



Neutral Citation Number: [2018] EWHC 2605 (Admin)

Case No: CO/870/2018

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

The Priory Courts 33 Bull Street Birmingham B4 6DS

Date: 08/10/2018

Before :

MR JUSTICE SOOLE

Between :

THE QUEEN
ON THE APPLICATION OF MARDEN PARISH
COUNCIL

Claimant

- and -

HEREFORDSHIRE COUNCIL

Defendant

-and-

MR HARRY SMITH

Interested
Party

Mr Hashi Mohamed (instructed by **Marden Parish Clerk**) for the **Claimant**
Mr Timothy Jones (instructed by **Herefordshire Legal Services Department**) for the
Defendant

Hearing dates: 17, 31 July 2018

Judgment Approved by the court
for handing down

Mr Justice Soole :

1. By this application for judicial review the claimant Parish Council (Marden) challenges the grant of planning permission to Mr Harry Smith by the defendant Council (Herefordshire) pursuant to the decision of its Planning and Regulatory Committee (the Planning Committee) on 17 January 2018 made pursuant to Mr Smith's application dated 6 July 2017. Permission to apply for judicial review was granted by Garnham J on 10 April 2018.
2. The grant of planning permission related to a site known as Ashgrove Croft, Marden, Hereford (the Site) which comprises approximately 0.4 hectares of agricultural land located on the north side of an unclassified road which leads to the hamlet known as The Vault, approximately 1.5 kms to the south-west of the village of Bodenham.
3. The grant describes the proposed and permitted development as *'two additional mobile homes, two touring caravans and the construction of a day room, associated hardstanding drainage and re-aligned access track.'* The mobile homes and touring caravans are otherwise referred to as 'static caravans'/'statics' and 'tourers'.
4. The permission is subject to conditions, which include that the caravans and dayroom *'...shall not be occupied or used by any persons other than gypsies and travellers as defined in Annex 1 of Planning Policy for Traveller Sites (August 2015)(PPTS) or any other subsequently amended definition'*; conditions in respect of the proposed occupation of one static by Mr Smith's mother-in-law (Mrs Ricker), a dependent relative; and for further development (save site clearance and groundwork) not to commence until the submission and approval of a revised landscape design.
5. The primary grounds of challenge are that members of the Planning Committee were misled by the Planning Officer (the Officer) as to the interpretation of the PPTS (Ground 1) and as to the effect of planning permission granted in 2005 and varied in 2006 (Ground 2). In addition there are challenges relating to the

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plan submitted with the application (Ground 3) and as to the investigation of the gypsy/traveller status of other family members intended to occupy the site, in particular Mr Smith's son (Mr Hamby Smith) and Mrs Ricker (Ground 4). For all these purposes it is necessary to consider the planning history of the Site from 2005 in some detail.

2005 permission

6. By decision dated 16 November 2005, granted on the application of Mr Ronald Jones of Ashgrove Croft, permission was granted for the proposed development, described as *'Change of use from agricultural to a one family gypsy caravan site, permission for 2 caravans and stable block'*. This was subject to conditions which included that the permission was personal to Mr and Mrs Jones. Thus by condition 2 *'This permission shall enure for the benefit of Mr Ronald Jones and Mrs Dorothy Jones only and not for the benefit of the land or any other persons interested in the land'*. This condition reflects the exception in s.75(1) Town and Country Planning Act 1990 (TCPA) whereby *'... any grant of planning permission to develop land shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested in it'*.
7. By condition 4 the permission related *'to the siting of one static caravan and one touring caravan only. No other units of accommodation shall be brought onto, or occupied, on the site'*. As with condition 2, the cited reason for this condition was that *'The nature of the development is such that it is only considered acceptable in this location having regard to the applicant's special circumstances.'*
8. Informative no.5 recorded that the decision to grant permission had been taken having regard to all the policies and proposals in the South Herefordshire District Local Plan, which included 'SH25 - Gypsy Caravan Sites', and to all relevant material considerations including Supplementary Planning Guidance.

9. In the Officer's appraisal which had recommended the grant of permission, it was noted that the application site was located in an area of open countryside, outside of any identified settlement boundary, in either the adopted Local Plan or the emerging Unitary Development Plan, where residential development will not normally be permitted unless exceptional circumstances can be demonstrated. The appraisal then considered policy SH 25 which made specific provision for gypsy caravan sites where there was an identifiable need and the proposal was otherwise in accordance with relevant policies. There had been independent confirmation that Mr and Mrs Jones were of a traveller background; and it was considered that the application could legitimately be considered against the provisions of the policy.

The 2006 permission

10. By application dated 9 February 2006, Mr Harry Smith sought variation of condition 2 *'from Mr and Mrs R. Jones to Mr and Mrs H. Smith or to another travelling family.'* By decision dated 5 April 2006 the application was granted to the extent of substituting a condition that the permission enured *'for the benefit of Mr Harry Smith and Mrs Shirley Smith only and not for the benefit of the land or any other person interested in the land'*. Thus an extension to include *'or another travelling family'* was not repeated.
11. The condition which limited permission to the siting of one mobile home and one touring caravan only was repeated. In each case the stated reason replicated the language of the 2005 permission, namely that the development was only considered acceptable in the location having regard to the applicant's special circumstances.
12. Another condition required that a layout plan for the resiting of the mobile home (i.e. static), touring caravan and associated structures to the eastern side of the Site be submitted to and approved by Herefordshire within two months of the date of permission.
13. By Informative 4, the decision had been taken having regard to the policies and proposals in the District Local Plan, on this occasion identified only as SH-25 Gypsy Caravan Sites.
14. In the Officer's appraisal for this 2006 application it had been stated that *'The primary consideration in determining this application is whether or not the applicants are members of the Traveller/Gypsy community, whereby [they] may claim the exceptional circumstances to occupy the site in accordance with the general principles of Policy SH 25 against which the original permission was determined and subsequently approved.'* The appraisal referred to evidence which confirmed the status of the family as members of the traveller/gypsy community and concluded that Mr and Mrs Smith *'satisfactorily meet the exceptional criterion, which is required to occupy the property in accordance with the spirit of the original planning permission, and as such approval of the variation of condition 2 is recommended'*. This was subject to reimposition of all the other conditions *'to avoid any doubt as to the exact nature of the approved development'*.

The 2017 application

15. By the subject application dated 6 July 2017 Mr Harry Smith applied for permission for the siting of two additional mobile homes, two touring caravans and the construction of a day room with associated hardstanding drainage and re-aligned access track. The application was supported by a plan of the Site, which included the proposed location of the static and touring caravans and day room. The plan showed the proposed new statics with a smaller size than the existing static. It is evidently not a professional drawing, but states that it is drawn to a scale of 1:500 and shows the direction of North.

The first Report

16. The Officer's first Report for this application is dated 6 December 2017 (the first Report). Although it was withdrawn and replaced by another Report dated 17 January 2018 (the second Report), Marden relies on this first Report as evidence of Herefordshire's erroneous approach to the application.
17. By para. 6.1 the first Report in particular recorded that the planning permissions of 2005 and 2006 did not impose a condition to restrict occupation to gypsies or travellers; that the 2006 permission had imposed the condition for submission/approval of layout plans for resiting within two months; that there had been no such submission nor resiting; and that no enforcement action had commenced. It concluded that '*...as a consequence, by virtue of section 171B(3) of the Town and Country Planning Act 1990 (as amended), the use of the land as it has been operating as a one family gypsy site is now lawful, as 10 years has elapsed since the breach.*' ; see also para.6.20 ('*... This is an application for additional caravans and not a new gypsy site.*') and the Conclusion section which describes it as '*an existing lawful private gypsy site*' (para.6.44).
18. Objections to the application included a challenge to this reasoning and conclusion in para. 6.1 of the first Report. It was submitted that the reasoning was a misapplication of the 'Whitley principle' (Whitley & Sons Ltd v. Secretary of State for Wales & ors (1992) 64 P & CR 296) which applied only to breach of pre-commencement conditions; and that this error vitiated the conclusion. The first Report was withdrawn. On behalf of Marden, Mr Hashi Mohamed submitted that the errors in the first Report contaminated the second Report, which merely provided a new rationalisation in support of the same erroneous conclusion.

The second Report (17 January 2018)

(i) Lawful gypsy site

19. By the new para.6.1 the Officer's appraisal first noted that '*Planning permission was originally granted, retrospectively, to Mr Jones for the change of use from agricultural*

land to a one family gypsy caravan site... This was subject to a condition (no.2) that stated it was for the benefit of Mr Jones and his wife. The reason given for the imposition of this condition was that the development was acceptable having regard to the applicant's special circumstances.' The 2006 variation of condition 2 had then changed the 'personal restriction' from Mr and Mrs Jones to Mr and Mrs Smith.

20. Para. 6.1 continued *'Although the proposal description was for the change of use from agricultural land to a one family gypsy site neither the original planning permission ... nor the subsequent amendment ... imposed a condition that restricted the site or caravans' occupation to gypsies or travellers. The restriction imposed on occupancy of the site related to the permissions being for the applicants only, with the reason for this being their 'special circumstances'. On the basis of the Officer's Reports for the previous permissions it is considered that these 'special circumstances' were solely the applicants' gypsy status, as no additional 'special circumstances' beyond the status were proffered'.*

It is not suggested that there is any error in this sub-paragraph.

21. By paragraph 6.2 it continued : *'As established in case law where planning permission is granted for a certain use, any limitation on the way that use is exercised must be imposed by express condition, not just in the description of the development (I'm Your Man Ltd v. Secretary of State for the Environment, Transport and the Regions [1999] 77 P & CR 251). However, even where there is an absence of conditions clarifying the limitations of the use, the permission does give consent for the use as stated in the proposal description, which is included on the decision notice. As clarified in more recent case law (Winchester City Council v. Secretary of State for Communities and Local Government and others[2015] EWCA Civ 563) the 'I'm Your Man' principles are concerned with restrictions on the manner in which the same use is exercised, not a change of use. In the Winchester case the Court of Appeal established that there is a clear difference between (1) a case involving a restriction on the extent of use and (2) a case where the restriction relates to the way the use is exercised. The Court of Appeal held that the appropriate approach is to ask: 1) what use has been granted by the permission, by interpreting the permission's wording; and then (2) whether the use being carried out is within this permitted use. **In the case of the application site, permission was granted for the change of use from agricultural land to a one family gypsy site and the proposal also falls within this use. On this basis it is reasonable to conclude that the use of the site is for a one family gypsy site for the area of land outlined in red on the original application, which is the same extent of land subject to this application. The extant permission is subject to a restriction that the change of use is for the applicant's benefit and limits the number of caravans to 2 (one static and one touring caravan)**' (emphasis supplied).*

22. The reference to a lawful gypsy site was then repeated elsewhere in the Report, e.g. paras. 6.8 (*'Permission is sought for additional caravans on a lawful private gypsy site'*) and 6.13, 6.21, 6.33, 6.35, 6.40, 6.44. The Conclusion section included

(para.6.45) the statement that *'In terms of the overriding principle of the NPPF¹, to achieve sustainable development, it is considered that the proposal would provide social benefits through the increased number of pitches on an existing lawful private gypsy site, which due to its size relative to the local settled community would enable and promote the facilitation of social interaction and creation of a healthy inclusive community.'*

(ii) PPTS

23. Policy H of the PPTS is headed 'Determining planning applications for traveller sites'. Paragraph 22 sets out the statutory requirement that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise : s.38(6) Planning and Compulsory Purchase Act 2004; s.70(2) TCPA.
24. Paragraph 24 sets out a non-exhaustive list of relevant matters for local planning authorities to consider in respect of such applications. These include the existing level of local provision and need for sites; the availability (or lack) of alternative accommodation for applicants; and other personal circumstances of the applicant.
25. Paragraph 25 provides: *'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.'* These terms are set out in para. 6.18 of the second Report.
26. Mr Mohamed contended that the Report treated the paragraph 25 restriction as limited to applications to develop a new traveller site, i.e. where none had been before; thus as not applicable to the further development of existing traveller sites, nor therefore to the subject application by Mr Smith.
27. He pointed in particular to para. 6.21 which states *'... This is an application for additional caravans [etc]... and is not for a new gypsy site as set out in paragraphs 6.1 and 6.2. The planning permissions in 2005 and 2006 granted a change of use of land to a one family gypsy site, as per their proposal descriptions. The absence of conditions limiting the occupation of the site to those that meet the definition of a gypsy (or traveller) only affects the way the permissions are exercised and not the extent of the use that has been granted. This application does not seek a change of use, but rather permission is sought for additional caravans,[etc]... which together amount to development requiring planning permission.'* (emphasis supplied). He submitted that the statement that it is *'not a new gypsy site'* could only be construed as a reference back to PPTS paragraph 25; and thus to imply that its restrictions had no application.

¹ National Planning Policy Framework

28. Paragraph 6.26 of the Report then states that it is accepted that the site is not adjacent to a settlement, but is 740 m from The Vault. It concludes with further reference to PPTS paragraph 25 : *'Furthermore, PPTS advised at paragraph 25 that new traveller sites should be very ('very' was added in the revised August 2015 version) strictly limited in open countryside that is away from existing settlements or outside of allocated area in the Development Plan'*.
29. The first sentence of the following paragraph (6.27) states that *'Although there is no requirement to demonstrate need, it should be noted that providing an additional static caravan and provision for the siting of a touring caravan for Hamby Smith, on an established site without expansion of its area accommodates another gypsy family without the need for an additional site, which in planning policy might otherwise be steered to a site closer or adjacent to a settlement.'* Mr Mohamed pointed to the words *'on an established site'*, again submitting that the inference is that PPTS paragraph 25 was not considered to have any application. The conclusions in paras 6.45-6.50 make no further reference to that paragraph.
30. Under the heading 'Status of intended occupiers of the proposed caravans', the Report concludes that Mr Hamby Smith *'...meets the more stringent definition of a gypsy and traveller under the revised PPTS...'*; that Mrs Ricker having ceased to travel permanently did not satisfy that definition but was a dependent relative; and concluded that the provision of two additional static caravans for him, his wife and dependent children was acceptable, subject to a condition requiring removal of a static if Mrs Ricker should cease to live on site : paras.6.22-6.29.
31. Under the heading 'Landscape', the Report stated that *'On landscape criteria alone there is a modest degree of harm'* (para.6.39).
32. The second Report's record of Marden's objections includes its specific references to (i) condition 2 of the 2005/2006 permissions and (ii) PPTS paragraph 25. As to condition 2, Marden had stated : *'19. The site was previously granted permission in 2005... as a personal permission for one static and one touring caravan...20. A further application was granted in 2006... with the same usage clause as in the previous ownership, that the benefit was for Mr Harry Smith and Mrs Shirley Smith only and not for the benefit of the land or any other person interested in the land.'* As to paragraph 25, the objection referred to its full terms and stated that the Site was outside the settlement boundary of The Vault.

Planning Committee meeting 17 January 2018

33. Following discussion of the application, the Planning Committee's vote was five in favour and five against, with three abstentions. The motion to approve was passed by the casting vote of the chairman.
34. In support of the contention that the Report had been misleading, Marden supplied a witness statement from its clerk, Ms Alison Sutton, who was present at the Planning Committee meeting and in that capacity made a speech in objection. She states that the

Officer sought to overcome any conflict with the Marden Neighbourhood Development Plan (NDP), the PPTS and the District

Council's core strategy by arguing that the site already had a lawful use as a one family gypsy site and that the principle of the development was thus already established. This was what some members of the planning committee had understood. She had refreshed her memory by listening to a recording of the meeting, made by members of the public. She cited the proposer of the motion to approve the application (Councillor Felicity Norman) as stating *'From what I understand, this is a lawful site. This is what I have understood. What we are looking at is some development of the site, some expansion of the site, not whether the site should be there or not. A lot of the argument against seems to be specifically about whether it should be there or not.'*

35. Councillor Elissa Swinglehurst asked for an interpretation of the 2005/2006 personal permissions and whether these had created a lawful use as a private gypsy site. She said *'What I am trying to get clear in my head is what seems to me to be crucial to this decision is the status of the land. It is very clear that the permission was granted to the individual and not granted on the land and so how did it become the land that is the beneficiary?'*
36. During the debate some members of the Planning Committee had felt they did not have enough information to make the decision. One councillor (Edwards) said that he was a member of the committee that approved the 2005 application for permission and stated that *'the emphasis [was] on the particular need of the applicants'*. He stated that he did not want know which way to vote *'because of the conflicting advice in the officer report'*. Councillor Anthony Powers spoke in some detail about his uncertainty stating *'Clearly this is a complex tangle of issues'* and referring to *'pieces of case law which have been cited in defence of both sides of the arguments'*.
37. The Officer responded to Councillor Swinglehurst's question at the end of the debate and before the vote was taken. She advised : *'With regards to the original planning permission which feeds into questions about the status of the site, in 2005 the proposed description which planning permission was granted for change of use from agricultural to a one family gypsy caravan site. What is established is that the proposal description confirms the development that has been granted and the extent of that, how that is then exercised is then limited by any conditions that are attached to the planning permission. So officers would advise the legal status of the site is a one family gypsy site subject to conditions regarding occupation and the number of caravans. The committee report and the delegated report for the two previous decisions do refer to the applicants' gypsy status. The committee report in 2005 and the delegated report in 2006 identify those as the exceptional circumstances that enabled both permissions to be granted'*. She continued *'With regards to Councillor Swindlehurst's question with regards to the status of the land we have already covered that with regard to the 2005 and 2006 permissions'*. The Council's planning solicitor was present but did not speak.

Ground 1 - Members misled by the misinterpretation of the PPTS **Ground 2 - Members misled by the misconstruing of the 2005 original planning permission and the 2006 variation application, as having created a lawful use for one family gypsy site**

38. As Mr Mohamed acknowledged, these two grounds are substantially interwoven.
39. There was no dispute as to the relevant law on challenges based on criticisms of an Officer's report. Thus Hickinbottom J (as he then was) summarised the relevant legal principles in R (Zurich Assurance) v. North Lincolnshire Council [2012] EWHC 3708 (Admin) at [15] :
- '(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 on 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)' See also R (Luton BC v. Central Bedfordshire Council [2014] EWHC 4325 (Admin) at [90-95] where Holgate J cited this passage and other authorities to like effect.*
40. There was likewise no controversy as to the distinction between a grant and its conditions. Thus : *'... The grant identifies what can be done – what is permitted – so far as use of land is concerned; whereas conditions identify what cannot be done – what is forbidden. Simply because something is expressly permitted in the grant does not mean that everything else is prohibited. Unless what is proposed is a material change of use – for which planning permission is required, because such a change is caught in the definition of development – generally, the only things which are effectively prohibited by a grant of planning permission are those things that are the subject of a condition, a breach of condition being an enforceable breach of planning control' : Winchester City Council v. Secretary of State for Communities and Local Government [2015]*

EWCA Civ 563 per Sullivan LJ 's at [22], citing Cotswold Grange Country Park LLP v. Secretary of State for Communities and Local Government [2014] EWHC 1138 (Admin) per Hickinbottom J at [15].

41. On a broader basis, Mr Mohamed also relied on the observations of Lord Millett in the housing case of Runa Begum v Tower Hamlets LBC [2003] 2 AC 430 :
*'A decision may be quashed if it is based on a finding of fact or inference from the facts which is perverse or irrational; or there was no evidence to support it; or it was made by reference to irrelevant factors or without regard to relevant factors. **It is not necessary to identify a specific error of law; if the decision cannot be supported the court will infer that the decision-making authority misunderstood or overlooked relevant evidence or misdirected itself in law.** The court cannot substitute its own findings of fact for those of the decisionmaking authority if there was evidence to support themselves and questions as to the weight to be given to a particular piece of evidence and the credibility of witnesses are for the decision-making authority and not the court. But these are the only significant limitations on the court's jurisdiction, and they are not very different from the limitations which practical considerations impose on an appellate court with full jurisdiction to entertain appeals on fact or law but which deals with them on the papers only and without hearing oral evidence.'* :
[99, emphasis supplied].
42. It is convenient to consider Grounds 1 and 2 in reverse order.
43. As to Ground 2, Mr Mohamed's central submission was that the Officer's Report (and in consequence the Planning Committee) failed to appreciate the significance of the fact that the 2005/6 permissions were in each case subject to the condition that they were for the personal benefit of the applicant and his wife alone. The significance of that condition was that the permission did not 'run with the land', but was a temporary and personal permission which would expire on the death of the beneficiary. By contrast, the Report treated the permission as permanent and (in effect) as if it did enure for the benefit of the land. Put another way, the personal and temporary nature of the permission was a material consideration which had not been taken into account.
44. This erroneous approach permeated the Report : see in particular the repeated statements that the use of the site was for a one family gypsy site (see the penultimate sentence of para.6.2 and e.g., paras.6.8, 6.13, 6.21, 6.33, 6.35, 6.44 and 6.45); and the reference to it as an 'established site' (para.6.27). The impression was thus given to the Planning Committee that there was a permanent change of use and an established gypsy site.
45. That the Planning Committee did not appreciate the true position was apparent from the cited observations of its members and was compounded by the failure of the Officer to make the position clear, in particular when answering the question posed by Councillor Swinglehurst. In consequence of that misunderstanding, the Committee proceeded on the wrong basis.
46. As already noted, Mr Mohamed submitted that the error in the reasoning of the first Report was also relevant to the Officer's approach to the matter. That first Report

having been withdrawn, the second Report had supplied a fresh rationalisation for the erroneous conclusion in the first. Although no part of the claim and written grounds, in oral argument Mr Mohamed also submitted that the authorities cited in para. 6.2 of the second Report provided no basis for the conclusion in its penultimate sentence.

47. As to Ground 1, Mr Mohamed submitted that the correct interpretation of paragraph 25 of the PPTS and its critical phrase *'very strictly limit new traveller site development in open countryside that is away from existing settlements'* extended to development of existing traveller sites as well as to development of completely new sites. Counsel for Herefordshire, Mr Timothy Jones, made clear that this interpretation was not in dispute. I accept the correctness of that agreed position between the parties.
48. Mr Mohamed then submitted that the Report incorrectly interpreted paragraph 25 as if it applied only to the development of a new traveller site. This was apparent from the combination of the repeated statements that the Site was a lawful gypsy site; the statement in para. 6.21 that it was 'not a new gypsy site'; and the reference to 'established site' in para.6.27. Set against the references to PPTS paragraph 25 in paras.6.18 and 6.26 of the Report, the implication was that this proposed development fell outside its ambit and thus its planning restraint.
49. In consequence the restriction imposed by paragraph 25 was treated as inapplicable. This was the necessary inference from the Report and the evidence of the discussion at the Planning Committee meeting. Permission was then granted for a significant level of operational development which would permanently change the landscape. If paragraph 25 had been applied, a proper assessment on the impact of the countryside would have been undertaken. This might have resulted in a different decision on the application.
50. Thus, taking Grounds 1 and 2 together, the Planning Committee had been led to proceed on the basis of two false and interrelated assumptions. First, that there was a permanent and established user as a gypsy/traveller site. Secondly, that paragraph 25 of the PPTS had no application.

Conclusions on Grounds 1 and 2

51. For the reasons advanced by Mr Jones, I do not agree with either basis of challenge. As to Ground 2, I do not accept that the Officer misconstrued either the original 2005 planning permission or the 2006 variation; nor that the Planning Committee, via the Officer's Report or otherwise, was in any way misled as to the true position.
52. The grant of planning permission in 2005 was for development (TCPA s.55) which comprised : (i) material change of use from agricultural to a one family gypsy caravan

site, with permission for two caravans and (ii) operational development for a stable block and for other matters dealt with by conditions.

53. The grant was subject to conditions which included that the permission was for the personal benefit of Mr and Mrs Jones only *'and not for the benefit of the land or any other persons interested in the land'* (condition 2). The 2006 planning permission was a variation of condition 2, substituting Mr and Mrs Smith as the personal beneficiaries of the planning permission, but leaving the lawful and permitted use unchanged.
54. I do not accept that it is correct in law or otherwise the practice to describe this as a 'temporary' permission. TPCA s.72(1)(b) and (2) defines *'planning permission granted for a limited period'* as planning permission subject to a condition *'for requiring the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised, at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the end of that period.'* The 2005/6 permissions did not fall within that definition. The true position was that there was a lawful use as a gypsy site with two caravans, subject to conditions which included that of personal benefit to Mr and Mrs Smith alone.
55. In any event, the second Report incorporated Marden's objections which had included specific reference both to the 'usage clause' and to the condition of personal benefit only (para.5.1, sub-para.19 and 20). The Officer's appraisal in turn correctly identified the change of use which had been granted in 2005; made clear and explicit reference to the condition that it was for the personal benefit of Mr and Mrs Jones; and noted the 2006 variation which changed that *'personal restriction'* to Mr and Mrs Smith : see para.6.1.
56. As to para.6.2, I see no error in the Officer's statement that *'... the use of the site is for a one family gypsy site for the area of land outlined in red on the original application, which is the same extent of land subject to this application. The extant permission is subject to a restriction that the change of use is for the applicant's benefit and limits the number of caravans to two (one static and one touring caravan).'* On the contrary it correctly identifies the lawful use and the particular condition as to personal benefit.
57. It is unnecessary to review the decisions in I'm Your Man and Winchester, cited in para.6.2. What matters is whether the Report, including this sub-paragraph, correctly identified the lawful use and the condition as to personal benefit. It did so. There is likewise no basis to challenge the continuing references in the Report to a 'lawful private gypsy site'. That was the lawful use, as specified in the extant planning permission.
58. I do not accept that the claim is given any assistance by the terms of the first Report. That was withdrawn and replaced. It thus formed no part of the presentation to the Planning Committee nor therefore the decision to grant the application. There is of course no suggestion that the Officer acted otherwise than in good faith.
59. As to the discussion at the Planning Committee meeting, I see nothing to support the contention that the Committee was misled as to the true position. In particular the Officer correctly identified the lawful use and the condition of personal benefit. The

Officer's Report and subsequent comments contained nothing which was wrong or misleading; and there is nothing in the cited discussion to suggest that the Committee were misled. The contrary argument is unsupported by the evidence and at odds with the principles set out in North Lincolnshire and like authorities.

60. As to Ground 1, I also accept Mr Jones' submissions that there is no basis for the contention that the Officer misinterpreted PPTS paragraph 25 or that the Committee was in any way misled.
61. A fair reading of the Report provides no support for the proposition that the Officer interpreted paragraph 25 on the basis that it did not apply to applications relating to an existing gypsy/traveller site. On the contrary, the Report set out the terms of paragraph 25 within Marden's objections (para.9, citing paras.2226) and in the Officer's appraisal (para.6.18) and referred to it again in para. 6.26. The Report said nothing, whether expressly or by implication, which could amount to a representation that paragraph 25 was inapplicable. In particular I do not accept that any such implication arises from the statement in para.6.21 that the application '*is not for a new gypsy site*'; from the reference in para.6.27 to '*an established site*'; nor from the absence of an express statement that the application fell within the ambit of paragraph 25. On the contrary, the references to that paragraph demonstrated that it was a provision of direct application. I see nothing in the evidence of the Planning Committee meeting to suggest that they were led to believe that the subject application fell outside its ambit.

Ground 3 - Failure to properly consider the implications of inaccurate plans

62. Article 7 of the Town and Country Planning (Development Management Procedure) Order 2015, under the heading '*General requirements: applications for planning permission including outline planning permission*' provides as material that (1) ... *an application for planning permission must - ... (c) ... be accompanied, whether electronically or otherwise, by - (i) a plan which identifies the land to which the application relates; (ii) any other plans, drawings and information necessary to describe the development which is the subject of the application; ... (2) Any plans or drawings required to be provided by paragraph (1)(c)(i) or (ii) must be drawn to an identified scale and, in the case of plans, must show the direction of North.*'
63. By s.327A of the TCPA :

'Applications: compliance with requirements

- (1) *This section applies to any application in respect of which this Act or any provision made under it imposes a requirement as to - (a) the form or manner in which the application must be made;*
(b) the form or content of any document or other matter which accompanies the application
- (2) *The local planning authority must not entertain such an application if it fails to comply with the requirement.'*

64. Marden contends that the plan submitted in support of the application fails to comply with the requirement of Article 7(2) that it must be drawn to an identified scale. Whilst the words ‘scale 1:500’ had at some point been written by the applicant on the plan, it was an amateur document which was not drawn to scale or accurate. In consequence the application should not have been entertained : s.327A(2). This was a statutory requirement, not a matter of planning judgment.
65. One of the objections to the application was supported by a document containing an aerial photograph of the Site, on which was superimposed a rectangular depiction of each of the proposed two new statics. These were drawn in the same size as the existing static on the Site, rather than the smaller size of the proposed new statics on the applicant’s plan. The document set the image alongside a copy of the submitted plan. As drawn, this showed that the proposed development (and in particular the new statics) would not fit within that part of the Site which the applicant’s plan allocated for that purpose.
66. In the Statement of Facts and Grounds it was also submitted that the implication was that the proposal with its additional units would extend beyond the Site boundary; and thus cause more harm to the open countryside and take up more grade 2 agricultural land. This further demonstrated the absence of a proper assessment and the failure to take account of PPTS paragraph 25.
67. Mr Mohamed contrasted the application plan with the requirement which Herefordshire had imposed in respect of landscaping works. The Consultation Response dated 16 November 2017 from its Senior Landscape Officer had required that when amending his latest landscape proposal Mr Smith should provide an appropriately coloured landscape plan at scale; and for that purpose recommended three local chartered Landscape Architects who could provide an *‘appropriate and professional Landscape Plan.’* This had been followed in condition 9 of the planning permission which required that, with exceptions for site clearance and groundwork, *‘...no further development shall commence on site until a revised landscape design has been submitted to and approved in writing by the Local Planning Authority.’* This demonstrated the type of professional and accurate plan that was required by Article 7(2).

Conclusion on Ground 3

68. I again prefer Mr Jones’ submissions to the contrary. I do not accept that the plan submitted by the applicant failed to satisfy the requirement of Article 7(2) that it be *‘drawn to an identified scale’*. The scale of 1:500 is marked on the plan and there is no evidence to show that it is not drawn to that scale. I do not accept that it matters that the plan is not a professionally drawn document; and accept that it is commonplace for plans in respect of small family gypsy sites to be in such a format. I also accept that nothing turns on the request or condition in respect of landscaping. That was required for a specific purpose and has no bearing on the adequacy of the plan submitted with the application.

69. In any event, in my judgment the real basis of the challenge is not to the scale of the plan or to its accuracy, but to the size of the static caravans identified by the applicant on the plan and to the subsequent planning judgment. The rival illustration does not reflect the application which has been made. The applicant's plan shows a smaller size of static caravan. There is no evidential basis for the challenge to the size identified by the applicant; let alone for the suggestion that the resulting development might go beyond the boundary of the Site. The acceptance of the applicant's plan is no reflection on the quality of the assessment; nor is there any reason to conclude that the presentation of plan in a different form might have led to a different decision.

Ground 4 - Failure to properly investigate and ascertain the applicant and family's travellers status for the purpose of the PPTS.

70. By the Glossary to the PPTS, 'gypsies and travellers' for the purpose of this planning policy means '*Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling show people or circus people travelling together as such.*' Furthermore '*In determining whether persons are "gypsies and travellers" for the purposes of this planning policy, consideration should be given to the following issues amongst other relevant matters : a) whether they previously led a nomadic habit of life b) the reasons for ceasing their nomadic habit of life c) whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances.*'
71. There is no challenge to the status of Mr and Mrs Smith. However Marden contends there had been an inadequate assessment of the status of Mr Hamby Smith and Mrs Ricker.
72. The assessment and Report had in particular failed to have regard to the statement of an anonymous objector which included information that Mr Hamby Smith had a static unit at a gypsy caravan site in Whitchurch, Shropshire and as to Mrs Ricker's state of health and care needs. If this had been followed up, it might have been concluded that Mr Hamby Smith did not satisfy the PPTS definition and/or that Mrs Ricker's care needs could not be met by her daughter. The Report did not even identify Mrs Ricker, its recommendation of a condition in respect of her occupation referring to '*The applicant's mother-in-law (name to be inserted)....*'
73. Disavowing any challenge on a Wednesbury basis, Mr Mohamed submitted that the Report failed to have regard to a material consideration, namely whether these individuals satisfied the definition of gypsies and travellers within the meaning of the PPTS.

Conclusion on Ground 4

74. For the reasons advanced by Mr Jones, I see nothing in this further point. Herefordshire's assessment was made on the basis of what it described as the 'more stringent' (para.6.22) definition of gypsies and travellers in the August 2015 PPTS. As the observations from the Manager of Social Inclusion and Equalities stated (para.4.7), Herefordshire Traveller Education Service had known Mr and Mrs Smith and their children for decades. In a lengthy section (paras.6.21-6.28) the Report carefully considered the information as to the status and circumstances of the intended occupiers, including those of Mr Hamby Smith his wife and children and Mr Smith's mother-in-law. The statement from an anonymous objector was reported to the Committee : see the Supplement to the agenda for the meeting. I see no basis to conclude that further investigation should have been taken nor that this might have resulted in a different conclusion. There was no failure to take account of the material consideration as to the status and circumstances of these family members, nor any basis to challenge the judgment which was reached.

Conclusion

75. Returning to Mr Mohamed's broader submission based on the observations of Lord Millett in Runa Begum, I do not accept that the decision of the Planning Committee provides any basis for an inference that they were misled or that they were otherwise operating under a mistaken understanding of the relevant law, policies or evidence. On the contrary, the Report and the subsequent decision reflected a planning judgment which was considered on the correct basis and with which there is no basis to interfere.
76. For all these reasons my conclusion is that all grounds of this claim must be dismissed.