Neutral Citation Number: [2016] EWHC 635(Admin)

CO/4129/2015

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

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday 21 January 2016

B e f o r e:
CHARLES GEORGE QC

(Sitting as a Deputy High Court Judge)

Between:
THE QUEEN ON THE APPLICATION OF DARTFORD BOROUGH COUNCIL
Claimant

v

SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
Defendant

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(Official Shorthand Writers to the Court)

Mr Ashley Bowes (instructed by Sharpe Pritchard) appeared on behalf of the Claimant

Mr Charles Banner (instructed by Government Legal Department) appeared on behalf of the Defendant

J U D G M E N T
(Approved)

1. DEPUTY JUDGE: This is a challenge brought by the local planning authority, Dartford Borough Council ("the council"), to a decision letter dated 29 July 2015 of an inspector appointed by the defendant, the Secretary of State for Communities and Local Government. Following an informal hearing, the Inspector allowed the appeal of the second and third defendants Mr and Mrs Beaney Snr against the council's refusal of a retrospective application for the change of use of land within the ownership of Mr and Mrs Beaney Snr at Shirehall Farm Shirehall Road, Hawley, Kent to a private gypsy and traveller caravan site comprising one mobile home and one touring caravan occupied by Mr and Mrs Beaney Jnr and their two daughters. The claim is brought under Section 288 of the Town and Country Planning Act 1990.

2. The site measures some 45 metres by 65 metres. To the south and west is open countryside as also to the north, apart from the existing farmhouse on the site, in which Mr and Mrs Beaney Snr live, and a separate garage. To the east there are some industrial units. The area in front of the house and garage has been hard-surfaced and provides parking and turning for the house.

3. The Issues for the Court

4. These are (1) whether the Inspector misdirected himself that the site was previously-developed land; (2) whether his reasoning in relation to previously-developed land was adequate; (3) whether the Inspector misdirected himself in finding that there were very special circumstances to justify the grant of permission for inappropriate development in the Green Belt and/or reached an irrational conclusion.

5. The decision letter

6. The key parts of the carefully structured decision letter are:

    i. "Openness and purposes of the Green Belt and character and appearance

ii. 9. The mobile home and tourer would be within the residential curtilage of Shirehall Farm. As a result there would be no encroachment into the countryside and none of the 5 purposes of the Green Belt would be infringed.

iii. .....

iv. 11. [In the light of Policy C1 of the Dartford Local Plan and paragraphs 12 and 23 of Planning Policy for Traveller Sites] the proposal should not be ruled out as a matter of principle due to its location outside of any settlement.

v. .....

vi. 14. ..... the proposal would not be intrusive or incongruous and would not harm the character and appearance of the surrounding area. As any adverse impact on the countryside would be minimised it would accord with Local Plan Policy C2. Openness would be reduced by a limited degree.

vii. .....

viii. <u>General need for and provision of traveller sites in the Borough</u>

ix. .....

x. 21. ..... there is an outstanding need for sites in the Borough ..... it is likely to be some time before general needs will be addressed. This adds further support to the immediate provision of a pitch at Shirehall Farm .....

xi. Alternatives for the appellants

xii. .....

xiii. 24. ..... there are no suitable, authorised alternative sites available to the current occupiers of the mobile home. In the event that the appeal failed and they were forced to leave it the likely outcome would be a roadside existence or an unauthorised site elsewhere ..... The absence of alternatives therefore favours the proposal ..... Requiring the mobile home to be vacated would therefore represent an interference with their home and family life.

xiv. .....

xv. 26. ..... From the evidence available the best interests of children would be served by staying at the site.

xvi. Further considerations

xvii. 27. The definition of previously-developed land in Annex 2 of the National Planning Policy Framework excludes land in built-up areas such as private residential gardens. However, the appeal site is within a rural area and as the mobile home and tourer would be located within the curtilage of developed land it should be treated as previously-developed land. In turn, the PPTS indicates that weight should be attached to the effective use of such land. There is nothing to suggest that the land was previously untidy or derelict but it is preferable for traveller sites to be located on land of this type rather than on 'greenfield' sites. I therefore give significant weight to the fact that the appeal site is previously-developed land.

xviii. 28. Policy CS20 of the Core Strategy confirms that in identifying sites to meet an agreed requirement account will be taken of the protection of the openness of the Green Belt. In the absence of other policies it is reasonable to use its criteria in the consideration of individual applications. There is no conflict with the other factors. My findings in relation to openness are set out earlier. However, given that future traveller sites are likely to be located in the Green Belt, the policy does not seek to prevent any impact on openness. In this case the consequences of a single pitch within a domestic curtilage are as about as low as they could be. Therefore whilst taking criterion c) into account there is no conflict with that development plan policy.

xix. 29. The PPTS advises that traveller sites should be sustainable

economically, socially and environmentally. Many of the factors referred to in paragraph 11 would be met. The Council does not dispute that the appeal site is within 1km of services and facilities and many other gypsy sites are further away. However, Shirehall Road is not conducive to walking so that most journeys would be likely to be undertaken by car contrary to the aim of the Framework of making the fullest possible use of public transport, walking and cycling. As such, the location of the site is neutral in the overall balance.

xx. .....

xxi. Overall balancing

xxii. 33. The proposal would be inappropriate development within the Green Belt which Policy CS13 of the Core Strategy seeks to resist. Policy S4 of the Local Plan has similar aims. According to the Framework substantial weight should be given to any harm to the Green Belt. The Written Ministerial Statements also underline that protection of the Green Belt is an explicit policy intent. In addition, there would be a limited reduction in openness. However, there would be no conflict with the purposes of the Green Belt and no harm to the character and appearance of the area subject to certain further works.

xxiii. 34. Although the general level of need for pitches in Dartford is relatively modest it does exist and policies to deal with this in the

longer term are still some way from being finalised. Similarly the provision of adequate sites is not imminent. Furthermore, there is a lack of realistic, suitable alternatives for Mr and Mrs Beaney junior and the best interests of their children would be served by staying where they are. Their personal circumstances in supporting the appellants attract limited weight. However, I give significant weight to the fact that the proposed location would be on previously-developed land and that the most directly relevant development plan policy would be met.

xxiv. 35. In the Written Ministerial Statement of July 2013 the Secretary of State makes clear that the single issue of unmet demand for traveller sites is unlikely to outweigh harm to the Green Belt so as to constitute the "very special circumstances" to justify inappropriate development in the Green Belt. This is re-emphasised in the further Statement of January 2014. However, in this case, the factors that weigh in favour of the proposal do not only relate to unmet demand for sites.

xxv. 36. In the final analysis, the other considerations clearly outweigh the totality of harm that would arise including the conflict with the broad policy aim of protecting the Green Belt. Looking at the case as a whole and having regard, in particular, to the location of the site on previously-developed land and the compliance with the policy relating to gypsies and travellers, I am satisfied that very special circumstances exist. As such a permanent permission is justified and there is no need to consider a temporary permission as discussed at the hearing or any human rights implications for the appellants.

xxvi. 37. Some representations raised concerns about precedent and regarded the appeal as a 'test case' for traveller sites in the Green Belt. I disagree with those views since the factors that I have assessed in this case are unlikely to be exactly repeated elsewhere ..... "

7. Finally, in allowing the appeal and granting permission, the Inspector imposed conditions to limit the visual impact, the number of caravans, the siting of the mobile home, the extent of the pitches and the size of the vehicles to be kept on site.

8. <u>The National Planning Policy Framework (NPPF)</u>

9. The Core planning principles in paragraph 17 include -

- take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting rural communities within it;

- encourage the effective use of and by re-using land which has been previously developed (brownfield land) provided that it is not of high environmental value.

10. Included in the provision of housing section are:

i. "48. ..... Any allowance [for windfall sites] should be realistic having regard to the Strategic Housing Land Availability Assessment ..... and should not include residential gardens.

ii. .....

iii. 53. Local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.

iv. .....

v. 55. To promote sustainable development in rural areas, housing should be located where it will enhance ..... the vitality of rural communities ..... "

11. The five purposes of the Green Belt are set out in paragraph 80. These are:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

12. Development control policy in the Green Belt is contained in two paragraphs:

i. "87. As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

ii. 88. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. "Very special circumstances" will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly

iii. outweighed by other considerations."

13. Then,

14. "Conserving and enhancing the natural environment

i. 111. Planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value ..... "

15. The Glossary to the NPPF includes:

i. "**Previously-developed land**: Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and

land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time."

16. Planning Policy for Traveller Sites (CLG, 2012) ("PPTS")

17. The relevant paragraphs are -

i. "1. This document sets out the Government's planning policy for traveller sites. It should be read in conjunction with the National Planning Policy Framework .....

ii. .....

iii. 14. When assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community.

iv. .....

v. 25. Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure.

vi. 26. When considering applications, local planning authorities should attach weight to the following matters:

a) effective use of previously-developed (brownfield) untidy or derelict land;

vii. ..... "

18. Policy CS20 of the Dartford Core Strategy 2011

19. Headed "Gypsies and Travellers" and described in paragraph 35 of the decision letter as "the most directly relevant Development Plan Policy", the relevant part provides:

i. "1. The Council will work with Kent authorities to agree a sub-regional distribution of traveller and travelling showpersons pitches. In identifying sites to meet an agreed requirement, the Council will take into account:

a) Impact of proposed pitch provision on adjacent residential communities;

b) Accessibility of a proposed location to educational, health, community facilities

ii. and public transport;

iii. c) Protection of the openness of the Green Belt;

iv. d) The availability and delivery of sites;

v. e) Other planning constraints, including flood risk."

20. Issue 1

21. There are a number of matters of common ground between the parties: (1) that the appeal site is not part of the built-up area but rather forms part of the countryside, and therefore subject to countryside policies; (2) that the mobile home and touring caravan would be located within the curtilage of developed land, that is in the curtilage of the farm house at Shirehall Farm; (3) that the Inspector's finding in paragraph 27 of the decision letter that the appeal site should be treated as previously-developed land turned on two matters, that it was in the curtilage of developed land and that since it was not in a built-up area the appeal site was not excluded as a private residential garden. This last matter turned on his interpretation of the phrase in the Glossary to the NPPF that "land in built-up areas such as private residential gardens .....” is excluded from the definition of previously-developed land; (4) that the wording of the exclusion of private residential gardens from previously-developed land in the Glossary to the NPPF is almost identical to that in Planning Policy Statement 3: Housing (PPS3) 2010, re-issued 2011, where the exclusion is also prefaced by the words "in built-up areas"; (5) that the Inspector's interpretation of the definition of previously-developed land to include private residential gardens in non-built-up areas went on to play a major part in the reasoning (in paragraphs 34 and 36 of the decision letter) for allowing the appeal, so that if the Inspector's interpretation was wrong the decision would have to be quashed.

22. The claimant's submissions

23. For the claimant, Mr Bowes's first argument is that, read entirely on its own, there is nothing in the definition of previously-developed land in the Glossary to the NPPF to require that only private residential gardens in built-up areas are excluded. Private residential gardens (and parks, recreation grounds and allotments) are primarily found in built-up areas, and the reference to "land in built-up areas" can and should be read as no more than an acknowledgement of that. Thus, private residential gardens in non-built-up areas are also excluded from the definition.

24. If the first argument were not to succeed, Mr Bowes's second argument was that the same broad interpretation of the exclusion can be reached by reading the definition in the Glossary to the NPPF in the light of paragraphs 45 and 53 of the same document, both of which referred to residential gardens, but without any differentiation between those in built-up areas and those in the countryside.

25. This second argument was further bolstered by the wording of a Written Ministerial Statement in the House of Commons on 9 June 2010, in which the Minister explained the Policy ambition to remove residential gardens from the ambit of previously-developed land so as to prevent the phenomenon of "garden grabbing"; and a circular letter to local planning authorities from the chief planning officer of 15 June 2010 in like terms.

26. Third, argued Mr Bowes, given the planning implications of land being classified as previously-developed land (see in this case paragraph 111 of the NPPF and paragraph 24 a) of the PPTS), there was no sensible reason for the Government to differentiate between private residential gardens in built-up areas and those in the countryside. This supported the wider interpretation of the exclusion and the narrower definition of previously-developed land.

27. Fourthly, bearing in mind the observation of Sullivan LJ in Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government [2014] EWCA Civ 1386, paragraph 16, that where the Government seeks to effect a change in national planning policy it is reasonable to expect a "clear statement to that effect", and Eady J's holding in Dartford Borough Council v Secretary of State for Communities and Local Government [2012] EWHC 634 (Admin), paragraph 23, that the changed definition of

previously-developed land was not confined to small or intensively used gardens, but to all gardens, the definition in both planning documents of previously-developed land should be read to exclude all private residential land, whether or not in a built-up area.

28. In the second sentence of paragraph 27 of the decision letter the Inspector had regarded the appeal site as previously-developed land because it was "within a rural area" and not within a built-up area. That was to misconstrue the current definition of previously developed land.

29. Submissions of the defendant

30. For the defendant, Mr Banner contends that the words "land in built-up areas" in the definition of "previously-developed land" in the Glossary to the NPPF and in PPS3 cannot simply be ignored. Mr Bowes's construction meant either omitting the words "in built-up areas" or writing in words which were not there. That was impermissible. As Richards LJ said in Timmins v Gedling Borough Council [2015] EWCA Civ 10; [2015] 2 P & CR 12, paragraph 14, in relation to the NPPF -

    i. "24 ..... Policy statements of this kind should be interpreted objectively in accordance with the language used ..... "

31. It was wrong to use other passages in the NPPF to force an artificial interpretation on the definition in the Glossary. It was the Glossary which was the interpretation provision. In any case, paragraphs 48 and 53 were not dealing with previously-developed land and did not compel an artificial interpretation of the definition in the Glossary. The Ministerial Statement and the chief planning officer's circular letter were issued in the context of, and with express cross-reference to, PPS3 (2010) which, in its definition of previously-developed land, differentiated between gardens etc in built-up areas and those which were not so situated. Therefore, the Ministerial Statement and the chief planning officer's letter did not assist Mr Bowes.

32. There was no anomaly. The objectively ascertained intention by the exclusion of private

residential gardens from the definition of previously-developed land was to address concerns about "garden grabbing" in suburban or urban areas, where green space is more limited than elsewhere. Redhill concerned an entirely different situation where an attempt was being made to read down a provision, rather than (as here) to delete express wording in a definition. In Dartford, the court had been considering a private residential garden in a built-up area and anything said there had no relevance to the arguments now advanced by the claimant.

33. In the NPPF there were numerous policies distinguishing between built-up areas and the countryside, for example paragraphs 17, 55 and 80. The approach to previously-developed land was not inconsistent, especially given the fall-back of paragraph 53 (which was available in rural areas as well as built-up areas).

34. The appeal site was not within the built-up area but within the countryside. As a result, the Inspector rightly concluded in paragraph 27 of the decision letter that the exclusion did not apply.

35. Conclusion on Issue 1

36. Mr Banner is plainly right and Mr Bowes plainly wrong. It is impossible to read the definition of previously-developed land in the two Policy documents in such a way as to exclude from it private residential gardens which are not in built-up areas. To do so is to contradict the clear words used in the definition.

37. The exclusion of residential gardens in build-up areas has a rational explanation in that "garden grabbing" is a particular (and some feel undesirable) phenomenon of built-up areas. The observation of Sullivan LJ in Redhill, at paragraph 16, commented upon and distinguished by Richards LJ in Timmins, paragraph 28, does not give carte blanche to disregard the express words of a definition in a policy document.

38. The reasoning of Eady J in Dartford does not assist Mr Bowes. Eady J uncontroversially found at paragraph 21 that the exclusion of residential gardens from the definition of previously-developed land related to "garden grabbing", and in paragraph 23 that there was nothing "to support the notion that it would only be small and intensively used

gardens that should not be 'grabbed'". The issue now raised by Mr Bowes simply did not arise.

39. If the wording of the exclusion in the definition of previously-developed land is due to an oversight (and there is no evidence of this) or, whilst intended, is now thought to have undesirable consequences, then the remedy lies with the Minister to widen the exemption and narrow the scope of previously-developed land. That is not a task for the court (see Timmins, paragraph 28).

40. The challenge on Issue 1 fails.

41. Issue 2

42. Submissions Of the Claimant

43. Mr Bowes here takes issue with another aspect of the second sentence of paragraph 27 of the decision letter, namely the reference to the mobile home and touring caravan being located within the curtilage of developed land. He agrees that the appeal site did include this curtilage and that the mobile home and touring caravan were being permitted to remain on it, but he questions how the Inspector has approached the bracketed phrase in the Glossary's definition of previously-developed land "(although it should not be assumed that the whole of the curtilage should be developed)". Mr Bowes says that in granting permission the Inspector seems to have assumed that the whole of the curtilage of Shirehall Farm "should be developed", without explaining why.

44. As a new point not previously raised, he referred to the absence of any condition attached to the planning permission removing permitted development rights at Shirehall Farm, and

the risk that the planning permission would now lead to additional development taking place under the Town and Country Planning (General Permitted Development) (England) Order 2015. He referred to Schedule 2 Part 1 (Class F) (which permits hard surfacing) and Part 2 (Class A) (gate, fence, wall or other means of enclosure).

45. Submissions of the defendant

46. Mr Banner considers that the point simply does not arise. There is no basis for the allegation that the Inspector assumed the whole curtilage should be developed. Indeed, the conditions he imposed relating to the siting of the mobile home and the extent of the pitch area of the mobile home and touring caravan to include hardstanding, parking and amenity areas showed that he made no assumption.

47. There had been no suggestion at the hearing that the Inspector should impose a condition limiting permitted development rights; and this matter was not therefore an issue on which he should be expected to have given consideration in the decision letter. Permitted development rights under Part 1 (Class F) only applied to the householder, that is to Mr and Mrs Beaney Snr, and not to the occupiers of the mobile home and tourer. Therefore, the position was unchanged as a result of the appeal permission. Any permitted development rights that would accrue to Mr and Mrs Beaney Jnr as occupiers under Part 1 (Class A) were trivial, since, in any event, Mr and Mrs Beaney Snr had those same rights. The only fence that the occupiers of the mobile home were likely to want was one between it and the farmhouse, where that was already the subject of a specific condition in the planning permission providing for replacement of the existing fence.

48. Conclusion on Issue 2

49. There is no basis to find that the Inspector has assumed that the whole curtilage should be developed. The conditions imposed strongly suggest that he has not done so. There is nothing of substance in the new points relating to permitted development rights.

50. The reasons given by the Inspector for his decision in relation to previously-developed land are intelligible and adequate so as to enable the reader to understand why the matter was decided as it was and what conclusions were reached on the important controversial

issues (see South Buckinghamshire District Council v Porter (No 2) 2004 UKHL 33; [2004] 1 WLR 1953, paragraph 36). This is not a case where the local planning authority is substantially prejudiced because the planning considerations on which the decision was based were not explained sufficiently clearly to explain what, if any, impact they may have in relation to the decision on future applications (see Save Britain's Heritage v No 1 Poultry Ltd [1991] 1 WLR 153,167.)

51. Accordingly, this ground must fail.

52. Issue 3

53. Submissions of claimant

54. Mr Bowes claims that the decision letter errs in its approach to "very specific circumstances" in three respects. First, there was an error of law in treating compliance with Policy CS20 of the Core Strategy as capable of contributing to the very special circumstances required for development in the Green Belt to take place by, amongst other policies, paragraph 87 of the NPPF. This is what the Inspector did in paragraph 36 of the decision letter. Second, if Mr Bowes were wrong on this, more reasoning was needed to explain why this compliance could so contribute. Third, and in any event, the Inspector's decision that there were very special circumstances to justify the development was irrational. The first two matters, but not the rationality challenge, were confined to Policy CS20.

55. On the first aspect Mr Bowes's oral submissions contained two strands. The first was that, properly construed, the decision in R (Wychavon District Council) v Secretary of State for Communities and Local Government [2008] EWCA Civ 692; [2009] 1 P & CR 15 (which was in fact, like the present claim, a Section 288 application and not a judicial review contrary to what the reported case name would suggest) supported the view that

the circumstances had to be very special on their own, as distinguishable from being of sufficient strength to justify an exception to Green Belt policy.

56. The second strand was that a proper direction on very special circumstances must "go beyond satisfaction of ..... development control policies": R (Lee Valley Regional Park Authority) v Broxbourne Borough Council [2015] EWHC 185 (Admin), paragraph 71.

57. Applied to the facts of this case, the Inspector was entitled to pay regard to Policy CS20, even though it was a policy on site allocation rather than development control. Nevertheless, the mere fact that the application accorded with "the most directly relevant development plan policy" (see paragraphs 28 and 34 of the decision letter) was incapable of contributing to a finding of very special circumstances.

58. Mr Bowes said that there was a real danger otherwise that proposed development in the Green Belt which accorded with other policies in the Development Plan would be held, on that account, to be permissible because justified by very special circumstances.

59. If he were right on this head then there was no alternative to quashing since one of the two particular and principal matters to which the Inspector had regard in finding very special circumstances was "compliance with the policy related to gypsies and travellers" (see paragraph 36 of the decision letter).

60. If he were wrong on this head, and there could be circumstances where accordance with a policy such as CS20 could contribute to very special circumstances, then more reasoning was needed as to why this was so as had been the case on the facts of Lee Valley, paragraph 71, where the challenge on this head had failed. Absent such reasoning, the local planning authority was prejudiced in its role in relation to other sites.

61. On the third aspect Mr Bowes realised the heavy burden on him to show irrationality. Nevertheless, he drew attention to the way in which the decision in R (Chelmsford Borough Council) v First Secretary of State [2003] EWHC (Admin), [2004] 2 P & CR 34, had been analysed in Wychavon (paragraph 27). The conclusion that the circumstances in this appeal amounted to very special circumstances was a conclusion that no reasonable inspector could have reached in accordance with paragraphs 87 to 88

of the NPPF.

62. Submissions of defendant

63. Mr Banner did not argue that the decision could be saved if any of these three related submissions were to succeed.

64. There was no reason why compliance with Policy CS20 should not be one of the matters which together made up a composite bundle of very special circumstances which was found clearly to outweigh the harm. This was particularly so in circumstances where (a) in the local planning authority's area there was "an outstanding need for sites" (paragraph 21 of the decision letter); (b) "future traveller sites [identified by the local planning authority to meet the need] are likely to be located in the Green Belt" (paragraph 28 of the decision letter); (c) CS20 "does not seek to prevent any impact on openness" and in this case "openness would be reduced by a limited degree" (paragraphs 28 and 14 of the decision letter); (d) "in this case the consequences of a single pitch within a domestic curtilage are about as low as they could be" (paragraph 28 of the decision letter); and (e) "the factors ..... in this case are unlikely to be repeated elsewhere" (paragraph 37 of the decision letter). Thus, there were special factors which explain why the compliance with CS20 was of particular relevance in this case. That was enough to render it capable of being part of the composite bundle.

65. The reasoning in Wychavon, paragraph 26, showed that the factors which make a case very special could be the same or at least overlap with those which justify holding that Green Belt considerations are clearly outweighed, any rigid division between the two sets of factors not being required.

66. The facts of Lee Valley were distinguishable. There, the only factor relied upon as a very special circumstance was a design issue. Even so, given the treatment which had been given to that matter in the officer's report, the challenge on that head failed (see paragraph 71). Here, the Inspector did not suggest that compliance with CS20 was sufficient on its own to constitute very special circumstances.

67. The argument on lack of adequate reasons lacked merit since the Inspector clearly

explained the relevance of CS20 to his decision.

68. The irrationality challenge was hopeless. It was within the range of reasonable planning judgments for the Inspector to accord the bundle of considerations sufficient weight that they clearly outweighed the harm so as to justify the conclusion that very special circumstances existed.

69. Conclusion on Issue 3

70. I accept Mr Banner's contentions that reference to Wychavon and Lee Valley are of no assistance to the claimant. The Inspector plainly had the reasoning in Wychavon in mind in the way he worded his decision letter.

71. This was not a case where mere compliance with other development control policies was claimed to constitute very special circumstances. The Inspector was clearly finding that a search for alternative gypsy sites was unlikely to yield a site with so few adverse consequences as in the present case (see paragraph 28 of the decision letter) and which accorded in so many respects with the allocation policy CS20. If that had stood on its own it might well have been capable of constituting very special circumstances justifying this development. I do not have to decide that point. But I can see no reason whatever why this policy compliance should not form part and indeed a particular part in the constitution of the bundle of circumstances found to be very special. That is enough to dispose of the first aspect of Issue 3.

72. The reasons challenge under issue 3 was initially expressed differently in the Grounds where the allegation went wider than policy CS20 and it was claimed that "the Inspector's reasons as to why very special circumstances existed were inadequate". Mr Bowes was wise to abandon that claim because the Inspector's reasons as a whole are very clearly reasoned and explained. The challenge is however no better when confined to the reasoning in relation to CS20. The Inspector has adequately explained why he took CS20 into account in the appellants' favour and why he placed reliance on it along with other matters in finding that very special circumstances existed to justify the development in the Green Belt. There is no failure or inadequacy of reasoning in the decision letter to

embarrass the council in dealing with future development control decisions. In particular, the Inspector has found that the factors which he assessed which included the unusual extent of compliance with CS20 were unlikely to be exactly repeated elsewhere (paragraph 37 of the decision letter). Whilst factors in planning applications are seldom "exactly repeated", the local planning authority should have no difficulty in drawing appropriate lessons from this appeal decision for application in other cases.

73. The rationality challenge is most surprising. I set out the way in which it was pleaded in paragraph 27 of the grounds:

> i. "The Inspector's conclusion at DL, 33 to 36, in a nutshell, is that the site's compliance with the site allocation selection criteria within CS20 Core Strategy 2011, the moderate shortfall of sites, the lack of alternatives, the limited weight attached to personal circumstances, and the fact that the land fell within what the Inspector understood as being previously-developed land, amounted collectively to 'very special circumstances', even assuming the Inspector had been correct to treat the site as previously developed, the circumstances relied upon cannot reasonably be said to be 'very special'."

74. Mr Bowes confirmed in oral argument that if he were wrong on Issue 1 he did not deny that the fact that the land fell within the definition of previously-developed land was a matter capable of going into the bundle of considerations which were eventually held to be very special. None of the other matters in my view was irrationally included in that bundle. There was in my opinion no overall irrationality. Given the bundle of factors, the facts and findings in this case are readily distinguishable from those in, for example, Chelmsford, which is why the factors in that case could be described as "unremarkable" (see Wychavon, paragraph 27). That in no way assists the claimant here.

75. Accordingly, the claim in respect of Issue 3 must also fail.

76. Disposal

77. Despite the clarity of Mr Bowes' presentation of the council's case, the application to quash is dismissed on all grounds.

78. MR BANNER: My Lord, thank you very much for that judgment. There are a few consequential matters. The first one is a small point. On a few occasions, if I heard it correctly, when Policy CS20 of the Core Strategy was referred to it came out as C20 (without the S).

79. DEPUTY JUDGE: That is helpful. The shorthand writer will note that we are dealing with CS20.

80. MR BANNER: I am also told that there were references to an Inquiry which ought to be to a hearing because the hearing procedure was used as well.

81. DEPUTY JUDGE: I said in the fourth line "following an informal hearing". I will bear that in mind.

82. MR BANNER: My friend says it was and I have no reason to doubt him.

83. The next thing that follows is an application for costs. Perhaps I may deal first with the principle. I simply rely on the principle that costs follow the event. I have won on all grounds and therefore my client is entitled to his costs.

84. DEPUTY JUDGE: I do not suppose, Mr Bowes, that that can be opposed, can it?

85. MR BOWES: It cannot. I do have two very small matters.

86. DEPUTY JUDGE: The next matter is to turn to your costs schedule which I have.

87. MR BANNER: The total claim - we have not included today's costs and I do not claim, add those - is £6,812 which is a little less than the costs the claimant would have claimed

had it been successful. I simply say at this stage that is a reasonable and proportionate amount for a claim of this nature. I think my friend has a couple of small points.

88. DEPUTY JUDGE: Mr Bowes, you have some submissions.

89. MR BOWES: There are two matters. The first is that my Lord will note that there is multiplicity of fee earners incurred in this case. First, section 3, Grade 7 fee earners £160 an hour.

90. DEPUTY JUDGE: I think that is done so that the £200 is very seldom charged and most of the work is done by those who charge the lesser fee rates. I think in most of these cases that is intended to benefit you rather than otherwise. Instead of simply getting Gary Howard and Clare Jones to do all the work, the others have been used. You say there is an excessive number.

91. MR BOWES: We say there must be some overlap between those three individuals. I see no reason why the council should bear that. The second point is a short point over the page. You will see attendance on others: counsel, court, co-defendant etc. The first category: personal attendances.

92. DEPUTY JUDGE: Which page am I on?

93. MR BOWES: Page 2, personal attendances: 3.7 hours at £160 an hour, £592. I have had the benefit of discussing this with my friend. He confirms that is not conference with him as counsel. Therefore, in my submission - - - - -

94. DEPUTY JUDGE: It is not what?

95. MR BOWES: It is not a conference with my friend, conference with counsel. It is therefore attendance on somebody else. We say that is awfully high for a straightforward 288 claim. Therefore, what flows from that is that we invite the court to summarily assess costs in the quantum of £6,000.

96. DEPUTY JUDGE: What you say is that something should come off the 6,812?

97. MR BOWES: Yes.

98. DEPUTY JUDGE: You do not say precisely how much.

99. MR BOWES: We would invite the court to summarily assess at 6,000.

100. DEPUTY JUDGE: You would be content at 6,000.

101. MR BOWES: Yes.

102. DEPUTY JUDGE: Has that point previously been notified to Mr Banner or was that new to him?

103. MR BOWES: No. It was new to him this morning. I took instructions on it.

104. DEPUTY JUDGE: Mr Banner, what do you say on those two points?

105. MR BANNER: On those two points, if I may deal with the multiplicity of fee earners first. Mr Lord summarises the point very accurately, if I may say so, that the division of labour is intended to save costs rather than add to them. Principally the costs were done by the mid-ranging fee earners subject to the supervision of the higher-earning fee earners where appropriate, and where tasks could be delegated to the more junior solicitor that was done. That was very sensible and reduced costs. As to the fact that there were - - - - -

106. DEPUTY JUDGE: I am just looking through. Where is the £200 ever claimed?

107. MR BANNER: It may not even be on the facts of this case.

108. DEPUTY JUDGE: I am just looking. Page 1, the only reference is to £160.

109. MR BANNER: It is in the schedule. If you go to the very final page - where the work done on documents which then feeds its way through into the form - there is a small amount, in fact barely over one hour, of work done by the more senior lawyers.

110. DEPUTY JUDGE: Where do I find that?

111. MR BANNER: You should have the spreadsheet.

112. DEPUTY JUDGE: I have the spreadsheet.

113. MR BANNER: Do you see "A hours"?

114. DEPUTY JUDGE: Yes.

115. MR BANNER: "A hours". There is 1.2 hours. A is grade A.

116. DEPUTY JUDGE: A is grade A. I have got it.

117. MR BANNER: That is how I understand it anyway.

118. DEPUTY JUDGE: We have a total of 1.2 hours. Of the entire claim, only 1.2 is being claimed at the £200 rate.

119. MR BANNER: That is correct. In my submission it is reasonable for the Secretary of State to have his more senior lawyers keep an eye on - a degree of scrutiny - material that goes out in his name. There is no excess here.

120. As to the fact that there were multiple grade B (£160 an hour lawyers), there was no overlap. I can certainly speak for the division of labour between Mr Torru and Miss Fern because when I prepared my skeleton argument between Christmas and the New Year Mr Torru was away and he had arranged for Miss Fern to receive my skeleton argument, pass it to material clients and to obtain those clients' instructions and then correspond with me. So there was no overlap there. It was simply to cover the absences from time to time of particular individuals.

121. DEPUTY JUDGE: What do you say about the other point raised which is the excessive number of personal attendances - 3.7?

122. MR BANNER: Unfortunately, all I can do is speculate because despite the fact that my friend and his clients have had their schedules since the beginning of this week, these points were only put to me this morning. My instructing solicitor is in the Court of Appeal at the moment. I can only speculate. What I can say is that specific instructions

were taken from the Inspector. I had the benefit of a note from the Inspector at the outset of these proceedings to inform me of various points. Some of the documents in this case produced by my client were filed at court by the Government Legal Department as opposed to by my clerks. Either or both of those may have been within that. There may have been other quite legitimate things but I simply do not know.

123. DEPUTY JUDGE: Does filing at court count as personal attendances?

124. MR BANNER: I think it probably would do because it is attendance on others, including court, so turning up at court with a document would appear to fall within that. I am put in a difficult position by this point being raised only at the last minute this morning.

125. What I would say by way of a higher-level observation is that - contrary to what my friend suggested - it is not an obviously egregious amount of time to spend on attendances in a claim of this nature. There are a significant number of attendances in the claimant's statement of costs amounting to some £450 which are not grossly dissimilar to the amount claimed by my client. In my submission there is nothing overtly untoward that justifies suggesting that the time claimed is not reasonable and nor is it disproportionate, either individually or in terms of its effect. Rounded down, my friend suggests 6,000 which is, in fact, greater than the sum claimed for those attendances in any event.

126. That is all I can say on the matter.

127. DEPUTY JUDGE: I think he was suggesting that you rounded it down, that dealt with the two matters which he was raising broadly.

128. MR BANNER: What I would say also, again by way of interesting observation of my friend's client's costs, is that there were three different fee earners referred to in their statement of costs too. So the council must accept the principle of an appropriate division of labour between more expensive, more senior lawyers, mid-ranking lawyers and junior lawyers depending upon the nature of the task in hand. One sees that in the description of fee earners at the top of the page.

129. DEPUTY JUDGE: It is slightly unusual - this case - in that the claimant's costs only slightly exceed the defendant's costs whereas claimant's costs usually very considerably exceed defendant's costs partly because they do not have the economies which a local authority conducts because they have the primary burden of presenting the case and that usually, therefore, inflates the costs. It is commendable in this case that their costs have been kept low. Mr Bowes, is there anything more you want to say on the matter?

130. MR BOWES: No. It is in the hands of my Lord to summarily assess the matter and so I invite my Lord to do.

131. Ruling on Costs

132. DEPUTY JUDGE: I have heard the arguments on this matter. There is no justification for saying that the Treasury Solicitor had involved too many people or too much time by a grade A fee earner, it being clear that only 1.2 hours has been done by a grade A fee earner and it being plain from the claimant's own schedule that in their case three solicitors were involved at different rates of pay, including one at £300 an hour which was much higher than any rate of pay charged by the Treasury Solicitor.

133. So far as the suggestion that the 3.7 hours for personal attendances on others was excessive, that had been raised very much at the last moment when this statement has been available for several days and was provided before the hearing on Wednesday of this week. I am simply not in a position to say that it was an unreasonable or disproportionate amount.

134. Accordingly, I decline to reduce the amount and I summarily assess the costs in the total claim which is £6,812.

135. Are there any other matters arising?

136. MR BOWES: There is one application, and that is to seek from my Lord permission to appeal. It has two strands, this application. It relates to Ground 1. The first strand is that there is a reasonable, compelling prospect of success, and that is that

notwithstanding my Lord found that there was a rational explanation for a distinction between land in a built-up area and land not in a built-up area when safeguarding the phenomena of "garden grabbing", that in my submission does not reveal itself from the contemporaneous policy statements of the Department or the Department's (Inaudible).

137. My second point that arises from that is that my Lord has not given effect to the intention of the Minister in producing these amendments. That intention was clear, and it is proper, as I think my Lord accepted, to read Policy Statements in the context of their intention.

138. On that basis I seek permission to appeal on the basis that it has a reasonable, good, prospect of success.

139. The second basis on which permission to appeal is sought is that there is a compelling argument, compelling reason, that the Court of Appeal hear this argument in that it is a matter of acute public interest - the status of residential gardens - in that there is a significant difference in the planning system as to how brownfield and greenfield are treated identified within my Lord's judgment and, secondly, as demonstrated from the Minister's Statement himself, taking the trouble to draw this matter to the attention of the House of Commons.

140. On those two bases I respectfully seek from my Lord permission to appeal.

141. Ruling on Permission to Appeal

142. DEPUTY JUDGE: So far as the first ground is concerned, I do not consider that there is a reasonable prospect of success.

143. So far as the second ground, I do not consider that that is a compelling reason for the Court of Appeal to consider it. But of course if application is made to the Court of Appeal for permission they will have the opportunity, if they see fit and if they were to feel that there were not grounds on the first matter but that there were on that matter, to grant leave on that matter on the grounds of that consideration.

144. Accordingly, I refuse leave.

145. I think that as this has been a read-out judgment, your time for appealing should not begin to run until there is issued the perfected transcript. (Pause) I may get it next week but then I have to turn it around so there may be a delay. Accordingly, your time for appeal will not start until you receive that. I do not think, Mr Banner, that is going to prejudice anyone in any way.

146. MR BANNER: I did have in mind there are some people, the beneficiaries of the planning permission, who will want to agree finality but it sounds like it is not going to be a delay of months as opposed to days.

147. DEPUTY JUDGE: In any event, they are living in the caravan there so I do not think it is going to make too much difference to them, the extra time.

148. MR BOWES: I am grateful to you. You anticipated my further application.

149. DEPUTY JUDGE: I am grateful to both counsel and of course those behind you for the way the case has been prepared and presented. We got through it very speedily earlier this week.
