

Case Name: *Sykes v Secretary of State for Housing, Communities And Local Government & Anor* [2020] EWHC 112 (Admin) (28 January 2020)

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Commentary: Runnymede Borough Council ('Council') have successfully defended a High Court legal challenge to a decision of the Planning Inspector, on appeal, to refuse retrospective temporary planning permission for the unauthorised development of a 13 pitch residential gypsy caravan site in the Green Belt in Chertsey. The Council defended the proceedings in the High Court brought under section 288 of the Town and Country Planning Act 1990 by Mr Syke ('Claimant') on behalf of a group of gypsies and travellers despite the Secretary of State not attending the hearing to defend his own Inspector's decision having conceded the claim pre hearing on a reasons ground.

This is an interesting illustration of the High Court applying the well-known principle from the *Simplex* case and exercising its discretion not to quash the Inspector's decision notwithstanding the Secretary of State's pre-hearing concession and the High Court accepting that the reasoning in the decision letter was defective. It is also a lesson to the Secretary of State of the dangers of prematurely "throwing in the towel"

The legal challenge was originally brought on 6 separate grounds but at the hearing the Claimant did not pursue Grounds 1 and 2. Ground 3 was that the Inspector's decision was unlawful as he had failed to take into account a relevant material consideration being the likelihood of the group of gypsies and travellers finding suitable alternative accommodation at the end of the temporary permission period within Surrey, outside of Runnymede. Ground 4 was that the Inspector had provided insufficient reasoning in his decision as to: (a) only considering the availability of sites in the Borough of Runnymede and not elsewhere in Surrey (b) not considering the change in planning circumstances beyond the 4 year period which was only the minimum temporary permission period sought by the Claimant; and (c) the availability of suitable alternative accommodation at the end of the temporary permission period. Ground 5 was that Inspector's decision was unlawful as he failed to consider granting planning permission for fewer than 13 pitches. Ground 6 was that the Inspector's decision was unlawful as he had failed to explain why he considered the grant of permission for fewer than 13 pitches would not alter the overall planning balance.

As to Grounds 3 and 4(a), which were considered together, the High Court concluded that the Inspector did not refer to the alternative option of sites elsewhere in Surrey because the appeal had not been presented to him on that basis by the Claimant and he was, therefore, entitled to decline to decide the issue in the absence of the required evidence. While the Inspector's decision had not explained his reasoning on this point, applying the well-known *Simplex* test, the High Court was satisfied, in the circumstances and on the evidence, that absent this error, the decision would have been the same in any event. As to Ground 4(b), the High Court held, on the evidence, that the Inspector's conclusion that it was very unlikely that a site would become available by the end of the 4 year temporary permission period would have been the same even if the Inspector had considered the longer period of 5 years, the

High Court finding that there was no evidential basis for a longer period being considered. As to ground 4(c), the High Court considered that the Inspector's reasoning as to the absence of suitable alternative accommodation at the end of a temporary period were adequate and intelligible.

As to Grounds 5 and 6, which were considered together, the High Court noted that the Claimant had made no application and/or provided any details or plans in respect of an alternative proposal for a reduced number of pitches and, as such, the Inspector was therefore entitled to deal with this issue in general terms in his decision and to conclude, in his planning judgment, that a reduced proposal would not have altered the overall planning balance with the Inspector's reasoning on this issue being adequate and intelligible.

Case summary prepared by Paul Arnett