Case Name: *Ward v Secretary of State for Levelling Up, Housing And Communities & Anor* [2024] EWHC 676 (Admin) (25 March 2024)

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Commentary:
This was a challenge under s.288 of the Town and Country Planning Act 1990 for a statutory review of the decision of an inspector to dismiss an appeal for planning permission for a change of use of land in the Green Belt for the stationing of caravans for residential occupation (the "Site").

In her decision letter in relation to the s.78 appeal, the Inspector found that the proposed development would, by definition, be harmful to the Green Belt, and substantial weight should be attached to this harm. The proposal would also result in harm to the openness of the Green Belt. The Inspector found that the benefits of the other considerations, including those personal circumstances of the appellant and his family, did not clearly outweigh this harm. Consequently, there were not the very special circumstances necessary to justify inappropriate development in the Green Belt whether on a permanent or temporary basis. The Inspector found that there would be no violation of the human rights on this occasion

The Claimant was an Irish Traveller who resided at the Site with her partner and three children and suffered from severe anxiety and depression, meaning stability and familiarity were important to her. The Claimant challenged the Inspector's decision on four grounds.

Ground 1: irrationality. The Inspector's decision not to grant a temporary planning permission was disproportionate and perverse.

The Claimant accepted that whether "very special circumstances" existed was a matter for the Inspector's planning judgment. However, the Claimant alleged that the countervailing considerations relied upon by the Claimant (such as the lack of supply of traveller sites in the local area and the human rights of the appellant and their family) clearly outweighed the harm to the Green Belt on any reasonable view. The inspector's decision was irrational in the sense that there was an error of reasoning which robbed the decision of logic.

In rejecting this ground, Mrs Justice Lang DBE found that the assessment of "very special circumstances" is not a mathematical exercise but a matter of planning judgement. The Government attaches great importance to the Green Belt and it is therefore unsurprising that the "very special circumstances" test may not be met, even where the number of factors in favour of the proposal exceed the number of factors against it. In this case, the Inspector carefully considered all the relevant factors, and made findings and reached rational conclusions which were clearly open to her, in the exercise of her

judgment.

Ground 2: children's best interests. The Inspector misdirected herself by regarding the primary consideration of achieving the outcome that was in the best interests of the children as attracting less weight than the public interest in protecting the Green Belt.

Under Ground 2, the Clamant submitted that the Inspector erred by regarding the consideration of the outcome that was in the best interests of the children as attracting significant rather than substantial weight. The substantial weight to be attached to the Green Belt should have been equated with the substantial weight to be attached to achieving the best interests of the child.

In advance of the hearing, the Inspector submitted a witness statement that explained "I am aware that the best interests of the children must be a primary consideration...the distinction between my use of 'substantial' and 'significant' [in the decision letter] simply reflected the NPPF's use of the word substantial in respect to Green Belt. For the purposes of my planning balance, the two words constituted the same degree of weight."

Mrs Justice Land DBE accepted that the word 'substantial' does not denote a greater quantum of weight than 'significant': the Inspector's decision expressly treated the best interests of the children as a primary consideration. Accordingly, Ground 2 was dismissed.

Ground 3: proportionality. In carrying out the balancing exercise required by Article 8 ECHR, the Inspector failed to give sufficient consideration to the issue of proportionality. Further or alternatively, she failed to give sufficient reasons for her conclusion.

Under Ground 3, the Claimant alleged that the Inspector's conclusion did not properly take into account the different directions in which the public interest was pulling, and the balancing exercise was flawed.

In rejecting this ground, the court held that the Inspector's decision letter had clearly identified the interference with the Article 8 right to a private and family life, the home, and the rights of the children. In summary, the family were in clear need of a pitch and would benefit from being settled where they can access health care facilities and education. Dismissing the appeal would result in the family not having a settled home The Inspector's decision went on to explain why the interference was necessary, stating that the issue of inappropriateness in relation to the Green Belt, along with the resulting harm to the openness of the Green Belt, was so substantial that, in the wider public interest, it was not outweighed by "the personal circumstances of the appellant and/or

the other considerations".

Mrs Justice Lang DBE held that a planning inspector should not be required to set out the legal test of proportionality in the way that a judge is expected to do; it was sufficient for her to identify the key elements of the proportionality exercise. When read in the context, it was apparent that the Inspector's conclusions on Article 8 did take into account the competing considerations.

The Claimant also contended that the Inspector erred in failing to count interference with human rights as a material consideration of substantial weight in its own right. However, the court held that there was no requirement in law to do so. The Inspector gave significant weight (which she treated as substantial weight) to the conduct by the Council which gave rise to the interference with the family's human rights, namely, the eviction from their home. She then correctly identified this as an interference with their Article 8 rights. The Inspector's reasoning met the required legal standard.

Ground 3 was therefore dismissed.

Ground 4: flawed balancing exercise.

Under Ground 4, the Claimant submitted that the Inspector "failed to factor in the right ingredients for a lawful decision". This pleading was outside the scope of the grant of permission to apply for statutory review. Nonetheless, the Defendant was content for the court to consider it in order to avoid further litigation.

In dismissing this ground, the court held that the Inspector was obviously aware that the Site was small, but she did not find harm at the lowest end of the scale. The inspector's decision letter addressed the difficult matter of whether and to what extent the Council could or would make pitch provision on Green Belt land in future. The Inspector did not find any local harm in addition to the Green Belt harm. The Inspector's findings and conclusions, in regard to the Council's failure to meet the accommodation needs of travellers under its Local Plan, were also a reasonable exercise of judgment on her part.

The challenge therefore failed on all four grounds and was dismissed.

Case summary prepared by Emma McDonald