Case Name: *Royal Borough of Kingston Upon Thames v Secretary of State for Levelling Up, Housing and Communities & Anor* [2023] EWHC 2055 (Admin) (07 August 2023)

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Commentary: This was a successful challenge by The Royal Borough of Kingston Upon Thames (the "**Council**") to the decision of a planning inspector (on behalf of the Secretary of State) to grant permission for the change of use of land to a private gypsy and traveller site for a mobile home. The Secretary of State conceded that the inspector's decision was unlawful, but the individual who had applied for the planning permission (the "**Second Defendant**") sought to defend the decision.

The key issue before the court was whether the inspector had erred in law in concluding that the change of use was not inappropriate development for the green belt. The Council submitted that the inspector had misinterpreted paragraph 150(e) of the NPPF which sets out the forms of development which are not inappropriate in the green belt, including "material changes in the use of land (such as changes of use for outdoor sport or recreation, cemeteries and burial grounds)".

It was argued by the Second Defendant that the list of developments in brackets was not exhaustive and allows other types of development so long as it does not conflict with the purposes of the green belt. The Second Defendant claimed that the inspector's interpretation of "such as" in the NPPF as an "open" list of appropriate forms of development was correct, relying on the case of *R (Samuel Smith) v North Yorkshire CC* which established that such "openness" is "no more than a convenient means of shortening and simplifying the policies without material change".

However, the Council argued that there must be a commonality between the proposed use and those listed in the policy, relying on the case of *Prestcold v Minister of Labour* which established that for "an activity which is not expressly described [, one] must discover from the context in which the expression appears what are the relevant common characteristics of the activities expressly described". The court accepted that residential use does not fall within the brackets in paragraph 150(e) of the NPPF because there is no commonality with the other uses listed.

The court also agreed with the Council that the inspector failed to follow paragraph 4 of the NPPF. Paragraph 4 requires the NPPF to be read in conjunction with the Government's Planning Policy for Traveller Sites which states that "traveller sites (temporary or permanent) in the green belt are inappropriate development." The Second Defendant's submission that this requirement was discriminatory was dismissed on the basis that all residential changes of use would be inappropriate in the green belt as discussed above.

The court quashed the inspector's decision and remitted the matter for redetermination.

Case summary prepared by Safiyah Islam, Ufuoma Ehwerhemuepha and Luisa Seferi