Appendix 2

Neutral Citation Number: [2016] EWHC 1436 (Admin)

Case No: CO/4214/2015

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/06/2016

Before :

RHODRI PRICE LEWIS QC

(Sitting as a Deputy High Court Judge)

Between :

THE QUEEN **(on the application of XY)**	**Claimant**
- and -	
MAIDSTONE BOROUGH COUNCIL	**Defendant**
and	
THOMAS SMITH	**Interested Party**

Mr Andrew Parkinson (instructed by **Richard Buxton Environmental and Public Law Solicitors**) for the **Claimant**
Mr Mark Beard (instructed by **Sharpe Pritchard LLP**) for the **Defendant**

The Interested Party did not appear

Hearing date: 17 May 2016

The Deputy Judge (Rhodri Price Lewis QC):

Introduction

1. Permission to bring this judicial review was given by Collins J on the 15th October 2015 when he also made an anonymity order in respect of the Claimant. The Claimant seeks judicial review of the decision by Maidstone Borough Council, the local planning authority for their area, to grant planning permission for the "change of use of land from grazing to residential for one caravan and a touring caravan and one utility shed" on land named on the decision notice as Blossom, Maplehurst Lane, Frittenden Road, Staplehurst, Kent. That planning permission was granted on the 13th July 2015. The applicant for planning permission was Mr Thomas Smith, the Interested Party. Mr Smith has taken no part in these proceedings. The land in respect of which the planning permission was granted has been referred to as "the Blossom site" throughout these proceedings.

2. That site forms part of a wider area known as Perfect Place on which planning permission was granted in July 2014 for the retention of a mobile home, a touring caravan and a barn subject to a condition ("Condition 1") that no more than one static residential caravan and one touring caravan should be stationed on the Perfect Place site at any one time.

3. The Blossom site lies at the southern end of Staplehurst village within a designated Special Landscape Area where it is the policy of the Local Plan that landscape considerations will normally take precedence over other matters. It is accessed off Maplehurst Lane.

4. It forms the western end of the land known as Perfect Place which itself extends from Maplehurst Lane towards the east over an area of 2.2 hectares. Planning permission had been granted on appeal in 2006 for the use of Perfect Place for the keeping of horses and the stationing of caravans and homes for residential purposes subject to a condition that the use was to be personal to Mr Perfect, his wife and children and that the use was to be for a limited period of three years. There was a further condition that no more than two caravans should be stationed on the site at any one time of which only one was to be a static caravan or mobile home. In 2009 the Council granted a further temporary planning permission. On the 1st July 2014 the Council granted the permanent planning permission referred to above.

5. To the east of the Blossom site and also within the Perfect Place site are two areas used for stationing mobile homes. Applications for planning permission for the retention of those mobile homes were made in respect of both those sites in February 2015. Those applications have not been determined.

6. To the east of the Perfect Place site and fronting onto Park Wood Lane is an area known as Parkwood Stables. Planning permission was granted on appeal in June 2013 for the use of that land for residential purposes involving the stationing of two mobile homes, three touring caravans and two utility blocks for two gypsy families. A condition requiring the submission and approval of schemes for the layout of the site has not been complied with and an application was made in 2015 to regularise the use despite the breach of that condition.

7. To the north of the Blossom site and also fronting Maplehurst Lane are four sites also used for stationing mobile homes. Applications for planning permission were made in respect of three of those sites in 2013 but those applications have also not been determined. No enforcement action has been taken in respect of any of those sites where mobile homes have been stationed. Personal planning permission was granted for stationing one caravan in respect of the most northerly of those sites in October 2012 but an application to increase the number of caravans to four was refused in July 2015 on the basis that there was no additional household being created and so there was no over-riding new need. The Claimant has identified seven breaches of planning control on land near the Blossom site at the time of the decision under challenge and indeed at the time of the hearing and the Defendant does not disagree with that analysis.

8. The Blossom application was reported to the Council's Planning Committee on 18th June 2015, with a recommendation for approval. The planning officer's report to the committee runs to 10 pages. It deals with the site description, the proposal before the committee and the relevant planning history. It identifies relevant government and local policies. It explains that no representations had been received from neighbours but that the Staplehurst Parish Council objected to the application. The officer then set out his appraisal which he began by reminding the members of the committee that section 38(6) of the Planning and Compulsory Purchase Act 2004 requires all planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. He then identified the key issues in relation to the proposal before them as "(a) principle (b) personal circumstances (c) impact on rural character and SLA (c) [sic] impact on the outlook and amenity of properties overlooking and abutting the site (d) highway and parking considerations and (e) sustainability." The Claimant accepts that those were the key issues before the committee. The officer then went on in section 7 of his report to deal with each of those key issues in turn and finally in section 8 expressed his conclusions as follows:

> "- The applicant's personal circumstances justify both the development that has taken place and the need to be at this location.
>
> - Given the acknowledged shortfall in meeting the demand for new gypsy and traveller sites granting planning permission here will make a material contribution in satisfying the identified need for such sites while helping to minimise the pressure for similar development in more sensitive locations.
>
> - No demonstrable harm to the rural character of the area and that of the SLA.
>
> - Will not result in harm to the outlook or amenity of any nearby dwellings.
>
> - Is acceptable in highway and parking terms
>
> - No objection on sustainability grounds."

9. The Planning Committee resolved to grant planning permission and on the 13th July 2015, the Council granted planning permission for the development.

10. The Claimant contends, in brief, that in granting planning permission the following errors of law occurred. Firstly, the members of the planning committee failed to have regard to the status in planning terms of the nearby gypsy sites which were either in unlawful use or in one case subject to a personal planning permission. Secondly, the committee failed to take into account that in granting planning permission in 2014 for the Perfect Place site the Council had concluded that more than one static caravan or touring caravan on that overall site would have an unacceptable visual impact. Thirdly, it is contended that the committee failed to take reasonable steps to obtain relevant information before concluding that Mr Smith was a gypsy. Fourthly, it is submitted that the committee failed to have regard to the evidence base for the emerging local plan as to the sustainability of the site. Fifthly, it is contended that the Council erred in failing to treat the current application and the applications then pending before it on the neighbouring sites as one project and therefore the application was a "Schedule 2 application" for the purposes of Regulation 7 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the Council should have adopted a screening opinion under Regulation 5.

11. This is the order in which the grounds of challenge were dealt with in submissions even though that was not the order in which they were pleaded and I shall consider them in the order in which they were argued in this judgment.

Legal principles for reviewing decisions taken by local planning authorities

12. The general approach to challenges to decisions of local planning authorities to grant planning permission were recently summarised by Holgate J in *R (oao Nicholson) v Allerdale Borough Council* [2015] EWHC 2510 (Admin) and I gratefully adopt his summary, as follows:

> "10. The grounds of challenge in this case primarily involve criticisms of the officer's report. The relevant principles upon which the High Court will approach a challenge of this nature have been set out in a number of cases and were summarised in *R (Luton Borough Council) v Central Bedfordshire Council* [2014] EWHC 4325 (Admin) at paragraphs 90 to 98.
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> 11. For the purposes of the present application I would emphasise the following principles drawn from that summary:-
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> (i) In the absence of contrary evidence, it is a reasonable inference that members of the planning committee follow the reasoning of the officer's report, particularly where a recommendation is accepted;
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> (ii) The officer's report must be read as a whole and fairly, without being subjected to the kind of examination which may be applied to the interpretation of a statute or a contract;
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> (iii) Whereas the issue of whether a consideration is relevant is a matter of law, the weight to be given to a material consideration is a matter of planning

judgment, which is a matter for the planning committee, not the court;

(iv) "An application for judicial review based on criticisms of the planning officer's report will not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at the meeting of the planning committee before the relevant decision is taken" per Lord Justice Judge (as he then was) in *Samuel Smith Old Brewery (Tadcaster) v Selby District Council* (18 April 1997)."

(v) "In construing reports, it has to be borne in mind that they are addressed to a "knowledgeable readership", including council members "who, by virtue of that membership, may be expected to have a substantial local and background knowledge."

(*R v Mendip District Council ex parte Fabre* (2000) 80 P CR 500 per Sullivan J, as he then was).

(vi) "*The purpose of an officer's report is not to decide the issue, but to inform the members of the relevant considerations relating to the application.* It is not addressed to the world at large, but to council members who, by virtue of that membership, may be expected to have substantial local and background knowledge. There would be no point in a planning officer's report setting out in great detail background material, for example, in respect of local topography, development plan policies or matters of planning history if the members were only too familiar with that material. *Part of a planning officer's expert function in reporting to the committee must be to make an assessment of how much information needs to be included in his or her report* in order to avoid burdening a busy committee with excessive and unnecessary detail." (emphasis added)

(Sullivan J in the *Ex parte Fabre* case at page 509)

(vii) Likewise in *Morge v Hampshire County Council* [2011] UKSC 2 at paragraph 36, Baroness Hale of Richmond said:

> "Democratically elected bodies go about their decision-making in a different way from courts. They have professional advisers who investigate and report to them. Those reports obviously have to be clear and full enough to enable them to understand the issues and make up their minds within the limits that the law allows them. But the courts should not impose

too demanding a standard upon such reports, for otherwise their whole purpose would be defeated..."

12. ...the observations of Sullivan J (as he then was) in *R (Newsmith Stainless Ltd) v Secretary of State* [2001] EWHC Admin 74 (at paragraphs 6 to 8) on perversity challenges to the decisions of planning Inspectors are also applicable where challenges of that nature are made to the decisions of a local authority.

13. Thus, an application for judicial review is not an opportunity for a review of the planning merits of the Council's decision. Although an allegation that such a decision was perverse, or irrational, lies within the scope of proceedings under CPR Part 54, "the Court must be astute to ensure that such challenges are not used as a cloak for a rerun of the arguments on the planning merits" (*Newsmith* at paragraph 6). In any case where an expert tribunal is the fact finding body, as in the case of a planning committee (see Cranston J in *R (Bishops Stortford Federation) v East Herts D.C.* [2014] PTSR 1035 at paragraph 40), the threshold for *Wednesbury* unreasonableness is a difficult obstacle for a Claimant to surmount, which is greatly increased in most planning cases by the need for the decision-maker to determine not simply questions of fact, but a series of planning judgments. Since a significant element of judgment is involved, there will usually be scope for a fairly broad range of possible views, none of which could be categorised as unreasonable (*Newsmith* at paragraph 7). Moreover, the decision may also be based upon a site inspection, which may be of critical importance. Against this background, a Claimant alleging that a decision-maker has reached a *Wednesbury* unreasonable conclusion on matters of planning judgment "faces a particularly daunting task" (*Newsmith* at paragraph 8).

14. On the other hand, as Mr. Dan Kolinsky QC (who appeared on behalf of the Claimant) pointed out, irrationality challenges are not confined to the relatively rare example of a "decision which simply defies comprehension", but also include a decision which proceeds from flawed logic (relying upon *R v North and East Devon Health Authority ex parte Coughlan* [2001] QB 213, 244 at paragraph 65)."

13. Further, section 70(2) of the Town and Country Planning Act 1990 provides that in dealing with an application for planning permission the local planning authority "shall have regard to (a) the provisions of the development plan, so far as material to the application ... and (c) any other material consideration." In *Tesco Stores v Secretary of State for the Environment* [1995] 1 WLR 759 it was held that "material" means "relevant". A number of the grounds of challenge here claim that the planning committee failed to have regard to various material considerations. The relevant test is set out by Glidewell LJ in *Bolton Metropolitan Borough Council v Secretary of State for the Environment* (1990) 61 P&CR 343 at 352-353, as applied by the Court of

Appeal in the context of judicial review against the grant of planning permission by local planning authorities in *R(on the application of Watson) v London Borough of Richmond upon Thames* [2013] EWCA Civ 513 at [26]:

> "1. The expressions used in the authorities that the decision maker has failed to take into account a matter which is relevant … or that he has failed to take into consideration matters which he ought to take into account … have the same meaning.
>
> 2. The decision-maker ought to take into account a matter which might cause him to reach a different conclusion to that which he would reach if he did not take it into account. Such a matter is relevant to his decision making process. By the verb 'might', I mean where there is a real possibility that he would reach a different conclusion if he did take that consideration into account.
>
> …
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> 4. …[T]here is clearly a distinction between matters which a decision maker is obliged by statute to take into account and those where the obligation to take into account is to be implied from the nature of the decision and of the matter in question ….
>
> 5. If the validity of the decision is challenged on the ground that the decision maker failed to take into account a matter in the second category, it is for the judge to decide whether it was a matter which the decision maker should have taken into account.
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> 6. If the judge concludes that the matter was 'fundamental to the decision', or that it is clear that there is a real possibility that the consideration of the matter would have made a difference to the decision, he is thus enabled to hold that the decision was not validly made. But if the judge is uncertain whether the matter would have had this effect or was of such importance in the decision-making process, then he does not have before him the material necessary for him to conclude that the decision was invalid.
>
> 7. …Even if the judge has concluded that he could hold that the decision is invalid, in exceptional circumstances he is entitled nevertheless, in the exercise of his discretion, not to grant any relief."

14. Therefore, a decision may be quashed for failure to have regard to a material consideration where it is clear that there is a real possibility that consideration of the matter would have made a difference to the decision.

Ground 1:

15. **The Claimant's Submissions:** The Claimant submits that the Council through its committee erred in failing to have regard to the planning status of the surrounding gypsy sites when considering the prevailing character of the area and so failed to have regard to a material consideration. The Claimant points out that of the gypsy sites to the north only one had the benefit of planning permission and that was a personal permission. When an application was made for further development on that site it was refused by the Council. The Claimant submits that if the existing character of the area is to be used to justify a finding that the application would not have a detrimental impact it was material to consider that the existing development is either unlawful or granted subject to a personal condition and therefore inherently temporary. It is submitted that with the unlawful sites it has never been concluded that their development is acceptable and with the temporary site there is a real possibility that it would revert to agriculture. So a permanent planning permission is being granted and justified here on the basis of circumstances that were inherently temporary. It is submitted that if the members had been told of the status of these other sites they might very well have granted a temporary planning permission in order to see what happens on those other sites.

16. The officer dealt with the impact on the rural character of the area and the SLA at paragraphs 7.21 to 7.27 of the analysis section of his report in the following terms:

> *"7.21 Where a gypsy and traveller site is located in a rural area this should normally fall outside an AONB, Green Belt or area liable to flooding. The application site does not fall in an area the subject of these specific restrictions but it is located in countryside falling within an SLA.*
>
> *7.22 It is therefore subject to provisions of policies ENV28 and ENV34 of the adopted Local Plan. Policy ENV28 states that development will not be permitted in the countryside where it would harm the character and appearance of an area or amenities of surrounding occupiers. Policy ENV28 nevertheless makes clear that exceptions will be permitted if justified by other policies contained in the plan. In SLA's landscape considerations will normally take precedence over other matters.*
>
> *7.23 It is generally accepted that mobile homes comprise visually intrusive development out of character in the countryside. Consequently unless well screened or hidden away in unobtrusive locations they are normally considered unacceptable in their visual impact. Consequently where they are permitted this is normally on the basis of being screened by existing permanent features such as hedgerows, tree belts, buildings or land contours.*
>
> *7.24 A key consideration here is that the application site is located on land already having planning permission for a gypsy and traveller site. Furthermore, the character of the area in the vicinity of the site is already made up of a number of gypsy and traveller sites fronting the track to the*

north. Although these are mainly hidden from direct view from the track, glimpse views are nevertheless available to them through gates and breaks in boundary screening.

7.25 Development that has already taken place on the application site continues this pattern with 5 bar galvanised steel gates providing views into the site with the site perimeter being defined by close boarded fencing set close to the back edge of the track. As such the site in its current condition cannot be considered as being screened by existing permanent features though the intention is to plant a native species hedgerow in front of the fence to screen both it and the caravan site behind from view.

7.26 Given (a) the prevailing character of the area, already significantly defined by the prevalence of gypsy and traveller development in the immediate locality and (b) this site falls within in [sic] *area already benefitting from planning permission for such purposes, it is considered it would be difficult to make a sustainable case of further material harm to the character of the area. Regarding revisions to the amenity block, what has already been erected on the site is both smaller and more unobtrusively sited than that originally proposed and is considered proportionate in providing essential ancillary facilities for the site occupants.*

7.27 As such, subject to a condition securing the proposed landscaping, it is considered that the visual impact on the rural character of the area and wider SLA is acceptable."

17. It is clear and indeed it is not disputed by the Defendant that the officer's report did not expressly address the planning status of the land to the north. The Defendant does not suggest that the matter was addressed in the discussion at the meeting and it is not said that members of the committee otherwise knew of those matters. There is no witness statement from any member of the committee.

18. **The Defendant's Submissions:** The Defendant submits that it is a matter of the officer's judgment as to what goes in to his report and that he was under no obligation to refer to the fact that the sites to the north do not have the benefit of planning permission. It is submitted that it could not be said that members were significantly misled by the absence of such information. The Defendant draws attention to three sites which do have the benefit of planning permission as traveller sites, namely the site to the north with temporary planning permission, the Perfect Place site and a site known as Little Oak which has a temporary planning permission. It was submitted that even the sites with temporary permission could continue in that use for a very long time and in particular it was pointed out that the temporary planning permission to the north enures for the benefit of the family's children who could remain for a substantial period. It was further submitted that unauthorised development can affect the character of an area and as any enforcement action would be likely to be resisted there was no real prospect of the character of the area changing in the foreseeable future. It was submitted that the fact that there were applications for planning permission to regularise the unlawful uses and that the Council has no present

intention to take enforcement action meant that the character of the area had been established for the foreseeable future by these developments. Overall it was submitted that the Claimant's approach to the officer's report was unduly legalistic.

Discussion:

19. I do not agree that the Claimant adopted the wrong approach to the officer's report under this ground. The complaint is that the report failed to mention factual matters which were material to the members' decision and that if they had been mentioned there is a real possibility that their decision might have been different. It is clear that the officer did rely on the "gypsy and traveller sites fronting the track to the north" as "mak[ing] up the character of the area": see paragraph 7.24 of the report. The "prevailing character of the area" was said to be defined by these developments: see paragraph 7.26. This was one of the two matters relied upon as resulting in it being "difficult to make a sustainable case of further material harm to the character of the area" from the development for which planning permission was being sought: see paragraph 7.26 again. In my judgment it was material to this assessment that the sites to the north were either in unlawful use and therefore susceptible to enforcement action or had the benefit of only temporary permission. The character of the area could therefore change if the Council took action or if the temporary permission expired. This is not to criticise the officer's report in an inappropriately legalistic way but simply to point out that relevant information was not put before the members at all and that information might have caused them to reach a different decision. The Defendant did not suggest that the members knew of the planning status of these other sites fronting Maplehurst Lane from their local knowledge or from having been members of the committee on previous occasions. There was certainly no evidence to that effect.

20. The Little Oak site referred to by the Defendant does not front onto Maplehurst Lane and so it is not one of the sites being referred to by the officer and relied upon as affecting the character of the area. The Perfect Place caravans are towards the centre of that site in accordance with the plans approved by the Council and again was not being relied upon by the officer as affecting the character of the area as seen from Maplehurst Lane. Further, whilst the site to the north with temporary planning permission could continue lawfully in use by the children of the family the members were not informed of the temporary nature of the permission at all so were not in a position to form their judgment as to how the planning status of the site affected its impact on the character of the area. In my judgment the possibility of enforcement action being taken was a matter that the members of the committee should have been able to consider for themselves if they had the information before them as to the unlawful nature of some of the existing developments. The applications for retrospective planning permission for the unlawful developments were submitted some years ago and there is no officer's report in relation to any of them and so not even a professional officer's view has been formed as to whether those applications should be approved. It is not possible to conclude in those circumstances that planning permission is likely to be granted. In any event, this is a matter that the members of the committee should have been able to consider: they were not able to because they did not have the relevant information before them in the officer's report.

21. In my judgment the members of the committee were significantly misled about material matters by this report in that they were invited to make a decision to grant

planning permission in reliance on matters that were potentially temporary in nature that went to a key issue in the decision, namely, the extent of harm to the character of the area by the development for which planning permission was being sought.

22. The claim therefore succeeds on this ground.

Ground 2:

23. **The Claimant's Submissions:** The Claimant submits that the Committee failed to have regard to the fact that the Perfect Place planning permission had a condition, Condition 1, attached to it which provided that no more than one static residential caravan and one touring caravan were to be stationed on the land at any one time. The reason for the condition was "to accord with the terms of the application and in the interest of visual amenity" and so in granting that planning permission the Council had reached a judgment that having more than one static or touring caravan on the Perfect Place site would have an unacceptable impact on visual amenity. The Blossom site is part of and within the Perfect Place site and so to grant planning permission for more caravans was inconsistent with that earlier determination. No reasons have been given for departing from that earlier judgment and no regard has been had to the importance of consistency in decision–making, as explained by Lindblom J, as he then was, in *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin) at [19 (7)].

24. In his report the officer had advised the members that "a key consideration here is that the application site is located on land already having planning permission for a gypsy and traveller site" (see paragraph 7.24 quoted above) and that "given (a) the prevailing character of the area, already significantly defined by the prevalence of gypsy and traveller development in the immediate locality and (b) this site falls within an area already benefitting from planning permission for such purposes, it is considered that it would be difficult to make a sustainable case of further material harm to the character of the area" (see paragraph 7.26). It is submitted that in those circumstances the officer should have advised members of Condition 1 attached to the Perfect Place permission and the reason for it so that they could take it into account in deciding whether granting planning permission for more caravans would have an adverse effect on the character and appearance of the area.

25. **The Defendant's submissions:** Mr Beard on behalf of the Defendant Council submits that in attaching Condition 1 to the Perfect Place permission the Council did not decide that a greater quantum of development than the one static residential caravan home and the one touring caravan permitted would have an unacceptable impact on visual amenity. The condition was attached to ensure that the grant of planning permission accorded with the terms of the application and the merits of granting planning permission for a more intensive form of traveller site development was not before the committee who considered the application in 2014. So it is submitted that a reasonable reader would not assume that the Council imposed Condition 1 on the 2014 permission having assessed the planning merits of a different and more intensive form of traveller site development but rather to explain that the council wished to retain control over the future development of the site and identified the interest of acknowledged planning importance engaged, namely the protection of visual amenity. By contrast the members of the committee who granted the planning

permission under challenge knew full well that they were considering an application that if granted would represent an "intensification" of the existing lawful traveller site.

Discussion:

26. It is accepted by the Defendant that the officer's report did not refer expressly to Condition 1 to the planning permission granted on the 1st July 2014 nor therefore to the reason for attaching the Condition. That grant of planning permission was made by an officer of the Council under delegated powers and so it is not likely that members knew of the Condition from having been members of earlier committees.

27. Nevertheless, in my judgment the members of the committee knew from the officer's report that the impact on the rural character of the area and on the Special Landscape Area was a key issue before them: see paragraph 7.02. They had the benefit of a site visit. They knew that the application site before them "is located on land already having planning permission for a gypsy and traveller site": paragraph 7.24. The issue is whether they were significantly misled about a material matter by the report failing to inform them that an earlier decision had been made that only one static residential caravan and one touring caravan should be stationed on the land which included the area of the application site and that that was done "in the interests of visual amenity". In my judgment the failure to inform the committee of that Condition and of the reason for it does not cross over the line into significantly misleading the committee on a material matter. They knew the importance attached to the Special Landscape Area and that, in that area, landscape considerations will normally take precedence over other matters: see the officer's report at paragraph 7.22. They could see from their site visit the effect on the landscape of the caravans on the Perfect Place site and on the application site. They did not need to know in order to arrive at a lawful judgment on these matters that the officer who had granted the Perfect Place permission had decided that a condition restricting the number of caravans was necessary in the interest of visual amenity. In my judgment they were not reaching an inconsistent view. They were simply forming their view that the caravans they saw on their site visit did not have such an effect on visual amenity so as to justify refusal of planning permission.

28. This ground of challenge therefore fails.

Ground 3:

29. **The Claimant's Submissions:** The Claimant submits that the committee failed to take reasonable steps to obtain relevant information before concluding that the applicant was a gypsy. The applicant's status was central to the issues before the committee. A "key issue" identified in the officer's report was characterised as "personal circumstances" (see paragraph 7.02 (b)) and the need for more gypsy and traveller sites was seen as a "key consideration": paragraph 7.04. The officer's report advised the members: "The status of the applicant as a gypsy is accepted as both he and his family comply with the definition of gypsies set out in Government policy": paragraph 7.15.

30. At the date of the decision the definition of gypsies and travellers was set out in Annex 1 of the Government's "Planning policy for traveller sites (2012)", namely:

> "Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependents' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such."

31. The test whether a person has a nomadic habit of life was set out by the Court of Appeal in *R v South Hams District Council ex parte Gibb* [1995] Q.B. 158. In summary, a person must be shown to be, or have been, travelling from place to place (even with a permanent residence) for an economic purpose (i.e. in order to find work). Therefore the relevant question for the court under this ground is whether a reasonable planning authority could conclude that it had sufficient information to show that the applicant had ever travelled from place to place for an economic purpose. The information set out in the officer's report at paragraph 2.05 did not address whether Mr Smith had ever travelled from place to place for an economic purpose. Indeed it recorded that the Applicant and his wife have lived in the Maidstone area all their lives and wish to stay in the area. There was no evidence at all before the committee as to whether Mr Smith met a key part of the test.

32. **The Defendant's Submissions:** The Defendant submits that again this ground relies on an unrealistic, legalistic and unduly prescriptive approach to an officer's report. The level of detail in such reports is for officers to decide. The members and officers of this borough have extensive experience of cases involving traveller sites and of the shortfall in the provision of such sites. It is difficult for a council to challenge the status of a gypsy or traveller and if asked the applicant could easily assert that he had travelled from place to place for an economic purpose either as a child with his family or once he began working or that he intended to do so in the future. The Council took account of the circumstances of the development the subject of the application which are typical of traveller site developments in England, namely where the applicant and his family occupied a mobile home on an existing traveller site, which itself was occupied by Mr Perfect whose gypsy status was well established and that the application typically sought retrospective permission for the retention of a mobile home and its residential use with the stationing of a touring caravan and the use of an existing building as an amenity block.

Discussion:

33. The question to be asked by the court is whether the inquiry made by the planning authority was so inadequate that no reasonable planning authority could suppose that it had sufficient material available upon which to make its decision to grant planning permission and impose conditions: see *R (on the application of Hayes) v Wychavon District Council* [2014] EWHC 1987 (Admin). The amount of detail to be included in a report to a committee is a matter for the officer. The officer referred to the correct definition of gypsy status in his report at paragraph 7.14 and his judgment was that "the status of the applicant as a gypsy is accepted". In a borough where there had already been a number of applications for planning permission for gypsy sites, not least in the immediate area of this application site, it is unreasonable to assume that the officer putting that view before the committee was unaware of the meaning of the phrase "a nomadic habit of life". Furthermore, the surrounding circumstances all tended to support the view that the applicant is a gypsy. In my judgment the

committee were entitled in these circumstances to rely on the view expressed to them by their professional officer and that in those circumstances they had sufficient material before them to reach their judgment that the applicant was a gypsy.

Ground 4:

34. **The Claimant's Submissions:** The Claimant submits that the Council erred in law in failing to have regard to the evidence base for the emerging Local Plan, which had ruled out allocating the Perfect Place site (and therefore this application site) for development as a gypsy and traveller site. The Sustainability Appraisal for the emerging plan had assessed the Perfect Place site as "not in easy access to a cycle route, train station, bus stop, primary or secondary school, post office, GP service or the Maidstone Urban Area." The Appraisal concluded: "For the sites which were not selected for allocation the harm resulting from the development was not considered to be outweighed by the scale of the need for additional pitches."

35. By contrast the officer's report on the application for planning permission had said this under the heading "Sustainability":

> "Regarding whether the site is sustainably located i.e. well placed in relation to public transport and local services, compared to many gypsy and traveller sites this site occupies a relatively sustainable location with Staplehurst just over 1.5 kilometres to the west. Given this and the presence of adjoining gypsy and traveller sites it is not considered the proposal fails on sustainability grounds."

36. It is accepted by the Defendant that the committee considering the application did not have this material from the Sustainability Appraisal drawn to their attention. There is a real possibility they would have reached a different decision if this material had been put before them because the need for gypsy sites was seen as justifying this site in the countryside and the committee might well have reached a different view on that issue if they were aware that more sustainable sites could meet the need.

37. The Claimant acknowledges that the Sustainability Appraisal was assessing the sustainability of reasonable alternatives in order to inform the plan making process and so to inform the allocations of land to meet local needs over the plan period whereas the committee considering the application had to determine primarily whether the proposal was in accordance with the development plan and in that exercise no comparative assessment was necessary. However, the officer's report did compare the application site with other gypsy and traveller sites in reaching its conclusions and the Sustainability Appraisal was not just a comparative exercise as it did provide assessments of individual sites.

38. Therefore the Claimant submits that this evidence base for the emerging Local Plan was material to the question of the sustainability of the application site and the Council erred in not taking it into account in deciding to grant planning permission.

39. **The Defendant's Submissions:** The Defendant submits that the Claimant is wrong to assert that the conclusion in the officer's report that the site occupies a relatively sustainable location compared to many gypsy and traveller sites is contrary to the findings of the Sustainability Appraisal because that appraisal itself concludes that "Most of the gypsy and Traveller site options (including allocated sites) perform very

poorly in terms of access to local services and public transport." An appeal decision in relation to the adjoining Parkwood Stables site in 2013 had not seen sustainability as a reason for dismissing that appeal. Planning permission had already been granted in relation to the Perfect Place site so it would be perverse to refuse permission on the Blossom site on the basis of sustainability. The Committee were not significantly misled by the omission of express references to the evidence base of the emerging Local Plan. In any event, given the poor sustainability of most of the gypsy and traveller sites, sustainability whether comparative or individually was not going to be decisive in the planning balance so the committee would reach the same decision to grant planning permission even if the Sustainability Appraisal was expressly put before them.

Discussion:

40. In my judgment given that permanent planning permission had been granted in 2014 on the Perfect Place site which included the application site and given that the Sustainability Appraisal had itself recognised that most of the gypsy and traveller sites in the borough were poorly located in relation to transport and services, it cannot be said that the committee were significantly misled on the issue of sustainability by the absence of any reference to the evidence base for the emerging local plan. Furthermore these local members would have been well aware of local transport provision and where local facilities were to be found. They were well placed to decide whether the application site was in a sufficiently sustainable location to justify the grant of planning permission.

41. This ground therefore fails.

Ground 5:

42. **The Claimant's Submissions:** Regulation 7 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 ("the EIA Regulations") provides as follows:

> *"7. **Applications which appear to require screening opinion***
>
> *Where it appears to the relevant planning authority that—*
>
> *(a) an application which is before them for determination is a Schedule 1 application or a Schedule 2 application; and*
>
> *(b) the development in question has not been the subject of a screening opinion or screening direction; and*
>
> *(c) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,*
>
> *paragraphs (4) and (5) of regulation 5 shall apply as if the receipt or lodging of the application were a request made under regulation 5(1)."*

43. Paragraph (5) of regulation 5 provides:

"An authority shall adopt a screening opinion within 3 weeks beginning with the date of receipt of a request made pursuant to paragraph (1) or such longer period as may be agreed in writing with the person making the request."

44. In deciding what is the "application" before the planning authority for the purposes of reg. 7(a) of the EIA Regulations, the starting point is to determine the relevant "project" as defined in the Environmental Impact Assessment Directive 2011/92/EU ("the EIA Directive"): see decision of the Court of Appeal in *Burridge v Breckland District Council* [2013] EWCA Civ 228 at para. 45.

45. At the screening stage, a project should not be considered in isolation if in reality it is properly to be regarded as an integral part of an inevitably more substantial development: *R v Swale BC ex parte RSPB* [1991] JBL 39. The underlying principles of European case law and the aims of the EIA Directive indicate that "project" in this context must be interpreted broadly.

46. The Council has before it a number of pending applications for gypsy developments relating to the land immediately surrounding the Site. The Claimant contends that for the purposes of the EIA Directive, these applications all form one project. In particular the following matters are relied upon: (i) the applications are all for the same development (ii) the applications are all made by members of the local gypsy community (iii) a number of the applications arise from the sub-division of the Perfect Place site (iv) the Council is relying on the cumulative effect of the developments (now before it as retrospective applications) to claim that the character of the area has changed (see Ground One above).

47. It is submitted that, considering this application together with the other pending applications for the same "project", the application before the Council was a "Schedule 2 application" and therefore the Council should have issued a screening opinion. This is because the cumulative area of all of the pending applications relating to this area is above 5 hectares: see Schedule 2, Column 1, para. 10(b) of the EIA Regulations read together with Column 2.

48. The Claimant therefore submits that the grant of planning permission is unlawful, as the Council has:

    i) Failed to consider whether the development was EIA Development and therefore whether it was development to which regulation 3 of the EIA Regulations applied (as in *R. (on the application of Birch) v Barnsley MBC* [2010] EWHC 416 (Admin) where planning permission was quashed for failure to consider whether development was Schedule 2 development – see para. 53).

    ii) Granted planning permission for Schedule 2 development without carrying out a screening opinion, and therefore in the absence of a written "determination" available to the public under Article 4(2) of Directive 2011/92/EU that EIA was not required (as in *R (Aldergate Projects Ltd) v Nottinghamshire County Council* [2008] EWHC 2881 (Admin), where planning permission was quashed for failure to carry out a written screening opinion – see paragraph 36). The planning permission should be quashed. The Claimant has not

received the "substance" of its rights under the EIA Directive: see the test put by Richards LJ in *Ashdown Forest Economic Development LLP v Wealden District Council* [2015] EWCA Civ 681 at §52. Alternatively, it is not highly likely that the outcome would not have been substantially different had the application been screened: section 31(2A) Senior Courts Act 1981.

49. **The Defendant's Submissions:** It was for the local planning authority to determine whether this application was for planning permission for EIA development and it was not because it did not form part of any larger "project". The development for which planning permission was sought was not an integral part of more substantial development. There was no one project under single control. The other applications all related to minor developments which neither individually nor cumulatively were likely to have a significant effect on the environment. So the Claimant has not established that the "substance" of the rights guaranteed by the EIA Directive has been denied.

50. **Discussion:** I consider that the Council acted reasonably in determining that this application was not a Schedule 2 application. If it is for the court to determine that matter, I too would decide that the application before the Council was not a Schedule 2 application. This application did not in any meaningful way form part of one project with the other pending applications on the nearby sites. It was not an integral part of the development on those other sites. Each of those sites was under the control of the individual occupier and applicant. It would be wholly unreasonable to treat them as one project because each of the applicants was a member of the gypsy community. The sites to the north were not part of the Perfect Place site. And to look at a number of individual sites cumulatively in order to determine the nature of the local rural character is not to treat all of those sites as one project. Looked at individually, as it should be, the application site did not exceed any relevant threshold for Schedule 2 development set out in the 2011 Regulations.

51. This ground also fails.

Discretion:

52. This claim therefore succeeds under Ground 1 alone. I do not exercise my discretion not to quash the planning permission because in my judgment there is a real possibility that if the members of the committee had been made aware of the unlawful nature of three of the sites fronting onto Maplehurst Lane and that the fourth site had a personal planning permission they would have reached a different decision. In particular they might have decided to grant a temporary planning permission in order to see what decisions were taken on the pending applications in respect of the sites in unlawful use. So in terms of section 31 (2A) of the Senior Courts Act 1981 I am not satisfied that it would be highly likely that the outcome would not have been substantially different if the committee members had been provided with the relevant information about the status of the nearby sites.

Conclusion:

53. The decision to grant planning permission must be quashed on that ground.

54. I invite the parties to agree the relevant order on that basis.