifestyle; living in a caravan facilitates travel for work. Being nomadic does not preclude having a permanent base to which an individual or family can return and live on for periods of time.

10 Romany Gypsy and Irish Traveller communities have some common cultural values, including a tradition of nomadism and living in caravans; it is part of their ethnic and cultural identity to have their moveable homes. Whether or not they move every day is immaterial; their aspiration is to always have the ability to be mobile. Living in a building with a sense of enclosure can be distressing to people been used to outdoor living[10].

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[8] Romany in this context may be spelt with a 'y' or 'i'; the Romani language is often spelt with an 'i'. 'Roma' is another word for Romany people (and does not have any connection with Romanian) while the term 'Sinti' refers to Romany people of Central Europe.

[9] The traditional Irish Traveller language is known as Shelta, De Gammon or Cant. Other ethnic groups include Scottish Gypsy Travellers or Welsh Gypsy Travellers (Kale).

[10] It is thought that Romany Gypsies have been in the UK since the late fifteenth century. They initially travelled on foot and lived in 'bender' tents (or "under canvas" for the purposes of birth certificates etc) made from hazel branches. Families later began to travel with bender tents placed on top of horse-drawn carts, and these evolved into the archetypal bow-top wagons associated with Gypsies to this day. The English Romani word 'vardo' or 'varde' can mean a Romany wagon or caravan.

11 The dominant position of the family is also integral to Romany Gypsy and Irish Traveller culture. Where possible, Gypsies and Travellers live in extended family groups in culturally appropriate accommodation, and travel as a family, so they can provide each other with mutual support and care.

12 There is a strongly held belief and practice that elderly, sick or disabled members are cared for within the family without external help. Gypsies and Travellers take their caring responsibilities very seriously and may experience profound isolation if separated from their families.

13 Another important element of Gypsy and Traveller culture, especially for Romany Gypsies, is a high emphasis on maintaining cleanliness through various customs, including by having separate washing places for items used for eating and for (different) clothes[11]. Living in a bricks and mortar house may compromise long-standing cultural norms with regard to washing, sanitary, cooking and also sleeping arrangements.

14 For all of these reasons, 'aversion to bricks and mortar' is a recognised condition for some Gypsies and Travellers. Many ethnic Romany Gypsies and Irish Travellers live in conventional housing, but not always by choice; some were accommodated there by their local authority when homeless. Gypsies have had varying degrees of success in adapting to life in bricks and mortar[12], and some wish to return to living in caravans. There is a significant number of Travellers who have never lived in a house and are unwilling to consider doing so.

15 While Inspectors should be aware of these aspects of Traveller culture and identity, you should not assume that they apply to all Travellers or would be relevant to any particular case. Any considerations material to a decision should be set out in decisions and supported by evidence.

[11] The 'Romanipen' is a collective noun for a wealth of Romany customs, including those on cleanliness. Other cultural values shared by Gypsies and Travellers relate to early and close kin marriage, rituals surrounding death and marriage, language and relationship with settled society/experience of discrimination.

[12] *R (o*ao *Clarke) v SSTLR & Tunbridge Wells* [2002] EWCA Civ 819

ANNEX C: Sites

The Use and Occupation of Land

1 Planning permission is required for 'development' as defined by s55 of the Town and Country Planning Act 1990 (TCPA90). 'Development' includes the carrying out of building or other operations and the carrying out of a material change of use. It does not include the 'occupation' of land.

Caravan Sites

2 Caravan sites have particular features in planning law:

- A caravan is not a building, and the siting of a caravan is normally undertaken to facilitate a material change of use of the land.
- Caravans may be sited for different purposes (residential, farming, storage etc) and so the use should be specified in the description of development.
- Once land is in lawful use as a [residential] caravan site, the use may be the same regardless of the number of caravans on it. Any restriction on the number of caravans must be secured by means of planning condition; see below and the Conditions ITM chapter.
- For a structure to be considered a caravan, it must be movable, whether by towing or lifting. Any restriction on where caravans are sited on land must be secured by condition.
- A caravan must also meet size and other requirements set out in the Caravan Sites and Control of Development Act 1960 (CSCDA60) and Caravan Sites Act 1968 (CSA68). There are different types of caravan, notably touring or static caravans, and the latter are often referred to as mobile homes. Again, any restriction on the type of caravans to be sited on land must be secured by means of condition.
- Likewise, any restriction on the people or group of people who can occupy a [residential] caravan site – including that a site may only be occupied by Travellers – must be secured by means of condition.
- A grant of permission for the use of land as a [residential] caravan site is required for a local authority to grant a site licence.
- A grant of permission for the use of land as a [residential] caravan site would not necessarily be construed as a grant of permission for associated operational development – but that may be required to facilitate the use.

3 Key judgments on whether structures should be considered caravans are listed in the Enforcement Case Law ITM chapter.

Gypsy and Traveller sites

4 Gypsies and Travellers generally live on residential 'pitches', each of which is typically occupied by one household (an individual or couple with or without children) with a static and a touring caravan. Some private sites contain two+ pitches to enable Travellers to live in extended family groups.

5 Utility or dayrooms may be needed on Traveller sites, not least to provide separate washing places. Travellers may also seek to develop pitches next to land that can be used for the keeping of horses, as is traditional in Traveller culture, or (other) purposes related to their nomadic work.

6 The majority of appeals relating to Gypsies or Travellers therefore concern:

- A change of use of the land to residential use [for Gypsies or Travellers] facilitated by the siting of [x number of] caravans.
- A change of use to a mixed use site comprising residential use as above plus (eg) the keeping of horses and/or [specified] business use(s)…
- Operational development – on its own or alongside the change of use. This may include the laying of hardstanding for access, parking or stationing caravan(s), the construction of buildings such as utility blocks or dayrooms, the erection of fences or walls, and the installation of sewerage and/or lighting facilities.

7 It will be necessary to establish at the outset precisely what is before you:

- What is/are the proposed use(s)?
- How many pitches?
- How many and what types of caravan?
- What, if any, works have been carried out and/or are proposed?
- Whether, if necessary, it would be possible to make a split decision, perhaps for some pitches but not all, or some use(s) but not all[13].

8 Other types of appeal pertaining to Gypsy or Traveller sites concern:

- Whether to vary or remove conditions imposed on a Gypsy or Traveller site.
- A change of use *from* such a use, causing the loss of a Gypsy or Traveller site.
- The construction of a permanent dwelling in place of a Gypsy or Traveller site.

[13] See the Approach to Decision-making ITM chapter

Transit Sites, Temporary Stopping Places and Negotiated Stopping

9 **Transit sites** are sites that are in permanent use but only for the provision of temporary accommodation, normally for Gypsies and Travellers, rather than Travelling Showpeople. Transit sites are required to meet the needs of Travellers who resort to the district.

10 Transit pitches may be provided on sites that are otherwise used as the permanent base of one or more families. In such cases, the owner of the site may wish to reserve the transit pitches for friends or relatives or rent them out on a commercial basis to other Travellers.

11 Some transit sites have individual plots of tarmac hard standing and a utility shed with bathroom and toilet facilities. Others are more basic but still by definition remain in situ permanently.

12 The length of stay on a transit site or pitch can vary but is usually set at between 28 days and three months. The requirements may be more relaxed where transit pitches are provided on private family sites but, even then, there must be some limitation to ensure that they are not used as permanent bases for individual households.

13 Thus, when planning permission is granted for a transit site or pitch(es), conditions must be imposed to specify the length of time any occupier may reside on the site or pitch(es); the interval before which they may return; and how this is to be monitored by the planning authority.

14 Transit sites should not be confused with **temporary stopping places**[14], where *any person* travelling with a caravan may bring the caravan onto the land for a period of no more than two nights, so long as:

- During that period, no other caravan is stationed for the purposes of human habitation on that or the adjoining land in the same occupation, and
- In the period of 12 months ending with the day on which the caravan is brought onto the land, the number of days on which a caravan was stationed on that or the adjoining land for the purposes of human habitation did not exceed 28.

15 Such use of land may be permitted development (PD) under Article 3 and Schedule 2, Part 5, Class A of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO)[15] and Paragraph 2 of the First Schedule to the CSCDA60.

16 Negotiated stopping is a relatively new concept whereby local authorities make agreements with Gypsies and Travellers to manage unauthorised encampments or [roadside] stopping. The agreement can apply to the land which has been camped on

[14] It has been suggested that there are or were thousands of stopping places ("atchin tans" in English Romani) in Britain, including places where it was possible for a family to stop one or two nights, and others where they could stay for longer, usually if carrying out seasonal (farm) work on the owner's land.
[15] In *Bromley LBC v Persons Unknown & London Gypsies and Travellers & Others* [2020] EWCA Civ 12, the Court of Appeal upheld the decision of the High Court that an application for a final injunction prohibiting the entering onto land for residential purposes would not strike a fair balance or be proportionate. The case largely turned on human rights considerations, but the challenge also included a ground that the injunction would 'cut against' PD rights under Part 5. The High Court judge remarked that this issue had '*not been satisfactorily addressed by the local authority*'; the CoA found that the HC judge was 'plainly entitled' to reach that conclusion and PD rights were 'a factor which was relevant to proportionality'.

or, if that is unsuitable, the authority can direct the Travellers to an alternative location where an agreement can be made.

17 The terms of the agreements vary but can include:

- The local authority ensures the supply of water, and provides and services temporary sanitation and waste disposal facilities;
- The occupiers agree to 'good neighbourliness' such as correct waste disposal.

18 The length of the agreement can vary from two weeks to several months but tend to be around 28 days. An example of negotiated stopping has been provision of dedicated temporary stopping facilities on routes to and from the Appleby Horse fair.

19 The existence of a negotiated agreement does not prevent a local authority from requiring occupiers to leave land and remove vehicles or property by making a direction under s77 (and seeking an order under s78) of the Criminal Justice and Public Order Act 1994 .

Travelling Showpeople's Sites

20 Travelling showpeople live on 'plots' or 'yards' that are in a specific mixed use involving the siting of caravans for residential use plus the use of land for the storage, maintenance and repair of rides, vehicles and equipment[16].

21 Again, there will be one plot per household, and travelling showpeople tend to live in family or working groups. Plots are traditionally referred to as 'winter quarters' but the work of Travelling showpeople has become less seasonal in recent years. A shortage of suitable stopping places has also led showpeople to use their sites as bases from which trips are taken to fairs or other amusement attractions throughout the year. Yards are occupied by families with children during term times for attendance at school, and throughout the year by retired showpeople.

22 It has been held that use as a travelling showpeople's site 'may be a significant and separate land use'. A planning permission for a change of use to a travelling showpeople's site 'granted permission only for that use' and not for use as a residential caravan site, although there was no condition limiting occupation to travelling showpeople[17].

23 Travelling showpeople's sites must be kept secure because of the stringent safety requirements for maintaining fairground equipment free from vandalism. Most travelling showpeople are members of the Showmen's Guild and required to follow a code of practice that regulates their sites.

24 Members of the Guild can exercise PD rights exempting them from the need for caravan site licences for occupation of their yards in the winter months or when travelling for business purposes. As stated at para 6 of Circular 005/2018, permitted development rights for travelling showpeople in Wales are set out under Part 5 of

[16] Paragraph 5 of Circular 005/2018 explains that "Travelling Showpeople" sites are often called yards or Winter quarters by Showpeople but that such sites must be available for occupation all year round.
[17] *Winchester CC v SSCLG & Others* [2013] EWHC 101 (Admin) upheld in [2015] EWCA Civ 563

Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995.

25 There is a small group of showpeople who specialise in holding travelling circuses. Their permanent quarters often differ from those of fairground showpeople in that they may need enclosed areas for training plus larger areas of land to exercise animals. Members of their trade associations do not enjoy the same PD rights as those of the Showmen's Guild.

26 Travelling showpeople are increasingly reliant on finding sites in the countryside to cater for their accommodation needs, since their traditional urban sites have often been redeveloped. Although they are separate communities from Gypsies and Travellers, their accommodation requirements are for the most part similar, the main difference being the likely need for the accommodation of on-site commercial activities[18].

27 As with Gypsies and Travellers, appeals may be made to vary or remove conditions imposed on a permission for a travelling showpeople's site, or for change of use *from* such a use, resulting in the loss of a site.

[18] A useful review of national guidance and the distinction between Gypsies and Travelling Showpeople is found in *Winchester CC v SSCLG & Others* [2013] EWHC 101 Admin.

ANNEX D: Alternative Sites

1 The existence of alternative sites is often a material consideration and thus should be explored with the parties at hearing or inquiry. The Council in particular should be asked:

- For suggestions or knowledge of other sites;
- Whether any suggested other sites are realistic;
- The chances of obtaining planning permission to develop another site;
- The likelihood of, and timescale for, other sites becoming available.

2 In summary, but subject to the advice below, alternatives to the appeal site which may be realistic can include:

- Obtaining planning permission for another site;
- Buying a site subject to an extant permission or lawful development certificate;
- Renting a vacant pitch on an existing private site;
- Going on the waiting list for an existing public site.

3 However, there should be evidence of specific alternative sites, and they must be suitable, affordable, acceptable and available to be a genuine or realistic alternative[19]. This is a matter on which you may need to canvas all parties' views, although not in any depth in most cases, since the lack of any realistic alternative is not usually disputed.

4 If it is necessary to look at whether suggested alternative sites are not realistic, bear in mind that the appellant's evidence does not have to be corroborated or detailed; their case should be accepted if it is clear and there is nothing to suggest that it is wrong.

5 This is important because many Travellers have difficulties with reading and writing. Most land deals between Gypsies are by word of mouth and a handshake – which does not absolve them of the need to register details of the land transfer with the Land Registry but does mean that there will be less written evidence before you at appeal.

6 Moreover, landowners and estate agents are unlikely to provide written statements of the non-availability of sites. Local authorities may not concede that there are problems on any public sites. There will rarely be documentary evidence of personal matters that might make it impossible for an appellant to move onto sites owned by other Travellers in the area.

[19] *Doncaster MBC v FSS & Smith* [2007] EWHC 1034 (Admin)

Suitability

7 The appellants should be asked to explain why any suggested alternative sites are 'unsuitable' in their view and Inspectors should judge whether their case is reasonable. Key matters to explore are usually the size, characteristics and/or location of such sites, with regard to planning merits and/or the appellant's requirements.

8 To be considered realistic in planning terms, alternative sites should be capable – in principle – of being used for residential purposes without causing unacceptable harm to the environment or community, or conflicting with the development plan.

9 In terms of size and needs, if permission is being sought for land large enough to include more than one pitch or plot, to accommodate more than one household, you may need to establish facts such as:

- How long the group has been together, if applicable;
- The consequences for them of living apart;
- How important it is for them to remain together;
- Whether they could live separately on smaller sites in relative proximity[20].

10 Similarly, you may need to address whether and why the appellant requires a site that is large enough and includes suitable space to meet other needs, for example, the stabling of horses or storage of business equipment.

11 Paragraph 65 of Circular 005/2018 advises that applications should not be refused because the applicant has no local connection, but they may be refused where there is evidence that identified needs are being met.

12 You should address any evidence that the appellant requires a site in the appeal area when considering whether there are any suitable alternative sites, for example:

- Work-related reasons for living in the appeal area, such as road links or proximity to sources of work;
- Education or health-related reasons, such as children attending a particular school, or any person being treated at a particular hospital;
- Proximity to family and/or upbringing in the area.

13 If the appellant or occupiers have connections with or could otherwise live in an area beyond the jurisdiction of the authority, it may be necessary to consider the likelihood of accommodation becoming available elsewhere. It was held in *Linfoot v SSCLG & Chorley BC* [2012] EWHC 3514 (Admin) that the option of a temporary permission should not have been discounted on the basis that a change in planning circumstances would not occur when there was in fact a possibility of changes across the county.

14 The needs to use, store and/or move plant, machinery and heavy vehicles on travelling showpeople's sites may mean that commercial areas are acceptable or even favourable to avoid harming the living conditions of nearby residential occupiers. However, Showpeople themselves will require a reasonable residential environment

[20] *Moss v FSS & South Cambridgeshire DC* [2003] EWHC 2781 (Admin)

and all of their needs will need to be considered when considering the suitability of alternative sites.

Affordability

15 The importance of affordability was addressed in *Chapman v UK* [2001] ECHR 43, albeit with regard to human rights considerations:

'The cost of a site compared with the applicant's assets, and its location compared with the applicant's desires are clearly relevant. *Since how much the applicant has by way of assets, what outgoings need to be met by her, what locational requirements are essential for her and why they are essential are factors exclusively within the knowledge of the applicant, it is for the applicant to adduce evidence on these matters.'*

16 While is reasonable to ask how much was paid to purchase a site, detailed questions about assets and the affordability of another site may be unduly intrusive. The answers may not be reliable in any event, or recordable in a decision without compromising data protection regulations.

17 It is usually more appropriate to focus questions on the price of land in the area and whether there is any reasonable prospect of the appellants being able to afford another site, with or without permission.

Availability and Acceptability

18 If you are given evidence to the effect that other sites are or will soon become available, you may need to judge whether they can be realistically considered as available or acceptable.

19 It is reasonable to ask appellants if they have considered joining a Council waiting list, and to try to establish the likelihood and time scale for getting a pitch or pitches. Grounds put forward for not seeking or accepting a Council pitch may include:

- Poor prospects of being offered a pitch or pitches in the foreseeable future;
- Restrictive qualifying criteria for sites;
- Poor condition of the site;
- History of poor management or violence on the site;
- Animosity between groups and/or individuals; or
- Distance of the site from schools or other crucial services.

20 Animosity may arise from family or ethnic differences and be described in terms of the dominance of the site by a single family, a fear of violence or intimidation, or a falling out between family members. Animosity between or within some families can go back generations and be a real bar to living on the same site, bearing in mind that living in a caravan on a rented public site is likely to be less private or secure than living in conventional housing.

21 Animosity may also be a reason why pitches on private rented sites are not available or acceptable to the appellant. In any event, Travellers who own private sites tend to keep ‘vacant’ pitches for friends and family members, in the same way that occupiers of bricks and mortar homes rarely let out spare bedrooms.

22 Where the appellant seeks permission to develop a site for their family, they may say that they only wish to live on their own property. The claim will carry limited weight if the appellant is homeless, although it should also be treated with sensitivity, since Circular 005/2018 encourages more private Traveller site provision, and the appellant may have experience of being moved on.

Weighing the Options

23 In your decision, you will need to reach a reasoned conclusion as to whether there are realistic alternative sites with regard to the above and:

- Whether any alternative sites would be less, more or similarly harmful to the environment or community than the appeal development;
- Whether any alternative sites would meet the needs of the appellant and/or intended site occupants, with regard to their private and family life, including their Traveller way of life;
- Whether dismissing the appeal would be likely to make the appellant and/or intended occupants homeless – and lead to camping on unauthorised sites that is not in the public interest
- If the site is already occupied, the prospects for or stage of enforcement action;

24 Alternatives which are rarely realistic in the long-term include:

- Staying on another site while the occupiers are travelling; this would normally be a temporary measure at best and could not take place in breach of any ‘personal’ condition that the site is subject to.
- ‘Doubling-up’ on an existing pitch; this would likely be in breach of condition and result in overcrowding;
- Moving into bricks and mortar housing; this option may need to be explored but will often be contrary to the Traveller way of life and unaffordable. Even where a family has lived in conventional housing before, this may not be a suitable alternative to a caravan site, because it is not uncommon to find that families have tried bricks and mortar accommodation but, for a variety of reasons, found it unworkable.
- Moving onto a Park Home or static caravan site, where occupiers buy a caravan that is already on the land and pay a monthly rent to live there. Such sites are often occupied by older members of the settled community seeking affordable retirement housing and so subject to rules which set a minimum occupier age and prevent the parking of other caravans and/or the keeping of dogs. From the legislative and practical controls, financial aspects and social make up, such sites are rarely suitable, affordable, available or acceptable to Travellers.

ANNEX E: Personal Circumstances and Human Rights

Facts to Try to Establish

1 Personal circumstances are often prayed in aid of an appeal for a new Traveller site – and were a key factor in the judgment of the House of Lords in *South Buckinghamshire DC v SSTLR & Porter (No. 2)* [2004] UKHL 33 to uphold an Inspector's decision to grant planning permission, subject to a personal condition, for a Traveller site in the Green Belt.

2 When addressing personal circumstances at hearing or inquiry, and in the decision, bear in mind that you will need to have regard to the best interests of the child(ren) in your overall conclusion[21].

3 The first question is whether the appellant and/or intended occupants has or have a personal need for a settled base. As noted earlier, the fact that Travellers have nomadic lifestyles does not preclude them from needing a settled base to which they can return during periods between work.

4 The starting point will be whether the appellant and/or intended occupants has or have anywhere else to live lawfully. It will be necessary to establish:

- Where they are living now, if not on the appeal site;
- Whether they have ever had a settled base;
- If not, where they lived in the past;
- If so, why they left their former settled base, with regard to issues set out under 'Alternative Sites' in Annex D; and
- Whether they can return to any other site in any event.

5 You may need to look at any personal circumstances which would add weight to the case for a grant of permission for their residential use of the appeal site, having regard to the significance of any individual's particular situation on the appellant group as a whole[22], and indeed the Traveller tradition of living in extended family groups for mutual care and support.

6 The definition set out in Circular 005/2018 allow Travellers and travelling showpeople to cease travelling temporarily or permanently 'on grounds only of their own or their family's or dependant's' educational or health needs or old age'. The appellant does not need to show that such educational or health needs are in some way 'special' in order for you to conclude that they have a personal need for a site or indeed a personal need to live on this site.

7 It will be necessary for the appellant to describe personal circumstances that they wish you to take into account in your decision. It follows that you will need establish the relevant facts in the case, starting with:

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[21] For the avoidance of doubt, children are those under 18 years old, whether or not they leave education or start work before that age.

[22] *Dartford BC v FSS & Lee* [2004] EWHC 2549 (Admin)

- The names of and relationships between the intended site occupants[23];
- Which occupiers, if any, have parental and/or caring responsibilities and which occupiers are 'dependants';
- The number and ages of any children, noting particularly any under 5;
- Any adults who need particular support and/or are aged 65+;
- In the case of an extended family group, how long they have lived together or why they need to do so now.

8 Turning to **education**, the usual assessment required in Traveller cases is of the benefits of the child(ren) continuing or starting education from the appeal site compared with the likely ramifications of refusing permission. You will need to establish:

- Which children are currently enrolled at school;
- What school(s) any of the children are enrolled in;
- The location of the school and how it is or would be accessed from the site;
- How the children have settled at the school and their attendance record;
- Whether any children are on a register of special educational needs (SEN) or receiving any other special/extra help at school;
- The children's educational history: when they were first enrolled at school, any previous schools attended, any previous or continuing home schooling;
- The consequences for the children's education of the appeal being dismissed, with regard to the availability of alternative sites and, if the appellants are already living on the appeal site, the prospects or stage of enforcement action.

9 Many children successfully change schools when their parents move home, but it is difficult for Travellers to enrol children in school and/or maintain the children's attendance if they have no fixed address or need to move between a series of temporary and/or unauthorised sites[24]. Children are likely to have lower educational attainment and suffer from the disruption if they miss school regularly or have to move between different schools[25].

10 Inspectors should make reasoned findings[26] on whether dismissing the appeal would be likely to render children homeless and what effects this would likely have on their access to and stability of education. You should consider the likelihood and degree of disturbance to education, the number of children involved, the strength of connection

[23] Married women in Traveller communities may use their birth and married surnames interchangeably, while men may also have two surnames and a family group may have a 'clan' name.
[24] Notwithstanding that s13(1) of the Education Act 1996 imposes on local authorities a general responsibility to make primary, secondary and further education available to meet the needs of the population of their area. It was held in *Hughes v FSS & South Bedfordshire DC* [2006] EWCA Civ 838 that 'it is safe to assume that the Inspector was well aware of the local authority's obligations under the Education Act 1996 to make provision for the education of children in its area.'
[25] "A change of home, carer, social worker or school almost always carries some risk to a child's development and welfare", paragraph 1.6 of the *Children Act 1989: Guidance and Regulations Volume 2* (June 2015)
[26] *Coyle & Others v SSCLG & Basildon DC* [2008] EWHC 2878 (Admin)

with existing school(s), and the transferability of any special help to another school. These are all factors which may carry weight depending on the circumstances.

11 It has been accepted that educational needs carry significant weight even when they are not special or unusual[27], as well as when there are special educational needs[28]. But even where this consideration is significant **and** there is no realistic alternative site, the balance may still be against the appellant if sufficient harm is or would be caused by the development[29].

12 Inspectors have granted temporary permission in cases where there was a clear end point or key date for what were decisive educational needs. However, most appeals casework relates to Traveller families which include adult women of child-bearing age and/or children of different ages, and so there will usually be no obvious change in circumstances as to justify a grant of temporary permission on educational grounds alone.

13 Traveller communities have worse **health** outcomes than the population as a whole[30]. Since sick, disabled or elderly Travellers are cared for by their families, it is not unusual for health matters to be raised in Traveller appeals. Since there is a public health interest in universal access to basic health care, you will need to establish in each case:

- Whether the intended site occupants are registered with a GP;
- The location of the practice and how it is or would be accessed from the site;
- If applicable, why the occupiers are *not* registered with a GP;
- If the occupants are living on the appeal site and this applies, why they are not registered with a *local* GP;
- Whether any intended occupants have health problems and, if so, the effects or limitations of these conditions;
- Whether any intended occupants are receiving regular treatment from a GP, clinic or hospital and, if so, the frequency and location of appointments;
- Whether any occupiers require full or part-time care (from another occupier).

14 As with education, it is usually necessary to establish the benefits for the individuals involved of being allowed to stay on the site compared to the consequences of a dismissal of the appeal – in terms of routine health care, and/or particular health problems or caring needs, and with regard to the availability of alternative sites and, if the occupiers are already living on the appeal site, the prospects or stage of enforcement action.

[27] *Basildon DC v SSETR & Others* [2000] CO/3315/2000 (HC)
[28] *Dartford BC v FSS & Lee* [2004] EWHC 2549 (Admin)
[29] *Doran v SSCLG* [2010] EWCA Civ 1798
[30] See the report (5 April 2019) of the House of Commons Women and Equalities Select Committee inquiry into *Tackling inequalities faced by Gypsy, Roma and Traveller communities* affirmed that 'Gypsy , Roma and Traveller people have the worst outcomes of any ethnic group across a huge range of areas, including education, health, employment, criminal justice and hate crime'.

15 If no alternative, available and affordable site has been identified, consider what the health and day-to–day living implications for the occupiers would be. Where it is likely that dismissing the appeal would render the occupiers homeless, this may:

- Make it difficult to access health care, at least on a consistent basis;
- Make it difficult to access fresh water, sanitation and washing facilities;
- Make it difficult for family members to stay together and sustain caring responsibilities;
- Lead to frequent moves from various unauthorised sites, and thus a lifestyle which is inherently insecure and physically demanding.

16 As with education, health problems or caring needs do not have to be 'special' to be given significant weight, although acute or unusual problems or needs may attract additional weight.

Dealing with People: Issues when Hearing Evidence

17 Where personal circumstances are raised, it is helpful if documentary evidence is provided from appropriate professionals. The acceptance of the contents of such material should be clarified early with the authority.

18 At hearings or inquiries, appellants and witnesses may agree to be cross examined or asked questions. As in any other type of casework, Inspectors should be alert to the inherent sensitivities in dealing with personal circumstances and consider whether, or the extent to which it is necessary for such details to be aired orally in public. Questions and discussion should be limited to the minimum needed for you to understand and assess the implications of their circumstances for the appeal decision.

19 You should curtail unduly intrusive questioning of appellants or others on personal matters – or on the Traveller way of life, including that Travellers live and work in family groups; care for the elderly, sick or disabled members within the family; and require particular sanitation facilities. If necessary, you can clarify what these traditions are for the benefit of settled persons who are interested parties.

20 You should ensure that any person with difficulties in reading and writing is able to fully participate in the hearing or inquiry, perhaps by giving their agent time to talk them through documents or, if they are unrepresented, giving clarifications yourself throughout the event. If appropriate, explain to the parties that giving the individual time and assistance is necessary to ensure that proceedings are fair, and that you get the evidence needed.

Dealing with Information: Data Protection

21 Since hearings and inquiries are public events, they must be conducted to avoid the publication of sensitive personal information. You may require that any filming or recording of a hearing or inquiry is paused when any personal matters are to be described in evidence or submissions.

22 Full advice on writing decisions to enable publication which does not contravene data protection regulations is set out in the Approach to Decision-making chapter. The approach in summary is:

- If personal information is relevant, you should **not** describe it in detail but only in general terms, by reference to the relevant documents or verbal evidence. It would suffice to say, for example, that you have had regard to the letters submitted by the appellant concerning the [educational] needs of the [children] and then set out what weight you give to the evidence.
- If you are in doubt as to what comprises sensitive personal data or consider it essential to refer to such information in your decision, seek advice from your mentor or manager. Where practical, any such information should be set out in one place in the decision for ease of redaction.

23 It is accepted, in relation to data protection regulations, that some personal information is likely to be more sensitive, based on the potential harm or impact on the individual(s). Information relating to children, including their name, age, address or school is likely to be seen to be more intrusive than that relating to an adult. Similarly, you should be alert to the risk of hate crime against Travellers, whether or not they are or are not perceived to be ethnic Romany Gypsies or Irish Travellers.

Traveller Status

24 It is not unknown for authorities to cite lack of Traveller status as a reason for refusing a planning application for a Traveller site. However, planning permission normally runs with the land, and so it is not necessary for an appellant or developer to have Traveller status in order to apply for the use of land as Traveller site; any individual or company may do so.

25 The starting point is whether the use of land as a Traveller site is acceptable in planning terms, irrespective of any personal needs and with regard to the fact that the identity of the occupants could change. If the use is acceptable on its merits, the question of status will be immaterial.

26 Furthermore, where permission is granted for the use on the basis of need for Traveller sites, a condition should be imposed to restrict occupation to persons with Traveller status. If it later appears to the authority that the site is occupied by persons who do not have Traveller status, they can enforce against a breach of the condition.

27 It follows that Traveller status will normally be relevant to a decision only where the appellant relies on personal circumstances as a consideration in favour of a grant of permission. That said, if there is any objection to a grant of permission on grounds of Traveller status, it will be necessary for you to test the evidence at a hearing or inquiry.

28 Where they are represented, appellants will often supply some information pertaining to Traveller status with their appeal; this should be accepted unless it is disputed by the authority or interested party.

Facts to (Try to) Establish

29 A common theme in relevant legal judgments is that the determination of Traveller status is a question of fact and degree[31]. If it is necessary to establish Traveller status the following should be borne in mind.

30 A 'nomadic habit of life' must have an economic purpose; it was held in in *R v South Hams DC ex parte Gibb* [1994] QB 158 (Court of Appeal) that for the purposes of the CSA68, Gypsies are 'persons who wandered or travelled for the purposes of making or seeking their livelihood … not … persons who moved from place to place without any connection between their movement and means of livelihood'.

31 Living away from home in a caravan from time to time for work, akin to a builder, has been found insufficient to establish Traveller status[32]. However, travelling does not need to be responsible for the major or primary source of family income; trading at horse fairs for up to two months of the year can suffice to maintain status, being Traveller activity that had an economic purpose and was more than a hobby[33]. Travelling can be undertaken seasonally, with a regular return for part of the year to a fixed abode[34].

32 You may therefore need to ask questions such as:

- What kind of paid work is carried out by the occupiers;
- Patterns of travelling for work – and whether these have changed or would change on living on the site;
- Whether the occupiers own any horses and, if so, are they kept as a hobby or for breeding and/or trading;
- Where they keep their horses, and do they own or rent that land;
- Do they go to horse fairs to buy or sell horses, or trade in any other respect?

33 The relevant time to consider whether the appellant has Traveller status is at the date of the decision[35] although their previous lifestyle is relevant. If the appellant or others have ceased travelling, you may need to establish whether they 'ever qualified as persons of nomadic habit of life' and, if so, why they stopped travelling[36].

34 Some members of a family or group may travel more than others; working age men typically travel routinely, but women, children and older men tend to travel less often, perhaps only for holidays. Inspectors should investigate the extent to which each occupier travels, the reasons for not travelling where applicable and the relationships between the individuals.

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[31] *Wrexham v NAW & Berry* [2003] EWCA Civ 835 or *Medhurst v SSCLG* [2012] EWHC 3576 (Admin), [2012] JPL 598.
[32] *Clarke-Gowan v SSTLR & North Wiltshire DC* [2002] EWHC 1284 (Admin)
[33] *Maidstone BC v SSE & Dunn* [1995] HC CO/2349/94
[34] *Greenwich LBC v Powell* [1989] 1 AC 995, (1989) 57 P&CR 49 (UKHL)
[35] *Hearne v SSW & Carmarthenshire CC* [1999] EWHC 494 (Admin); [2000] JPL 161 (Court of Appeal) it follows that it would not necessarily be relevant if the appellants would (have to) start leading a nomadic lifestyle upon dismissal of the appeal.
[36] *R (oao Massey & Others) v SSCLG & South Shropshire DC* [2008] EWHC 3353 (Admin), paragraph 23.

35 If you find that all occupiers have Traveller status, the final decision will be based on all considerations, including any general need for Traveller sites as well as the relevant personal circumstances. The same may apply if some occupiers have Traveller status and some do not or are dependant[37], and there is an overriding need for the family to stay together.

36 Individuals who do not have Traveller status cannot benefit from any policies aimed at providing for Travellers, although the proposal should be considered on the basis of its description[38]. A grant of permission for that or those individuals could be justified if the use would be acceptable on its merits as described above, or the harm is outweighed by personal circumstances alone, with regard to human rights and equality implications.

37 Local authorities do not often challenge whether Travelling Showpeople meet the Housing Act definition, since most are members of the Showmen's Guild. A regional representative of that organisation will often make written representations and/or attend the hearing/inquiry not only to support the appellant but also to provide an overview on need generally and whether there are realistic alternative sites.

Human Rights and Equality

Dealing with Article 8 issues

38 Article 8 of the European Convention on Human Rights, incorporated into UK law through the HRA98 provides:

j. *Everyone has the right to respect for his private and family life, his home and his correspondence.*

k. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*

39 Article 8 is frequently engaged in Traveller casework in relation to the appellant and/or intended site occupiers. It is typically relevant in the following, sometimes interrelated respects:

- Loss of home and the resultant effects on family life: the practical consequences for the individuals concerned if the appeal is dismissed.
- Respect for private and family life: the duty to facilitate the Gypsy way of life[39].

[37] The House of Lords defined 'dependants' as persons living in family with the person defined and dependent on him (or her) in whole or in part for their subsistence and support; *Fawcett Properties Ltd v Buckingham CC* [1961] AC 636. It was held in *Shortt & Shortt v SSCLG & Tewksbury BC* [2015] EWCA Civ 1192 that, as a matter of ordinary language, 'dependants' is capable of referring to relationships without financial dependency.

[38] *Hearne v SSW & Carmarthenshire CC* [1999] EWHC 494 (Admin), [2000] JPL 161 (Court of Appeal); *South Cambridgeshire DC v FSS & McCarthy & O'Rourke* [2004] EWHC 2933 (Admin)

[39] 'The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in arriving at the

40 If the appellants or intended occupiers are living on the site, it should be regarded as their home. A decision that would result in them having to leave would amount to a significant interference with their Article 8 rights. There would also be an interference, albeit to a lesser extent:

- If they are not occupying the land but still have nowhere lawful to live[40];
- If a decision to grant temporary permission could result in homelessness later.

41 In each case Inspectors should assess the nature and degree of any such interference and reach a conclusion following the 'Bingham Checklist' and 'Proportionality Assessment'. In particular, regard should be had to:

- The effects of your decision on the appellants with regard to your findings on their personal circumstances.
- The effects on the appellants with regard to your findings on general need and the availability of alternative accommodation. You should address not only any shortage of provision and/or the likelihood of planning permission being granted for another site[41], but also the unacceptability of conventional housing[42]. But an absence of alternative sites will not necessarily make dismissing the appeal disproportionate[43]. All of the facts must be weighed in the balancing exercise[44].
- The timescales involved: in relation to enforced departure and to the time that may be necessary to look for alternative accommodation[45].
- Whether the imposition of conditions would protect the public interest by means which are less interfering of an individual's rights: see advice below temporary and on personal conditions.
- In Enforcement cases, if there is no case for a grant of conditional permission, whether an extended period of compliance with the notice would protect the public interest by means which are less interfering of an individual's rights: if there is any possibility of the appeal being dismissed and a consequential interference with the appellant's rights under Article 8, the Inspector should canvas views on extending period of compliance and, if so, for how long[46].

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decisions in particular cases…there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way of life'; Chapman v UK [2001] ECHR 43

[40] Rafferty & Jones v SSCLG & North Somerset DC [2009] EWCA Civ 809

[41] FSS & Doe & Yates & Eames v Chichester DC [2004] EWCA Civ 1248

[42] R (oao Clarke) v SSTLR & Tunbridge Wells BC [2002] EWCA Civ 819

[43] Egan v SSTLR [2002] EWHC 389 (Admin)

[44] 'A further relevant consideration…is that if no alternative accommodation is available, the interference is more serious than where such accommodation is available. The more suitable the alternative accommodation is, the less serious is the interference constituted by moving the applicant from his or her existing accommodation…the cost of a site compared with the applicant's assets, and its location compared with the applicant's desires are clearly relevant'; Chapman v UK [2001] ECHR 43.

[45] There can never be any guarantee of finding an alternative site.

[46] Even if there is no appeal on ground (g), an Inspector may exercise their powers of variation under s176(1)(b) to extend the time for compliance, if there would be no injustice to the authority or appellant.

- Any unlawful use of the site can be relevant to the Article 8 balance[47] with regard to the reasons for the use.

42 The effects on the appellant will need to be considered against what is necessary in a democratic society in accordance with Article 8(2):

- Public safety can include highway safety and flood risk issues.
- The economic well-being of the country has been accepted as encompassing the protection of the environment, including the protection of the Green Belt and the countryside, plus general character and appearance issues.
- The rights and freedoms of others can include the living conditions of neighbours and, again, the preservation of the environment.

43 The human rights balance will, therefore, generally be based on your findings on the main planning issues in the decision, but you must be alert to the possibility of different matters being involved, or different weightings being applied. The human rights assessment must be carried out in substance and if you conclude that dismissing the appeal would violate an appellant's human rights, this would, in most cases, logically indicate that the appeal should be allowed.

Other articles of ECHR

44 **Article 6: the right to a fair trial (or hearing)**; this is an absolute right, but certain minimum rights set out in Article 6 apply only to criminal and not civil cases such as planning appeal proceedings.

45 Article 6 requires positive steps to be taken to ensure (1) the right of access to proceedings, including effective access, and (2) the principle of "equality of arms". Every party "shall have a reasonable opportunity of presenting his case to the court under conditions which do not place him at substantial disadvantage vis-à-vis his opponent". Barriers to participation which are difficult or impossible to surmount must not be imposed.

46 If, for example, the appellant lacks financial resources to make their case, an Inspector may take a positive step to adjourn the inquiry so that the appellant can apply for public funding for representation – so long as this would not lead to unreasonable delay[48].

47 Likewise, if you know or are unsure whether appellant or others lack literacy skills, you should establish this at an early stage of the hearing or inquiry. Other family members or friends may be able to help, and, in any event, it may be necessary to take certain matters more slowly or read out documents. You should ascertain that the persons understand and agree the contents of any written statements submitted on their behalf.

However, any option of granting temporary planning permission via ground (a) should be considered first, not least so that conditions can be imposed, including to limit the number of caravans on the land.

[47] Chapman v UK [2001] ECHR 43

[48] If an Inspector allows such an adjournment, costs applications may still be made against the appellant.

48 Article 6 also establishes the right to (3) a hearing within a reasonable time, including the right to a decision within a reasonable time[49], and (4) an independent and impartial tribunal.

49 **Article 14: prohibition of discrimination**; Article 14 may be invoked alongside Article 8 in Traveller casework, since a breach of Article 14 may only occur if another Convention right or freedom is *affected*. It is not necessary for the other article itself to be breached but the Courts have taken a restrictive approach to the issue[50].

50 Discrimination means treating persons in 'relevantly' similar situations differently, without an objective and reasonable justification. For a claim of violation of Article 14 to succeed, it must be established that the situation of the alleged victim can be considered similar to that of persons who have been better treated.

51 **Article 1 of the First Protocol: protection of property**; like Article 8, this is a qualified right where interference may be permissible if it is done to secure an aim set out in the relevant article.

52 However, Article 1 is wider than Article 8 in that the protection offered is not limited to the 'home'. In Traveller casework the most common grounds of claim are likely to be:

l. In the case of the appellant: loss of a property without compensation and/or the unavailability of reasonable accommodation alternative[51].

m. In the case of third parties: interference with their peaceful enjoyment of a property and/or loss of property value without compensation.

53 The right to compensation is not expressed in Article 1, but the existence of compensation is an important factor in the balancing of the general interests and private rights.

54 **Article 2 of the First Protocol: the right to education**; it may be argued that effective access to education would be denied to Traveller children by the disruption resulting from the family being moved.

55 No successful court cases have been brought in respect of Article 2 of the First Protocol. There are educational support services for Traveller children, including provisions for home-based learning; it would be difficult to prove that even a decision which would force a family 'on the road' would deny access to education. Even so, you will need to establish the facts and take account of advice above as to the relevance of education to accessibility issues as well as personal circumstances and the best interests of the child.

[49] *Moore & Coates & the EHRC v SSCLG & Bromley LBC & Dartford BC* [2015] EWHC 44 (Admin)
[50] *Chapman v UK* [2001] ECHR 43
[51] *Chapman v UK* [2001] ECHR 43

ANNEX F: Temporary and Personal Conditions

1 As with any other casework, most Traveller appeals will be dismissed or allowed with a grant of permanent permission. Where the latter outcome would be unacceptable[52], but there are considerations of hardship arising from the practical difficulties of finding alternative accommodation, you have the option of granting a temporary permission. Even if the appellant does not raise this option you should address this possibility[53].

2 Paragraph 5.26 of Circular 016/2014 explains that a temporary permission may be justified where it is expected that the planning circumstances will change in a particular way at the end of that period. You should have regard to the likelihood of any change that may occur during the potential timescale of a temporary permission whether through adoption of an emerging local development plan or otherwise, in respect of any of the main issues for the appeal, particularly the supply and availability of sites.

3 It will always be necessary to expressly justify why you would impose a temporary condition and the reasons for the time specified. There should be a realistic prospect that by the end of that period the circumstances will have changed. If there is no realistic prospect of that, you should either dismiss the appeal or grant permanent or personal permission[54]. As noted above, you may need to take account of possible changes across a wider geographical area than just that of the local authority[55].

4 The period chosen will depend upon the circumstances of the case, but often depends on when alternative sites seem likely to become available. Relatively few temporary permissions have been granted for more than three years by Inspectors.

5 Circular 016/2014 advises that a condition restricting occupancy to particular occupiers should only be used when sound planning grounds can be demonstrated. As indicated above, if personal circumstances would be critical, planning permission should be granted subject to a **personal** condition which refers to the names of the beneficiaries and their dependants.

6 Those named in the condition need not be restricted to or even include the appellant. The condition should list the names of the leading members of each family or group per pitch; where the leading members are an adult couple, their names should be separated by an 'and/or' (eg, Henry and/or Mary Smith) to take account of possible family breakdown or death.

7 The condition should refer to the 'dependants' of the leading members of the family group – but not name them in case, for example, more children are born. The implication of using the term dependant is that when and if those people are no longer dependant on the named individuals, or when those named are no longer resident, the

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[52] If the development would be acceptable at the date of the decision, permanent permission should be granted even if it appears that alternative and possibly more suitable sites will be available in the future; *Doncaster MBC v FSS & Smith* [2007] EWHC 1034 (Admin); *Clee v FSS & Stafford BC* [2008] EWHC 117 (Admin)

[53] *R (oao Jordan) v SSCLG & Thurrock BC* [2008] EWHC 3307 (Admin)

[54] *Bromley LBC v SSCLG & Friend* [2008] EWHC 3145 (Admin)

[55] *Linfoot v SSCLG & Chorley BC* [2012] EWHC 3514 (Admin)

continued occupation of the site by the one-time dependants is in breach of that condition.

8 A personal condition should apply for the lifetime of the beneficiaries but may be adapted so that it can be imposed alongside a temporary condition. Personal conditions are time-limited in any event because of eventual death. If personal and/or temporary conditions are imposed, these should be worded to ensure that the use is ceased, and the land is restored to its previous condition upon the expiration of the condition. This is so that the authority can enforce against the continued use of the land as a breach of condition.

9 The condition should include an early timetable for the submission of the restoration scheme, when the previous state of the land can be more easily established, the site occupants are present and there is a clear incentive for them to avoid the potentially serious consequences of not complying with the condition. The submission of a scheme at the end of time-limited condition is less likely, and moreover a scheme that is approved early will be enforceable against any subsequent owners of the land.

10 When considering the grant of a temporary or personal permission, you will also need to address what other conditions would be necessary and reasonable, with regard to the scale and nature of any works that might be required and the duration of the permission. For example:

- If serious highway safety concerns could only be overcome through significant alterations to the site access, you should consider whether it would be reasonable to impose the burden of the works on the appellant when the duration of the permission would be short – and if not, whether temporary permission should be granted at all.
- If harm to the character of the area would be mitigated but not overcome by landscaping, and it would not be reasonable to impose the burden of the works on the appellant when the duration of the permission would be short, consider whether the condition is necessary at all, bearing in mind that the shorter duration of the permission will also mitigate harm.

11 Circular 16/2014 states that it is undesirable to impose a condition requiring the demolition, after a stated period, of a building clearly intended to be permanent. It may be necessary to canvas with the parties what elements of the proposed development should be permitted and/or required by condition in the event that the decision is to grant temporary and/or personal permission:

- Whether day or utility rooms could be provided in temporary structures;
- Whether hardstanding could be required to be removed;
- What drainage facilities and/or boundary treatments would be required.

12 Paragraphs 5.66 -70 of Circular 16/2014 provide specific advice on Gypsy Travellers.

ANNEX G: Information sought of the main parties

Guidance is provided for appellants on the specific information that should be provided, where relevant, in support of their appeal on this type of casework:

- Gypsy status: if this is relevant, provide details of family background and travel for work purposes over the last 10 years. If no travelling for work purposes has taken place recently, or it is proposed to give up the travelling lifestyle, please also provide details of this.
- Who will be living on the site? Give names (if known) and family relationships.
- If more than one family (parent(s) and children) intend to occupy the site, how long have they travelled together and how important is it that they stay together? Do they want to be treated as a single group, for the purposes of the appeal, or as individual families?
- Do any of the residents have any particular educational or health needs? Where possible, these should be supported by written evidence from educational or medical authorities.
- How many caravans will normally be on the site, and what type (touring or static)?
- Are any buildings (day rooms, stables, toilet blocks etc.) proposed?
- Is any business use of the site proposed?
- What efforts have been made to find an alternative site, e.g. approaching Council's housing and planning departments including applications for a pitch on a Local Authority site, estate agents, landowners, other gypsies and travellers? Written evidence should be provided wherever possible.
- Is the permission sought on a temporary or permanent basis? If temporary how long for and why?
- If the appeal were unsuccessful what alternative accommodation options are realistically available?

The information requested of the local planning authority:

- Copies of any adopted or emerging development plan policies concerning Gypsy site provision together with the supporting text.
- Copies of any quantitative assessment of need for Gypsy sites undertaken within the last 5 years, or details of any being undertaken or planned. If none, explain why.
- Details of any planned provision of new or enlarged Gypsy sites.
- A copy of the most recently published Bi-annual Gypsy Count data for their region comprising the Caravan Count (Table 1) and count of Local Authority Sites (Table 2).
- A copy of the two most recent statistical returns submitted by the local authority to the Statistics for Wales Gypsy Count (undertaken in January and July of each year).
- Details of levels of occupancy, plot turn over, waiting lists, current vacancies (if any) and criteria for acceptance on all local authority sites in the area.

- For private, authorised sites, the address, number of caravans authorised and whether subject to a personal and/or temporary condition (with expiry date).
- Details of all unauthorised gypsy sites/encampments known to exist in the authority's area, including addresses, number of caravans, length of occupation and enforcement action taken (if any).
- Details of all planning applications and appeals concerning Gypsy sites in the authority's area in the past five years, and their outcomes.
- Conditions, with reasons, the Council would wish to see imposed were the appeal(s) to be allowed.