Neutral Citation Number: [2017] EWHC 874 (Admin)

Case No: CO/2438/2016

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/04/2017

Before :

MR C M G OCKELTON, VICE PRESIDENT OF THE UPPER TRIBUNAL (SITTING AS A DEPUTY HIGH COURT JUDGE)

- -

Between :

The Queen on the application of Anthony Jayes	**Claimant**
- and -	
Flintshire County Council	**Defendant**
- and –	
Mr L. Hamilton	**Interested Party**

- -
- -

Kevin Leigh (instructed by **Jayes Collier LLP**) for the **Claimant**
John Hunter (instructed by **Flintshire County Council Legal Services**) for the **Defendant**
No representation or appearance for the Interested Party

Hearing date: 8 December 2016

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR C M G OCKELTON, VICE PRESIDENT OF THE UPPER TRIBUNAL (SITTING AS A DEPUTY HIGH COURT JUDGE)

C. M. G. Ockelton :

INTRODUCTION

1. The site concerned in these proceedings is Dollar Park, Baglitt Road, Holywell, Flintshire. It belongs to the Interested Party. The claimant's house, Glyn Abbot, is opposite the site and overlooks it from a raised position. By these proceedings the claimant challenges the defendant's decision on 7 April 2016 to grant the interested party planning permission to continue to use the site as a residential gypsy site. The permission allows this use of the site to accommodate nine families on seven pitches with a total of thirteen caravans (no more than seven of which are to be static), retention of hardstanding and boundary works, retention and continued use of three amenity blocks and the erection of a fourth. The grant is of temporary permission and the use is limited to a maximum of five years from the date of the grant.

2. Permission was refused by Cranston J on the papers but granted on limited grounds by Holgate J. Following the grant, revised grounds of challenge were filed on 13 September 2016; the respondent's detailed grounds of resistance to those grounds are dated 18 October 2016. The interested party has taken no active part in the proceedings and has not filed an acknowledgment of service.

PLANNING HISTORY

3. The site was first occupied as a gypsy encampment in March 2007 and an application for planning permission was made then. Planning permission was refused in February 2008 and an Enforcement Notice was issued the next month. The interested party appealed against the Notice and the refusal of planning permission. The Inspector said that the decision was a difficult one, because of the article 8 rights of the occupants and the lack of suitable alternative accommodation for gypsies in the county, both of which factors demanded considerable weight. One major factor against the development was, however, the objection by the Highways Department to the access arrangements. The Inspector dismissed the appeals, save for varying the Enforcement Notice to allow until February 2010 for the site to be vacated and cleared.

4. In December 2009, before the expiry of the Enforcement Notice as varied, there was a further application for planning permission. The application was refused and the interested party again appealed. The Inspector's decision was in February 2011. He took into account the continued lack of alternative sites and the impact on the article 8 rights of those on the site, including interference with established arrangements for health care and the education of children, all of which would be interfered with if the families were forced to leave the site and set up camp on the roadside. These were matters to which he gave substantial weight. The highway objections the Inspector decided no longer had weight in the light of revised access proposals. He was concerned by the harm that would be caused to the rural character of the area and the setting of Glyn Abbot. These factors counted against a grant of permission on a permanent basis, but he considered that there should be a grant on a temporary basis pending the allocation of sites as part of the Local Development Plan process. He therefore allowed the appeal to the extent of granting permission for five years from the date of his decision, and so expiring in February 2016.

THE DECISION UNDER CHALLENGE

5. Following the application, on 2 November 2015, the usual time was allowed for objections, and an objection was received from the claimant on behalf of himself and others. The Council Officer, Emma Hancock, who is familiar with the site and its planning history, prepared the report to the Council's Planning and Development Control Committee. The report itself is not dated. She summarised the responses to the application, including the claimant's objection. Amongst the points made by the claimant and appearing in her summary are the following: 'no information on whether local children attend schools or the health reasons to remain on site or the befits [sic] of living as an extended family together on one site; some of the named families on the 2011 permission no longer reside on the site so must have found alternative accommodation'.

6. Setting out the facts at paras 7.19 and following of her report, Ms Hancock noted that the application was for '9 gypsy family units Hamiltons Gaskin and Price on 7 pitches in 13 caravans'. She observed that since the occupation of the site in 2007 two individuals who were then children have grown up and occupy their own caravans. She lists the current and proposed occupants of the site in para 7.21, comparing it with the 2007 position and concluding that 'the site is still occupied by the same extended families'.

7. All those listed in the report appear to be adults. The only reference to children on the site is in connexion with a play area, which was part of the permitted development in the previous planning permission but has instead been occupied (without permission) by a further caravan. Ms Hancock writes 'The loss of the play area is justified in the context that the pitches are all large enough for the children to play within their own plots and the play area was never utilised as such as families prefer to supervise children within the plots'. There appears to be no reference to any specific children or their circumstances or needs. There is no indication of whether the justification of the loss of the play area is Ms Hancock's or the applicant's. There is no indication of the source of the information about what parents prefer.

8. So far as the adults are concerned, there appears to be no reference in the report to any illnesses that might be of importance in assessing the need for them to remain where they are. Nor does there appear to be any assessment of the links (if any) between the families named (and described as extended families, in the plural) that might raise a need for any one or more of the families to be with another or others.

9. As Ms Hancock says at para 7.30, the main issues for consideration are the impact on the rural character of the site and the setting of the listed building and whether these factors still outweigh 'other considerations such as the best interests of the children on the site, the need for gypsy and traveller sites, the provision of alternative sites and the personal circumstances of site occupants'.

10. The report then goes on to consider need, and the availability of sites for gypsies in Flintshire and in North Wales. She observes that on appeal inspectors have placed considerable weight on the lack of alternative accommodation. She lists the sites available and those under consideration. Two of the latter are underoccupied, to the extent of five sites in all. She looks to the completion of the Council's Gypsy and

Traveller Accommodation Needs Assessment, as required by the Housing (Wales) Act 2014, of which she hopes results will be available for consideration in January 2016. She concludes 'However in light of the fact that there is no obvious alternative to direct these families to it is evident that some level of quantitative need still exists'.

11. At para 7.58 is the heading 'The best interests of the child, Personal circumstances and Human Rights'. The text of the paragraph is as follows:

> "No details of the applicants or the site's resident's specific personal circumstances have been put forward other than that they have a need for lawful accommodation in this area where they can continue to live together as an extended family group and where they can obtain adequate health care and regular schooling for children. There are children living on the site, however the exact numbers and ages have not been provided by the applicants."

12. Ms Hancock goes on to set out the Inspector's consideration of this issue in the 2011 decision, referring to the possibility of unlawful interference with the (then) existing arrangements. Her own next observation is that 'It is acknowledged that children would live on the site and the Local Authority has a statutory duty under the Childrens Act 2004 to safeguard and promote the welfare and well-being of children. She adds a reference to the United Nations Convention on the Rights of the Child, and concludes this section of the report as follows at para 7.62:

> "These considerations are material considerations in making a decision as to the impact any decision would have on the children residing on the site. If permission is refused then the impact of not having a settled base would need to be considered and weighed in the planning balance as a primary consideration."

13. She then looks at the possibility of a grant of temporary permission and the conclusion of the report is a recommendation of a grant of temporary permission on the grounds that the harm to the character of the site and the setting of the listed building do weigh against granting planning permission on a permanent basis but that refusal on a temporary basis would 'make the families and their children homeless and put them on the roadside with no base to access health care and education.' A temporary grant would enable different provision to be made when the needs assessment is implemented.

14. When the matter came before Committee on 20 January 2016 there were 'Late Observations' from the claimant and others, supplementing the report. The claimant is recorded as saying that the report was misleading and inaccurate; amongst other things it did not assess the additional harm caused by increasing occupation since 2011, nor did it assess the need from 2016. There is said to be no basis for saying that families will be made homeless, nor any investigation of whether the occupants of the site could go elsewhere. There is a further record of a representation by the claimant's AM asking for the decision to be deferred until investigations have been made. There is additional information from the applicant, as follows:

> Children on site:
>
> Plot 3 – John and Jane Hamilton – 3 children
> Plot 4 – Tracey and Edward Hamilton – 4 children
> Plot 4a – Lavinia Hamilton – 3 children
> Plot 5 – Acer and Leanne Hamilton – 1 child.
> All primary age children attend Glan Aber primary school.
> Medical conditions
> Lavinia Hamilton has arthritis and is under a consultant at Glan Clwyd
> Kathleen Hamilton is under a consultant at Glan Clwyd
> Len Hamilton has diabetes and high blood pressure and is under the doctors in Holywell.
> Debbie Price has arthritis and is under doctor in Holywell.

15. Emma Hancock's witness statement, dated 19 October 2016, asserts under the heading 'occupants without children' as follows:

> "The families on the site are related or part of an extended social network and therefore support each other. The adult site residents also have medical conditions which benefit from a settled base. The main family on the site are the Hamilton family. Len and Kathleen Hamilton are in their sixties and both have medical conditions requiring continued attention. Kathleen has had a number of operations including knee replacements and suffers from arthritis and is under a consultant at the hospital. Len Hamilton has diabetes and high blood pressure and is under the doctors at Holywell. The other Hamilton families have children."

16. The statement goes on to deal with the Gaskin and Price families, and amongst other observations explains that a number of those classed as children in 2011 have now grown up (hence the families' entry under this heading, presumably). The next heading is 'children attending school'. Ms Hancock states that she visited the site and spoke to the applicant, Len Hamilton, 'before the application was determined in order to find out more about the children at the site'. The information she was given by Mr Hamilton is that set out above from the Late Observations available to the Planning Committee, including the information about school attendance. Then there is this:

> "I also contacted the Council's Education Department to obtain any information they had about the children on the site. I did not receive a response at the time but since I have been told by the Inclusion and Progression Unit that the Council currently has a record of the following pupils on roll at Glan Aber Primary School, Baglit who give Dollar Park as their address:
>
> Tony Joe Jones d o b 25.12.05 Plot 1
>
> Natalia Jones d o b 25.01.09 Plot 1
>
> Valentine Jones d o b 17.01.12 Plot 1

> Kacie Hamilton d.o.b. 13.03.13 Plot 5
>
> Atlanta McDonagh d o b unknown due to start nursery 03.10.16 Plot 2
>
> The Inclusion and Progression Unit within Education only has records of the children who are registered at schools. The other children on the site are therefore not counted within their information. This will therefore not include those children who may be home educated or not attending school due to their age (ie over 11 as gypsy and traveller children do not generally attend secondary school). It will also not include younger children who are not yet old enough to attend school. While the latest information from education suggests that there may be more children living at the site than I was told about by the applicant at the time this would not have made any difference to my advice to the committee given that it is clear on either basis that there are children living at the site of which several attend the local school."

17. The statement ends with what is said to be an explanation for the reasons for granting planning permission. After citing the Inspector's 2011 decision, including the opinion that 'refusal of permission, so that the current occupants were required to vacate the site, would plainly be an interference with their rights to respect for family and private life and to the peaceful enjoyment of possessions, as identified in article 8 and article 1 of Protocol 1 of the European Convention on Human Rights', Ms Hancock states that the best interests of children was one important material consideration weighing in the balance, but not the only one. As reported in the late observations, the adults have medical conditions which benefit from a settled base; and the families are also 'related or part of an extended network and therefore support each other'.

18. The application came before the Committee on 20 January 2016. The Minutes of the 20 January Committee Meeting suggest that Ms Hancock's visit to the site (at which she obtained the information about the children) was two days previously. During discussion, concerns were expressed about whether a repeat grant of temporary permission meant either de facto permanency, or that the use was more likely to become permanent. Ms Hancock, who was present at the meeting, is recorded as having said that the Inspector [in 2011] 'had indicated that the applicant and their resident dependants could live on the site'. One Councillor expressed concern that if the application was refused and went to appeal, an Inspector might grant permanent permission. The decision was that planning permission be granted for a temporary period, subject to amendment of the definition of the period of time, and the matter was adjourned for that matter only to be considered.

19. On 24 February the application was considered again in that context. It was decided to grant planning permission for five years or a shorter period if within the five years a suitable alternative site became available. The Council's decision followed on 7 April. These proceedings were issued on 11 May 2016.

THE GROUNDS OF CHALLENGE AND THE RESPONSE TO THEM

20. The Claimant raises four grounds of challenge in the revised or refined grounds served after the grant of permission. The first is that there was no sufficient evidence as to the circumstances of the children of the occupants of the site to justify considering any needs of the children as material. The approval related to all the site but there were some pitches where no children lived. Secondly, the grant of planning permission for a limited period, an exception to planning principles that would have mandated refusal, was justified on the ground that there was an existing need for gypsy sites, and assessment of the needs of gypsies in the county was forthcoming, but the council's officer had stated that the local plan would not meet the needs, and, on the other hand, there were unoccupied pitches on sites with existing permission. Thirdly, the duty under s 103 of the Housing Wales Act 2014 to provide sites (referred to in the officer's report) had not yet arisen. Fourthly, analysis of discussion at the meeting tended to show that the decision had been influenced by the possibility of permanent permission being granted on appeal if the decision was outright refusal.

21. The defendant's detailed grounds of resistance respond to those grounds as follows. First, the sufficiency of information was a matter for the decision-maker: there was information that some of the families had children and that some attended the local school. The decision-maker was entitled to conclude that if permission was refused there would be disruption, which would be contrary to their best interests. Although some of the pitches had no children, the rationale of the decision was not limited to the children: some of the adults had needs (including the need not to have to resort to roadside accommodation) and the occupants were one extended family group. The second ground misunderstands what the officer said: obviously the intention was that the local plan would address the needs when identified; and anyway the comment in question was made when the decision in principle had been made and the only discussion was at the second meeting when the issue was whether to provide for termination of the permission before five years if possible. Further, the fact that a site is unoccupied does not mean that it is available for occupation by gypsies unrelated to the owner of the site. So far as concerns the third ground, the response is simply that although the statutory duty is only formalised when the needs assessment is completed and approved by the Welsh Assembly, there is nevertheless a current need. Fourthly, the reference at the meeting to a possible appeal does not show that that factor was a reason for the decision as taken; and it would in any event be lawful to take into account what the position would be if there was an appeal against the decision being made.

22. The detailed grounds conclude by formally relying on s 31 of the Senior Courts Act 1981 as amended: the outcome of the decision-making process would not have been substantially different if none of the alleged errors had occurred.

23. Skeleton arguments and submissions at the hearing followed the structure laid out in the revised grounds of challenge, with particular emphasis on the material relating to the children. In addition Mr Leigh raised the question whether a repeated grant of temporary permission was contrary to published policy.

The Law

Children and Planning Decisions

24. The attention to be paid to the interests of children in planning decisions is in principle the same as that to be paid in other areas of decision-making and the governing authority is Zoumbas v Secretary of State for the Home Department [2013] SC 74, where the principles are summarised at [10]. The best interests of children affected by the decision must always be at the front of a decision-maker's mind and must always be treated as a primary consideration. That means that no other consideration can be treated as inherently more significant. Other considerations may however share primacy, and in making the decision the best interests of children may be outweighed by a combination of other factors. So it cannot be said that the best interests of children are the paramount or only consideration. Thus, a decision can properly be made only by carefully examining all relevant facts.

25. In the planning context those principles were explained by Hickinbottom J in Stevens v Secretary of State for Communities and Local Government [2013] EWHC 792 (Admin) at [69] as follows:

> "i) Given the scope of planning decisions and the nature of the right to respect for family and private life, planning decision-making will often engage article 8. In those circumstances, relevant article 8 rights will be a material consideration which the decision-maker must take into account.
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> ii) Where the article 8 rights are those of children, they must be seen in the context of article 3 of the UNCRC, which requires a child's best interests to be a primary consideration.
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> iii) This requires the decision-maker, first, to identify what the child's best interests are. In a planning context, they are likely to be consistent with those of his parent or other carer who is involved in the planning decision-making process; and, unless circumstances indicate to the contrary, the decision-maker can assume that that carer will properly represent the child's best interests, and properly represent and evidence the potential adverse impact of any decision upon that child's best interests.
>
> iv) Once identified, although a primary consideration, the best interests of the child are not determinative of the planning issue. Nor does respect for the best interests of a relevant child mean that the planning exercise necessarily involves merely assessing whether the public interest in ensuring planning controls is maintained outweighs the best interests of the child. Most planning cases will have too many competing rights and interests, and will be too factually complex, to allow such an exercise.
>
> v) However, no other consideration must be regarded as more important or given greater weight than the best interests of

> any child, merely by virtue of its inherent nature apart from the context of the individual case. Further, the best interests of any child must be kept at the forefront of the decision-maker's mind as he examines all material considerations and performs the exercise of planning judgment on the basis of them; and, when considering any decision he might make (and, of course, the eventual decision he does make), he needs to assess whether the adverse impact of such a decision on the interests of the child is proportionate.
>
> vi) Whether the decision-maker has properly performed this exercise is a question of substance, not form. However, if an inspector on an appeal sets out his reasoning with regard to any child's interests in play, even briefly, that will be helpful not only to those involved in the application but also to the court in any later challenge, in understanding how the decision-maker reached the decision that the adverse impact to the interests of the child to which the decision gives rise is proportionate. It will be particularly helpful if the reasoning shows that the inspector has brought his mind to bear upon the adverse impact of the decision he has reached on the best interests of the child, and has concluded that that impact is in all the circumstances proportionate. I deal with this further in considering article 8 in the context of court challenges to planning decisions, below."

26. That formulation was endorsed by Richards LJ in Collins v Secretary of State for Communities and Local Government [2013] EWCA Civ 1193 at [10].

Officers' Reports and the Decision at the Meeting

27. The general principles relevant to the consideration of officers' reports in challenges to planning decisions were usefully assembled by Holgate J in R (Luton Borough Council) v Central Bedfordshire Council [2014] EWHC 4325 (Admin) at [90] – [95], on which both parties relied, and which I adopt with gratitude:

> "90. A great many of LBC's grounds involve criticisms of the officers' reports to CBC's committee. Accordingly, it is necessary to refer to the legal principles which govern challenges of this kind. I gratefully adopt the summary given by Mr Justice Hickinbottom in the case of The Queen (Zurich Assurance Ltd trading as Threadneedle Property Investments) -v- North Lincolnshire Council [2012] EWHC 3708 (Admin) at paragraphs 15-16.
>
> > "15. Each local planning authority delegates its planning functions to a planning committee, which acts on the basis of information provided by case officers in the form of a report. Such a report usually also includes a recommendation as to how

the application should be dealt with. With regard to such reports:

(i) In the absence of contrary evidence, it is a reasonable inference that members of the planning committee follow the reasoning of the report, particularly where a recommendation is adopted.

(ii)When challenged, such reports are not to be subjected to the same exegesis that might be appropriate for the interpretation of a statute: what is required is a fair reading of the report as a whole. Consequently:

"[A]n 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" (Oxton Farms, Samuel Smiths Old Brewery (Tadcaster) v Selby District Council (18 April 1997) 1997 WL 1106106, per Judge LJ as he then was).

(iii) 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). That background knowledge includes "a working knowledge of the statutory test" for determination of a planning application (Oxton Farms, per Pill LJ).

16. The principles relevant to the proper approach to national and local planning policy are equally uncontroversial:

(i) The interpretation of policy is a matter of law, not of planning judgment (Tesco Stores Ltd v Dundee City Council [2012] UKSC 13).

(ii) National planning policy, and any relevant local plan or strategy, are material considerations; but local authorities need not follow such guidance or plan, if other material considerations outweigh them.

> (iii)Whereas what amounts to a material consideration is a matter of law, the weight to be given to such considerations is a question of planning judgment: the part any particular material consideration should play in the decision-making process, if any, is a matter entirely for the planning committee (Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759 at page 780 per Lord Hoffman)."

91. I would also draw together some further citations:

"[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." (per Sullivan J in R v Mendip DC ex p Fabre (2000) 80 P&CR 500 at 509).

92. In R (Siraj) v Kirkless MBC [2010] EWCA Civ 1286 Sullivan LJ stated at para. 19:

"It has been repeatedly emphasised that officers' reports such as this should not be construed as though they were enactments. They should be read as a whole and in a common sense manner, bearing in mind the fact that they are addressed to an informed readership, in this case the respondent's planning subcommittee"

93. In R (Maxwell) -v- Wiltshire Council [2011] EWHC 1840 (Admin) at paragraph 43 Sales J (as he then was) stated:

"The Court should focus on the substance of a report of officers given in the present sort of context, to see whether it has sufficiently drawn councillors' attention to the proper approach required by the law and material considerations, rather than to insist upon an elaborate citation of underlying background materials. Otherwise, there will be a danger that officers will draft reports with excessive defensiveness, lengthening them and over-burdening them with quotations of material, which may have a tendency to undermine the

willingness and ability of busy council members to read and digest them effectively."

94. In Morge v Hants CC [2011] UKSC 2; [2011] PTSR 337 at [36] Baroness Hale of Richmond said:

" … in this country planning decisions are taken by democratically elected councillors, responsible to, and sensitive to the concerns of, their local communities. As Lord Hoffmann put it in R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2003] 2 AC 295 , para 69: "In a democratic country, decisions about what the general interest requires are made by democratically elected bodies or persons accountable to them." 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 will be defeated: the councillors either will not read them or will not have a clear enough grasp of the issues to make a decision for themselves. It is their job, and not the court's, to weigh the competing public and private interests involved."

95. In R (Bishops Stortford Federation) v East Herts DC [2014] PTSR 1035 Cranston J held at paragraph 40:

"The courts have cautioned against undue judicial intervention in policy judgments by expert tribunals within their areas of special competence (see AH (Sudan) v Secretary of State for the Home Department (United Nations High Comr for Refugees intervening) [2008] AC 678 , para 30, per Baroness Hale of Richmond), and this reticence has been applied to considering the decisions of planning inspectors on issues of planning judgment: see Wychavon District Council v Secretary of State for Committees and Local Government [2009] PTSR 19 , para 43, per Carnwath LJ. Arguably, the same applies to experienced planning committees with their training and codes of conduct."

96. A number of the issues raised by LBC in these proceedings were not mentioned in its representations to CBC (e.g. the application of the sequential test). However, LBC correctly makes the point that that does not alter LBC's standing or entitlement to bring a claim for judicial review to quash the planning permission relying on such matters (see Kides v South Cambridgeshire D.C. [2003] 1 P & CR 19 at para 132-134). LBC has a genuine interest in obtaining the relief sought.

> 97. However, the principle in Kides does not detract from the principle laid down in Fabre, Oxton and related authorities as to the approach to be taken to a judicial review of a local authority's decision to grant planning permission on the basis of an officer's report to committee. It is primarily the function of the officers to judge which issues to address in the report and which to omit, as well as the depth to which any issue included in the report is explored and the amount of information supplied. Quite apart from the Kides issue of standing, there is a separate and crucial question for the Court to determine, namely whether the officer's report can be said to have been defective because it was significantly misleading, applying the tests in Oxton and Fabre. On that aspect a failure by parties to raise an issue in their representations to the local planning authority may be highly material, if not determinative, unless that issue was one which the legislation required the authority to take into account in any event (e.g. the statutory development plan - see section 70(2) of the Town and County Planning Act 1990 and R (St James's Homes Ltd) v Secretary of State [2001] EWHC Admin 30; [2001] PLCR 27)).
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> 98. I should also refer to the decision of the Court of Appeal in R v Secretary of State for the Environment ex parte Powis [1989] IWLR 584 in which the Court of Appeal held that in general judicial review is to be conducted by reference to the material which was before the decision-maker at the time of his or her decision and without regard to fresh evidence. That principle is subject to exceptions, including evidence on whether or not a procedural error has been committed, such as a breach of a legitimate expectation."

28. Because of the way in which the claimant puts his argument on consistency, it is also necessary to consider what, if any, attention should be paid to remarks at a meeting, during the course of discussion, by individual members of a decision-making body (here, the planning committee). It ought to go without saying that what counts is the decision itself, not the discussion leading up to it. The purpose of the discussion is to reach the decision, and during the discussion process an individual may hold to his original view or change it, in either case without saying anything; he may say nothing at all in the discussion and yet has an equal vote in the decision. A view expressed in the course of discussion may be an individual's starting-point; or it may be that individual's final position; or it may fall somewhere between the two. We have all been at meetings when a person has been seen to express a view and having tested the water, as it were, decides in the end to vote in the opposite way to what his words might have suggested.

29. It is difficult to see that anything useful could ever be derived about either the decision-making process or the decision itself from examining the parts of the committee-members' mental processes that happened to be expressed orally during the course of discussion. That examination would be hopelessly insecure as a guide to what even the person who spoke thought when it came to the time for a decision,

and would reveal nothing at all about the thought-processes of those who did not speak at all, or who did not respond orally, about the particular point expressed.

30. These points and some others were the subject of reference by Foskett J in R (Oadby Hilltop and Meadow Conservation Area Association etc) v Oadby and Wigston Borough Council [2011] EWHC 60 at [38] – [40] and [127] – [128]:

> "38. [W]hat I do think would be highly unfortunate is if a practice or an "industry" was allowed to grow of obtaining transcripts of meetings of this kind as a matter of course and subjecting every word spoken to minute scrutiny in an endeavour to find the basis for an argument in support of a judicial review claim. That cannot be in the public interest. Whilst it would be impossible to say that such evidence should not be received in appropriate circumstances (because occasionally a transcript may offer the best evidence that a planning committee has or has not erred sufficiently for judicial review purposes), the development of the kind of practice to which I have referred would, to my mind, need resisting strongly.
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> 39. It is important to recognise that a planning committee meeting is just that: a meeting of the members of a local planning committee. Decisions are made by a majority vote when an obvious consensus does not exist. As with most committees, whether of a public or private nature, individuals may come to a meeting with a preconceived notion of the view they will adopt to a particular item on the agenda. However, during the course of discussion, when other views are aired and debated, those preconceived views may change. That is the whole essence of a successful and dynamic committee and of what true service in a public office involves. If, as will sometimes be the case, the opportunity to articulate a changed view does not always present itself at the meeting, the record of someone's oral contribution may be at variance with his or her eventual vote. All sorts of dynamics can occur that may mean that what someone is recorded as having said is not translated into an eventual vote that clearly indicates what was in the individual's mind at the time of voting.
>
> 40. Furthermore, the actual articulation of an argument can sound very different when it is heard than how it appears to be from the written word in the form of a transcript. What may appear to have been strongly expressed may have been a "throw away" line and vice-versa. These are just a few considerations that make a fine textual analysis of what is said at such a meeting in the search for some clearly defined error of reasoning fraught with difficulty.
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> 128. [After citing the observations of Sullivan LJ about officers' reports in Siraj (above)] I would respectfully suggest that at least the same caution needs to be observed in relation to the oral contributions of members of the committee (including those of the Chair) whose words may have been recorded. Unlike an officer's report, the words will not have been formulated in the quiet of an officer's room with all relevant documentary material to hand. Some words will doubtless have been prepared in advance, but they will need to have been adapted to the circumstances of the debate as it proceeds and, as I have indicated above, views may change during the course of the debate. That is a perfectly understandable and desirable feature of the proceedings of such a committee. It could operate to stifle the kind of open debate that is the lifeblood of effective local decision-making if a close textual analysis of those contributions was permitted to be made too readily."

DISCUSSION

31. There can be no doubt that the defendant's investigation into the present inhabitants of the site was rather casual, to put it mildly. It looks as though it was only two days before the matter was due to come before the Committee that any questions were asked at all about the children on the site, or about any particular needs that any adults had. The answers given about the children appear to have been almost wholly wrong. The children listed by the applicant as Hamilton children, and (if of primary school age) attending Glan Aber school, may not exist, but in any event it does not appear that they attend Glan Aber school or any other school, because the Council's Education Department has no record of them. The only exception is Kacie Hamilton, under 4 years old in January 2016, but known to the Council at the time Ms Hancock's enquiry was answered. The other children known to the Council live on plots different from those identified by the applicant, and have surnames different from those identified by Ms Hancock as those of families on or permitted to live on the site.

32. The claimant, whose outlook and amenity is said to be affected by the decision, is entitled to be upset if the decision was taken on a factually wrong basis after an enquiry that was late and inefficient. The problem for him is that, as the defendant argued, there are two reasons why the incomplete and incorrect information about the children does not of itself render the decision unlawful. The first is that there appears to have been no reason at the time to disbelieve the applicant's account of what he claimed were the children of his family and their school attendance. There was sufficient information to justify a conclusion that there were children living on the site who attended primary school. The second is that (whether or not the information given by the applicant was accurate) the position seems to be that there are indeed children on the site registered as pupils at Glan Aber. That being the case, it appears that the recommendation in the report would have been the same if the true facts were known, and indeed Ms Hancock says as much in her witness statement.

33. The report, however, does not contain only assertions of fact. It includes advice as to the application of the law to the facts. The law is, as set out above, first, that the best

interests of any children affected by a planning decision are a primary consideration. This point is faithfully made in the report. That, however, is not the whole story. In order to give the interests of children the appropriate weight, it is first necessary to establish what the best interests of any particular children are. Then they must be weighed in the balance with all the other considerations going towards, and away from, a grant of permission. The exercise is complex and fact-sensitive.

34. In my judgment the report wholly fails to express correctly the process the Committee needed to undertake. The report itself is admittedly vague. It works on the premise that there are children living on the site, but their number, identity and age, as also the question whether they are encompassed in the application, are all unknown factors. The statement that the Children Act 2004 requires the Council to safeguard and promote the wellbeing of children is of course correct, as is the fact that 'the impact of [any children] not having a settled base' would need to be taken into consideration if the application were to be refused outright. But in context, those assertions are seriously misleading. First, they imply that there has been an assessment of the needs of actual children on the site, so that the loss of a 'settled base' could be identified as contrary to their best interests. Secondly, they imply that the statutory and any other duties stand alone and are not merely factors (albeit important factors) to take into account. Thirdly, they imply that refusal in the present case would not be an option.

35. That this is not a misreading of the view of the author of the statement is confirmed both by her conduct and by her witness statement. She made a site visit and was told of the existence of a number of children and their attendance at school. On the one hand she took steps to see, even at this very belated stage, that the information was correct, but on the other she simply passed it on in the form of the late observations, still not suggesting for a moment that before any decision was made the actual needs and interests of the now-identified children would need to be assessed. Her witness statement makes it clear why. She took the view, based on the assessment made of the needs of different children in 2011, that requiring the families to leave the site would be an interference with their rights: that is probably right, but the question is the extent to which the interference would be proportionate. Her final assertion, that the facts coming from the local authority would have made no difference to her advice, is troubling. Her conclusion that 'there are more children living at the site than I was told' appears to indicate that despite the contrary information from the Council's Education department she saw no need to question or investigate the accuracy of what she had been told. The reason why it would have made no difference, that 'it is clear … that there are children living at the site of which several attend local school' demonstrates that her approach was that the existence of children attending a local school was sufficient to motivate and justify the advice without any further investigation.

36. In order to establish this point I have had to look in some detail at the report and its makeup. But there can be no proper suggestion that the features of it that I have identified emerge only on analysis at a level inappropriate to an officer's report. On the contrary: the problem is that the view that the existence of children, rather than an analysis of their interests, justifies the grant of planning permission in the situation under examination pervades the report itself and the advice in it. There is, as usual, no reason to suppose that the decision was made otherwise than in accordance with the facts and recommendation in the report, supplemented in this case as to fact only

by the late observations. The decision is flawed for the same reasons that the report is flawed: it manifests an approach to the making of the decision that is not in accordance with the law.

37. For these reasons I have reached the view that the first ground of challenge is made out, not on the specific basis that the Council ought to have considered each plot separately, but on the general basis that it ought to have ascertained and evaluated the relevant facts in relation to children. In these circumstances it is impossible to say what the decision would have been if the error of law had not occurred, because the facts remain unclear and the evaluation has not been made. The claimant succeeds on the first ground.

38. I do not therefore need to deal with the other grounds of challenge, but in the circumstances I will briefly give my views. I do not find in the policies to which I was referred any inhibition on a second grant of temporary permission: the factors to be considered are the same on each occasion, that is to say whether there is reason to think that there will be a material change of circumstances at the end of the period specified (Welsh Government Circulars 16/2014, para 5.26 and 30/2007, paras 13-14); a previous grant of temporary permission is not to be regarded as a precedent, but it does not follow that the previous grant is to be regarded as something that should not be repeated. So far as concerns the needs assessment and the duty to provide sites, it seems to me that the claimant's grounds simply get nowhere. As the witness statement of Ms Hancock makes clear, the underoccupancy of a site does not mean that it is available for other gypsies. A moment's reflection confirms that. Where the permission is the result of an individual's application in respect of land he or she owns or occupies, there is no reason to treat the resulting site as available to anyone, and good reasons not to do so. Only sites available to gypsies generally (or sites where it is known that the applicants would be allowed) can count in the calculations of other available accommodation. And it is clear also, for the reasons given in the written reply to the grounds of challenge, that the claim that the Council is inconsistent in its position on whether the local plan process will in due course meet the needs of gypsies rests on a misunderstanding of what was said (and evidently meant). Whatever be the position in relation to the needs assessment, the position is that at the present time there is an unmet need. That fact was what had to be taken into consideration: it might have been of weight in deciding whether to grant permission; and the prospects of sorting the position out within five years was a factor to be taken into account in determining the length of time for which permission should be granted.

39. The ground based on 'consistency in decision-making' is not entirely easy to understand but is based on an interpretation of what was said during the course of discussion at the meeting. For the reasons given above I do not consider that there is anything properly to be drawn to the claimant's aid from poring over the transcript of the meeting. The decision that was taken was in accordance with the report and nothing said at the meeting enables the claimant to show that any irrelevant factor not contained in the report was taken into account in reaching the decision.

DECISION

40. The claimant succeeds on his first ground of challenge only. The decision under challenge will be quashed.