The Queen on the Application of Chelmsford Borough Council v The First Secretary of State, Draper

Positive/Neutral Judicial Consideration

Court
Queen's Bench Division (Administrative Court)

Judgment Date
25 November 2003

CO/3497/2003

High Court of Justice Queen's Bench Division The Administrative Court

Neutral Citation Number: [2003] EWHC 2978 (Admin), 2003 WL 22827101

Before: Mr Justice Sullivan

Tuesday, 25 November 2003

Representation

Mr R Green (instructed by Solicitor to Chelmsford Borough Council) appeared on behalf of the Claimant.
Mr J Litton (instructed by Treasury Solicitor) appeared on behalf of the Defendant.

JUDGMENT

MR JUSTICE SULLIVAN:

1..

Introduction

2.. This is an application under section 288 of the Town and Country Planning Act 1990 ("the Act"), to quash a decision of the first defendant to allow the second defendant's appeal and to grant planning permission, subject to conditions, for the retention of the use of land at Hillview, Meadow Lane, Runwell, Wickford, Essex ("the site"), for the stationing of caravans. The second defendant, Mrs Draper, and her husband are gypsies. They moved onto the site in June 2001, travelled away in August to various destinations and then returned to the site in January 2002. They have been living at the site since that time.

3.. In May 2002, Mrs Draper applied for planning permission for a change of use from storage to residential, stationing of one mobile home and up to five touring caravans and replacement of house by utility room.

4.. The site is in the Green Belt. The claimant Local Planning Authority refused planning permission. The second defendant appealed to the Secretary of State who appointed an inspector to conduct a hearing and report to him. The inspector held the hearing on 12 March 2003, and in his report to the first defendant dated 9 April, he recommended that planning permission should be granted, subject to a number of conditions. In a decision letter dated 18 June 2003, the first defendant accepted the inspector's recommendation, allowed the second defendant's appeal and granted conditional planning permission. That decision is the subject of this application.

The decision letter

5.. Having dealt with certain procedural matters, the Secretary of State said that, for the reasons given in the decision letter, he agreed with the inspector's recommendation. Although the Secretary of State indicated (by cross-references to the paragraph

numbers in the inspector's report) where he agreed with (most of) the inspector's conclusions, the decision letter sets out the Secretary of State's own reasoning. It does not simply adopt all of the inspector's reasoning and conclusions.

6.. In paragraph 5, the Secretary of State identified the material policies in the development plan and said that other material considerations included the Government's Planning Policy Guidance Note 2: Green Belts (PPG2).

7.. Before turning to the main considerations identified by the Secretary of State, it is helpful to set out paragraphs 3.1 and 3.2 of PPG2 which was issued in 1995:

> "3.1 The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved, except in very special circumstances: see paragraphs 3.4, 3.8, 3.11 and 3.12 below as to development which is inappropriate.
>
> "3.2 Inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any planning application or appeal concerning such development.

8.. Against this policy background, the Secretary of State identified the following main issues in paragraph 6 of the decision letter:

> "Whether the proposal is inappropriate development in the Green Belt.
>
> The impact of the proposal on the Green Belt.
>
> Whether there are very special circumstances that would justify allowing inappropriate development."

9.. On the first of those issues, the Secretary of State agreed with the inspector that the development was inappropriate in the Green Belt and that the site was not a brown field site. He said that he had considered "whether very special circumstances exist sufficient to outweigh the harm caused by the proposal".

10.. Under the heading, "The impact of the proposal on the Green Belt", the Secretary of State said this:

> "8. Paragraph 3.2 of PPG2 states that inappropriate development is by definition harmful to the Green Belt. However, the Secretary of State agrees with the inspector that the harm caused to the Green Belt by the proposal is limited because Meadow Lane is in a secluded location, there are limited views into the site, and the pattern of occupation is low density. He accepts the inspector's opinion that, as a result of the clearance of vegetation from the site, there are now vistas across the site and that the overall character of openness is not greatly reduced and is even increased in certain respects (paragraphs 58, 59 and 61). He agrees with the inspector's conclusion that there is scope to mitigate the damage caused by the use of a landscaping condition (paragraphs 60–61).

> "9. The Secretary of State agrees with the inspector that the presence of gypsies is a recognised feature in this locality, and acknowledges that the Local Planning Authority is taking steps to regularise the position of a number of unauthorised pitches and to create three new authorised pitches in the lower part of Meadow Lane (paragraph 63). He does not consider that the presence of other gypsies in the location, or of other unauthorised uses, is any justification for a grant of planning permission to regularise another unauthorised use, but he does consider that the extent of such activities in the location supports his conclusion as to the limited nature of harm caused to the Green Belt in this location by this proposal (paragraphs 59 and 63).
>
> "10. In the light of these conclusions, the Secretary of State considers the harm caused to the Green Belt as a result of this proposal to be limited."

11.. Having agreed with the inspector that the second defendant and her family were gypsies, the Secretary of State dealt with their personal circumstances in paragraphs 12 and 13:

> "12. The Secretary of State agrees with the inspector that the educational needs of Mrs Draper's two school age children are a particularly significant factor (paragraph 66) and notes that they have settled well at the local primary school.
>
> "13. If planning permission were refused and enforcement proceedings were to go ahead, Mrs Draper and her family could lose their home. However Mrs Draper and her family previously occupied the pitch on an authorised gypsy site and chose to leave that pitch to move to the appeal site in the knowledge that they would be reducing the security of their living arrangements. While the children's education is a significant factor, the family left a secure pitch from which the children could also have attended school. Nevertheless, the Secretary of State still attributes considerable weight to the children's educational needs at the appeal site (paragraph 66 and 67)."

12.. The information in relation to the second defendant's family is set out in paragraph 23 of the inspector's report:

> "Mr Draper is 30 years old and Mrs Draper is 29. They have two daughters aged 7 and 6 who attend Runwell Community Primary School, which is within walking distance of the appeal site. The children are settled into school, as is made clear in a letter of support from the head teacher. Mrs Draper is expecting a third daughter in May. Both Mr and Mrs Draper have had very little formal education."

13.. Paragraphs 66 and 67 of the inspector's report referred to by the Secretary of State in paragraph 13 of the decision letter, were as follows:

> "66. The personal circumstances of the appellant and her immediate family are important material considerations in this case. In particular I place special significance on the schooling of Mrs Draper's children. She has two children of school age who have, it is reported, settled well in the local primary school which is within walking distance of Hillview.

> 67. Evaluating the weight to place on Human Rights considerations arising from a decision in this case that could result in Mrs Draper and her family losing their home, is particularly difficult in this instance. Mr and Mrs Draper were in possession of an authorised gypsy site before moving to Hillview. Their decision to occupy an unauthorised site was not because they have nowhere else to live and was made in the knowledge that they were reducing the security attached to their living arrangements. It is also not without significance that the Council's proposals for the main gypsy encampment at Meadow Lane involved the creation of three additional pitches. Notwithstanding these considerations, when applying the tests established by the *Buckley* case, I consider that the Human Rights dimension arising from Article 8 of the Convention on Human Rights is one that should be accorded significant weight."

14.. The decision letter then dealt with the adequacy of existing caravan site provision within the locality:

> "The Secretary of State agrees that there is a national and regional need for greater provision for gypsy sites. However he also agrees that the local level of gypsy site provision is extensive and increasing."

15.. Precedent is dealt with in paragraph 15:

> "The Secretary of State agrees with the inspector that although a decision in favour of the appellants would not make actions to enforce planning controls on neighbouring development easier, the general suitability of the area for gypsy occupation has been demonstrated (paragraphs 63 and 64). The nature of very special circumstances is that they are personal to the applicants in each case and do not create a precedent."

16.. The Secretary of State's overall conclusion is contained in paragraphs 16 and 17.

> "16. The proposal constitutes inappropriate development in the Green Belt, and is therefore, by definition, harmful to the Green Belt. However, the Secretary of State has concluded that, because of the nature of the proposal and of the Green Belt in this location, the harm caused is limited and may be ameliorated by landscaping. The Secretary of State has balanced the material considerations put forward by the appellant to see if these amount to very special circumstances sufficient to clearly outweigh the limited harm caused to the Green Belt.
>
> "17. The Secretary of State accepts that the appellant is a gypsy and that her children's educational needs are of special significance and places considerable weight on the children's educational needs. He also accepts that a refusal of permission could result in the appellant losing her home. He has concluded that the local level of gypsy site provision is extensive and increasing and therefore that arguments around wider need for gypsy sites are not special circumstances in this case (paragraph 55). The appellant chose to leave an authorised gypsy site to move to the appeal site and reduce the security of her living arrangements. The Secretary of State has not reached a conclusion on whether refusing this appeal would result in a violation of the appellant's rights under Article 8 of the European Convention on Human Rights because there will be no interference with the appellant's human rights. Nevertheless,

> the Secretary of State agrees with the inspector's conclusion in the final sentence of paragraph 70 and concludes that the weight that he, the Secretary of State, accords to the children's education needs is sufficient to clearly outweigh the limited harm caused to the Green Belt in this particular case."

17.. The Inspector's final conclusion in paragraph 70 of his report was as follows:

> "In my view the combination of the personal circumstances of the Appellant and her family, coupled with the limited harm from the development amounts to very special circumstances warranting an exception to the presumption against inappropriate development within the Green Belt in this case."

18.. The planning permission granted by the Secretary of State was subject to a number of conditions, they included:

> "(a) The residential use here permitted shall be carried on only by Mr and Mrs Draper and her dependants.
> (b) The use here permitted shall be restricted to one mobile home, a utility block and a touring caravan …
> (h) The use here permitted shall allow for a further four touring caravans (not owned by Mrs Draper, her husband or her dependants) to occupy the site. Any such touring caravans may not be stationed on the site for a period of more than 8 weeks in any 12 month period."

The claimant's submissions

19.. On behalf of the claimant, Mr Green submitted that the decision letter was flawed in four respects.

20.. (1) The Secretary of State had misunderstood or misapplied his own policy in PPG2, which recognises that inappropriate development in the Green Belt may cause harm in two respects. Firstly, by reason of its inappropriateness, it is, by definition, harmful (harm in principle). Second, further harm may be caused, for example, to the appearance or openness of the Green Belt (further harm). Even if the harm to the Green belt is limited to harm in principle, it will, in the words of paragraph 3.2 of PPG2, be given "substantial weight" by the Secretary of State. Although the decision letter, for example in paragraphs 8 and 16, acknowledges that inappropriate development is, by definition, harmful to the Green Belt, the remainder of the decision letter conflates harm in principle, and further harm, and concludes that harm to the Green Belt is limited because the further harm by reason of the development's visual impact is limited.

21.. In support of his submission, Mr Green relied upon my decision in *Doncaster Metropolitan Borough Council v Secretary of State for the Environment, Transport and the Regions [2002] JPL 1509; [2002] EWHC Admin 808* . That case was similar to the present case in a number of respects. An inspector had allowed appeals against enforcement notices and granted planning permission for the retention of a mobile home in the Green Belt. The inspector had concluded that "the relatively unobtrusive location limits but does not eliminate the harm to the openness of the Green Belt and to its purpose in this area caused by the residential use".

22.. He noted that the appellant and his wife had two children aged 6 and nearly 5, and concluded:

> "I attach great importance to continuity of education for the appellant's children. It would be unrealistic however to expect this to happen if the children had to move their home to a hostile environment or if, as is more likely in this case, the family took to the road. Continuity of education depends as much on a secure and peaceful home life as on continued proximity to the same school. I have come to the conclusion that, on balance, the benefit to the appellant's family and particularly to the children of allowing the appeals outweigh the limited harm caused to the openness and purpose of the Green Belt."

23.. In paragraph 67 I said this:

> "… applying the Policy set out in paragraph 3.2 of PPG2, the proper question for the inspector in the present case was whether the harm, by reason of inappropriateness, and the *further* (albeit limited) harm caused to the openness and purpose of the Green Belt were *clearly* outweighed by other considerations. Those other considerations were confined to 'the benefit to the appellant's family, and particularly the children, of allowing the appeals'. But it was only if those benefits not merely outweighed 'the limited harm caused to the openness and purpose of the green belt', but if they clearly outweighed the harm by reason of inappropriateness and, the further, albeit limited, harm caused to the openness and purpose of the Green Belt, that very special circumstances could be found in terms of paragraph 3.2 of PPG2."

24.. In paragraph 68, I sought to explain:

> "However, it is very important that full weight is given to the proposition that inappropriate development is by definition harmful to the Green Belt. That Policy is a reflection of the fact that there may be many applications in the Green Belt where the proposal would be relatively inconspicuous or have a limited effect on the openness of the Green Belt, but if such arguments were to be repeated the cumulative effect of many permissions would destroy the very qualities which underlie Green Belt designation. Hence the importance of recognising at all times that inappropriate development is by definition harmful, and then going on to consider whether there will be additional harm by reason of such matters as loss of openness and impact on the function of the Green Belt."

25.. Having considered the terms of that particular decision letter, I said this:

> "70. When striking the all important balance, the inspector appears to have approached the matter on the basis that because there was only limited harm caused to the openness and purpose of the Green Belt, this could be outweighed by the children's educational needs, even though he did not suggest that these needs were in the least unusual. Such an approach to the Green Belt balancing exercise diminishes the weight which should properly be attributed to Green Belt policy. Given that inappropriate development is by definition harmful, the proper approach was whether the harm by reason of inappropriateness and the <u>further</u> harm, albeit limited, caused to the openness and purpose of the Green Belt, was <u>clearly</u> outweighed by the benefit to the appellant's family and particularly to

> the children so as to amount to very special circumstances justifying an exception to Green Belt policy (my emphasis).
>
> "71. I am anxious that this decision should not be regarded as an attempt to force inspectors to use particular formulations of policy or particular phraseology. A decision letter has to be read as a whole and in a common sense way. Questions of planning judgment are for the inspector.
>
> "72. Adopting a common sense approach to this decision letter read as a whole, the eventual conclusion is readily intelligible if there was no need to show very special circumstances and if the issue before the inspector was a simple balancing exercise between the educational needs of the appellant's children and some limited harm to the openness and purpose of the Green Belt. Even though there would appear to be nothing unusual about the children's educational needs, if they were to be balanced against some limited harm, one could understand how they might just outweigh, if not clearly outweigh, such harm.
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> "73. However, it is very difficult to see how those relatively unexceptional educational needs could reasonably be said to clearly outweigh, not merely the limited harm caused to the openness and purpose of the Green Belt, but the harm by reason of inappropriate development when coupled with the further limited harm to the openness and purpose of the Green Belt. How can the circumstance relied on by the inspector be reasonably described as 'special', let alone 'very special'? Reading the letter as a whole I am left in real doubt as to whether, in striking the Green Belt policy balance, the inspector applied the correct policy, as set out in PPG2.
>
> "74. It is important that the need to establish the existence of very special circumstances, not merely special circumstances in Green Belt cases, is not watered down …"

26.. The proposition that the need to establish not merely special, but very special circumstances should not be watered down was endorsed by the *Court of Appeal in South Bucks District Council v Secretary of State for Transport, Local Government and the Regions, 19 May 2003; [2003] EWHC Civ 687* : see paragraphs 30 and 31 of the judgment of Pill LJ, with whom the other members of the court agreed.

27.. (2) Mr Green submitted, and Mr Litton on behalf of the first defendant accepted, that the sole circumstance relied upon by the Secretary of State as amounting to very special circumstances in the present case was the educational needs of the second defendant's two children. The Secretary of State rejected the submission made on behalf of the second defendant, that the site was a brown field site: see paragraph 7 of the decision letter, and concluded in paragraph 17 "that arguments around wider need for gypsy sites are not special circumstances in this case".

28.. Although the Secretary of State concluded (erroneously if ground (1) above is accepted) that the harm to the Green Belt was limited, he correctly did not rely upon the fact that the harm to the Green Belt would be limited as constituting a very special circumstance: see the final sentence of paragraph 16 of the decision letter.

29.. The extent of the information relating to the children's educational needs is set out in paragraph 23 of the inspector's report: see above. The two girls, aged 7 and 6 at the time of the hearing, had settled into the local primary school which was within walking distance of the site. Mr Green's second submission is that the girl's educational needs as so described by the Inspector are perfectly commonplace and could not reasonably be described as a special, much less as a very special circumstance.

30.. Thirdly, in the *South Bucks* case, Pill LJ said that "clear and cogent analysis" was required if the decision taker relied on very special circumstances. The recipient of planning permission in that case was very unwell. Pill LJ said in paragraph 35:

> "If very special circumstances can be established simply by relying on a catalogue of hardship, the concept would be devalued and the planning system tend to be undermined. For reasons already given, a more comprehensive approach is required."

31.. Mr Green submits that there was no such analysis in the present case. Mere reference to educational needs, perfectly ordinary and commonplace on their face, was not a sufficient explanation as to why/how they constituted very special circumstances.

32.. (4) The Secretary of State's statement in paragraph 15 of the decision letter, that "the general suitability of the area for gypsy accommodation has been demonstrated", was either unreasonable or unintelligible. In the light of the fact that the area was in the Green Belt and the Secretary of State had agreed with the inspector that this proposal for a gypsy caravan site was an inappropriate development in the Green Belt, the fact that other planning permissions had been granted for gypsy caravan sites, presumably in Meadow Lane, presumably on the basis of very special circumstances, could not make this area of the Metropolitan Green Belt generally suitable for gypsy occupation.

Ground (4) conclusions

33.. In opening the claimant's case, Mr Green conceded that ground (4) was of subsidiary importance, but emphasised that the claimant was concerned that the statement that this Green Belt area was generally suitable for gypsy accommodation might set a most unfortunate precedent. Considered in isolation, the reference to general suitability in paragraph 15 of the decision letter is indeed puzzling, but the decision letter has to be read as a whole and as soon as that is done two points emerge.

34.. Firstly, the Secretary of State has earlier said, in terms, that he does not consider that the presence of other gypsies in the location, or of other unauthorised uses, is any justification for a grant of planning permission to regularise another unauthorised use (paragraph 9). That statement should go a long way towards alleviating the claimant's concerns on the ground of precedent.

35.. Secondly, it is clear that the Secretary of State rejected the claimant's case on precedent for the reasons set out in the final sentence of paragraph 15:

> "The nature of very special circumstances is that they are personal to the applicants in each case and do not create a precedent".

36.. By definition, a circumstance that really is "very special" will not create a precedent. The question is whether the educational needs of the second defendant's children can reasonably be described as very special circumstances. The reference to general suitability in paragraph 15 is perhaps best regarded as mere surplusage or as a recognition, in the context of the first sentence, that a favourable decision will not make enforcement actions in relation to neighbouring development any easier, given that there is a significant number of gypsies in the area.

Ground (3) conclusions

37.. Turning to ground (3), save for the reference to general suitability in paragraph 15, the reasoning in the decision letter is perfectly clear. The first defendant carried out the kind of comprehensive analysis referred to by Pill LJ in the *South Bucks* case. Having rejected all of the other factors advanced as very special circumstances on behalf of the second defendant, the Secretary of State was left with the educational needs of the claimant's two daughters. He concluded that they were very special circumstances. If he had any particular reasons for concluding that they were very special circumstances then he would no doubt have set them out.

38.. The reasoning is clear, the question is: whether it was open to the Secretary of State to reach the conclusion that the girls' educational needs were very special circumstances?

Ground (1): conclusions

39.. I have found ground (1) rather more difficult to resolve. Mr Litton submitted that, if the decision letter was read as a whole, it was plain that the Secretary of State had not misunderstood his own policy in PPG2. He had stated that inappropriate development was, by definition, harmful to the Green Belt in both paragraph 8 and paragraph 16 of the decision letter. Having done so, his conclusion that the harm caused was "limited" was to be read as an overall conclusion that embraced both harm in principle and any further harm.

40.. He referred to paragraph 71 of my judgment in the *Doncaster* case. The Secretary of State was not to be faulted merely because he did not use a particular formulation of policy or particular phraseology.

41.. The current version of PPG2 replaced the 1988 version in January 1995. Paragraphs 12 and 13 of the 1988 version of PPG2 were as follows:

> "The general policies controlling development in the countryside apply with equal force in Green Belts, but there is in addition a general presumption against inappropriate development within them.
>
> "13. Inside a Green Belt approval should not be given, except in very special circumstances, for the construction of new buildings or for the change of use of existing buildings for purposes other than agricultural and forestry, outdoor sports, cemeteries, institutions standing in extensive grounds, or other uses appropriate to a rural area."

42.. The list of development that is appropriate within the Green Belt has changed, but paragraph 3.2 of the current PPG2 emphasises the fact that, even if there is no other harm, for example, to openness, inappropriate development is, by definition, harmful to the Green Belt. This reminds decision takers that it is important that they do not fall into the trap of saying, for example when considering the effect of a proposed development in terms of the openness of the Green Belt: this development is inconspicuous, therefore there will be only limited harm to the Green Belt. The harm in principle will remain even if there is no further harm to openness because the development is wholly inconspicuous. Adopting this policy approach is essential if the cumulative effect of numerous (inconspicuous) developments in the Green Belt is to be prevented.

43.. On this aspect of the decision letter, the Secretary of State, in essence, agreed with the inspector's assessment of the effect of the development on the Green Belt. In paragraph 56 of his report, the inspector had reminded himself that "inappropriate development is, by definition, harmful to the Green Belt". He then considered the issue of further harm, concluding in the final sentence of paragraph 58 that "the proposal thus constitutes an element of development in the countryside in conflict with the aim of Green Belt policy of safeguarding the countryside from encroachment".

44.. He went on in paragraph 59 to say:

> "In assessing the extent and significance of the harm to the Green Belt and to rural character, there are a number of unusual features of the locality of the appeal site to take into account. There are limited views into the site, with the only public views being from Meadow Lane. Meadow Lane is in a very secluded and out of the way location. It is a vehicular cul de sac and though it continues northward as a bridle way, there is little evidence of its use by anyone other than those living or having business along the lane. The extent of activity down the lane is greater than one would expect for a Green Belt area with many activities, some authorised, others unauthorised. There are activities by gypsies and by non-gypsies in both categories."

45.. In paragraph 61, he said:

> "Overall, while recognising that the development that has taken place is inappropriate in terms of Green Belt policy and therefore harmful, my view is that this secluded appeal site is relatively insensitive to the type of change that has taken place. With the level of occupation on the site restricted to one family and a limited number of touring caravans, it would remain an element of openness. Moreover, through the imposition of an appropriate landscaping condition, the extent of the harm that has resulted from clearance of boundary vegetation and excessive deposit of hard surfacing could be reduced and the barren appearance of the site could be ameliorated."

46.. On a fair reading of the inspector's report, when the inspector concluded that the harm to the Green Belt would be limited, he had not lost sight of the fact that there would be harm in principle in addition to limited further harm. After some hesitation, I conclude that the same applies to the references to limited harm in paragraphs 10, 16 and 17 of the decision letter.

47.. The Secretary of State's conclusion that the harm to the Green Belt as a result of the appeal proposal was limited, was an overall conclusion embracing both harm in principle and (limited) further harm. I repeat the view which I expressed in the *Doncaster* case, that the decision taker should not be required to use a particular form of words or mantra when considering Green Belt issues. The inspector's decision in the *Doncaster* case was quashed on the ground that the reasoning in his decision letter was inadequate. The concluding paragraph of that decision letter had not stated that there were very special circumstances, and had not said that they clearly outweighed the harm to the Green Belt.

48.. In the present case, the Secretary of State has concluded that the educational needs of the second defendant's children do amount to very special circumstances, and that they "clearly outweigh" the limited harm to the Green Belt in this particular case. The Secretary of State has thus applied the right test: was he entitled to conclude that in this particular case there were very special circumstances?

Ground (2): the first defendant's submissions

49.. As stated above, Mr Litton acknowledged that the only circumstances relied upon by the Secretary of State as being very special circumstances for the purposes of paragraphs 3.1 and 3.2 of PPG2, were the educational needs of the second defendant's two daughters. The evidence relating to those educational needs was confined to that set out in paragraph 23 of the inspector's report. He did not contend that those needs, as described in that paragraph, were in the least unusual. He submitted that they had to be considered in the context of the other conclusions in the decision letter, including the conclusion that there would be limited harm to the Green Belt.

50.. There was no prescribed list of very special circumstances. What might amount to a very special circumstance was a matter for the decision taker in any particular case: see the judgment of Mr Lockhart Mummery QC (sitting as a Deputy Judge of the *Queen's Bench Division) in Brentwood Borough Council v Secretary of State for the Environment and Gray [1996] 72 P&CR 61* at page 78.

51.. His principal submission was that very special circumstances comprised material planning considerations which, in the circumstances of a particular case, were given such weight by the decision taker that he could reasonably conclude that they outweighed the harm done to the Green Belt (including both harm in principle and any further harm). Thus, he submitted, the question was really one of the weight to be attributed to a particular factor. It is well established that the weight to be given to any particular piece of evidence is a matter for the decision taker: see the judgment of the *Divisional Court in ELS Wholesale (Wolverhampton) Limited v Secretary of State for the Environment [1987] 56 P&CR 69* at pages 72 to 73.

52.. If the decision taker was entitled to conclude that the particular circumstances relied upon by the applicant or appellant clearly outweighed the harm to the Green Belt, then those circumstances were capable of being very special circumstances for the purposes of PPG2. Thus, if the Secretary of State concluded, as he had in the present case, that greater weight should be

given to the educational needs of the second defendant's children so that they clearly outweighed the limited harm to the Green Belt, then those needs could reasonably be described as very special circumstances.

Ground 2: conclusions

53.. I accept that, by definition, there can be no prescribed list of very special circumstances. As Mr Lockhart Mummery said in *Brentwood* : "the list is endless and it would not be for the court to restrict it (page 68)".

54.. I also accept that the question whether any circumstance is "very special" has to be considered not in the abstract, but in the context of the particular application or appeal which is being determined. It is for the decision taker to judge whether, in that context, a particular circumstance or combination of circumstances amounts to "very special circumstances". I further accept that the weight to be attributed to any particular consideration is, subject to considerations of Wednesbury reasonableness, a matter for the decision taker: see the *ELS* case above. However, I do not accept Mr Litton's submission that, if the decision taker concludes that a particular factor outweighs the harm to the Green Belt, that factor can therefore be described as a very special circumstance. To accept that submission would be to rewrite paragraphs 3.1 and 3.2 of PPG2, and to strip the words "except in very special circumstances" of any effective meaning.

55.. The guidance given in paragraph 3.1 of PPG2 is unambiguous. Inappropriate development should not be approved in the Green Belt "except in very special circumstances". The words "very special" must be given their ordinary and natural meaning. Since the expression "very special" is so familiar, any attempt at definition is probably superfluous, but for what it is worth, the Shorter Oxford English Dictionary tells us that special means:

> "Of such a kind as to exceed or excel in some way that which is usual or common; exceptional in character, quality or degree …"

56.. The circumstances must be not merely special in the sense of unusual or exceptional, but very special. The decision taker, whether it be the Secretary of State, one of his inspectors or a Local Planning Authority, has to be satisfied that the circumstances relied upon are indeed very special, but it does not follow that, merely because the decision taker considers that they outweigh the harm to the Green Belt, they are reasonably to be described as very special. The breadth of discretion that is conferred upon decision takers in other (non-Green Belt) cases is deliberately constrained by paragraph 3.1 of PPG2. The decision taker must be satisfied that there are very special circumstances. His judgment that there are such circumstances is subject to review on Wednesbury grounds. A factor is not a very special circumstance merely because the decision taker chooses to describe it in that way. The decision taker must be able to point to a circumstance or circumstances which, viewed objectively, are reasonably capable of being described as "very special".

57.. The submission advanced on behalf of the first defendant strips very special circumstances of any independent objective meaning in paragraph 3.1, and effectively rewrites the second sentence in paragraph 3.2 as follows:

> "Very special circumstances to justify inappropriate development will exist if the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations."

58.. It is no accident that the second sentence in paragraph 3.2 is not worded in this way. The combined effect of paragraphs 3.1 and 3.2 is that, in order to justify inappropriate development in the Green Belt, (a) there must be circumstances which can reasonably be described not merely as special but as very special, and (b) the harm to the Green Belt by reason of inappropriateness and any other harm must be clearly outweighed by other considerations. Those other considerations must be

capable of being reasonably described as very special circumstances. If they are capable of being so described, whether they are very special in the context of the particular case will be a matter for the decision maker's judgment.

59.. It was open to those formulating Green Belt policy in PPG 2 formulate the guidance, omitting any reference to very special circumstances, as follows:

> "Inappropriate development will not be permitted unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations."

They did not do so. Every aspect of the policy in paragraphs 3.1 and 3.2 must be given its full force and effect.

60.. The 1988 version of PPG2 (see above) made it clear that planning permission should not be granted in the Green Belt "except in very special circumstances" for new buildings or for changes of use of existing buildings for purposes other than agriculture and forestry et cetera. The revised guidance in paragraphs 3.1 and 3.2 of the 1995 PPG2 was not intended to water down the policy that inappropriate development in the Green Belt should not be approved "except in very special circumstances". The intention was to strengthen not weaken Green Belt policy by making it clear that inappropriate development was, by definition, harmful to the Green Belt. That had not been spelt out in paragraph 12 of the 1988 PPG2.

61.. The need to demonstrate very special circumstances to justify what would now be described as inappropriate development in the Green Belt goes back to the very first Central Government Policy Advice on Green Belts: Ministry of Housing and Local Government Circular 42/55 . For nearly 50 years Central Government Policy has been that what would now be described as inappropriate development should not be approved in the Green Belt "except in very special circumstances". Those words mean precisely what they say.

62.. Can the educational needs relied upon by the Secretary of State in paragraph 17 of the decision letter be reasonably described as very special circumstances? I accept that, in principle, personal circumstances, including educational needs either alone or in conjunction with other factors, may amount to very special circumstances. Mr Litton relied upon a decision of Ouseley J in *Basildon District Council v Secretary of State for the Environment, Transport and the Regions [2001] JPL 1104* . In that case the Secretary of State concluded that, in addition to the harm to the Green Belt in principle because of inappropriateness, there would be a noticeable loss of openness to that part of the Green Belt. He nevertheless concluded that planning permission should be granted on the basis that there were very special circumstances which justified the grant of planning permission. Those circumstances included the educational needs of the children of the four gypsy families who were occupying the site.

63.. Five children of school age were living on the site, and in respect of three of those children, the school had expressed concern at the consequences for their education if their homes were to be disrupted: see the extracts from the Secretary of State's decision letter cited in paragraph 9 of Ouseley J's judgment.

64.. Ouseley J rejected the appellant Council's submission that the gypsies' personal circumstances were not material considerations. In response to the submission that it was irrational for the Secretary of State to have given the weight that he did to those circumstances, Ouseley J said this in paragraph 37:

> "That, as (counsel for the appellant) recognised, was a brave submission. Of course the Secretary of State cannot give so much weight to a particular consideration as to render his decision irrational. But it is exceptionally difficult for a court to conclude that the weight given has failed to cross that low threshold of quality control. More importantly, in this case the Secretary of State did not rely exclusively on those personal circumstances as being the only factor justifying his view that very special circumstances existed, albeit it was the weight which he gave to them which caused him to differ from the inspector. He gave those circumstances significant weight, but his conclusion as to very special circumstances was based both on those circumstances and on the general need for more gypsy sites in the area, as, for example, paragraphs 14 and 19 of his decision letter made clear."

65.. Thus, the issue raised by ground (2) in this application, whether the apparently ordinary educational needs of two girls aged 7 and 6 can amount to "very special circumstances" did not fall for consideration in the *Basildon* case. Mr Litton does not suggest that there is anything out of the ordinary in the girls' educational needs. This is not a case where, for example, a child has special educational needs that are being met at a local school with particular expertise in meeting those needs, or where there is evidence that having to move schools would be particularly disruptive to the child's education because, for example, of the child's physical or mental health or the stage reached in the educational curriculum. The educational needs in the present case, both in terms of the number of children involved and in terms of their individual needs, would appear to be entirely normal.

66.. There will be many cases where the inspector or the Secretary of State is uniquely placed to decide whether or not a particular factor can fairly be described as a very special circumstance. Purely by way of example, such cases will include those where reliance is placed upon impressions gained from a site visit, or upon an aesthetic judgment as to the architectural quality of a proposed building and/or upon its effect upon the landscape, or upon an assessment of a broader policy issue, such as the need in the national interest for a defence facility to be constructed in the Green Belt or the need to attract inward investment or employment into a region by permitting commercial development; or to bring the examples nearer to home, where reliance is placed upon an assessment of the need to make provision for accommodation for gypsies in a particular area.

67.. In such cases it will be very difficult, if not well nigh impossible, for a court to conclude that the circumstances relied upon by the decision taker could not reasonably be said to be "very special". That is not the position here. Unless it is concluded that there must be very special circumstances here because the Secretary of State has concluded that the children's special educational needs clearly outweigh the limited harm to the Green Belt; it is impossible to see how these perfectly ordinary educational needs of two children can reasonably be described as special circumstances, let alone very special circumstances for the purposes of paragraph 3.1 of PPG2.

68.. I do not attempt to belittle the children's educational needs and I have no doubt that from their parents' point of view they are very special indeed, but it is common ground that the references to very special circumstances in PPG2 cannot mean very special in the eyes of the applicant for planning permission. Every applicant will, from his own perspective, view his needs as very special.

69.. There is a further pointer to the approach to be adopted to very special circumstances to be found in paragraph 15 of the decision letter, dealing with precedent. If the appellant's personal circumstances can reasonably be described as very special, then granting planning permission will not create a precedent. If, on the other hand, the personal circumstances relied upon are relatively commonplace, there is a real danger that a precedent will be created. If the apparently normal educational needs of the second defendant's two daughters are properly to be described as very special circumstances, why not the normal educational needs of the children of other gypsy families who choose to leave an authorised pitch and move to an unauthorised pitch in Meadow Lane?

70.. I recognise that it is a strong thing to say that the Secretary of State could not reasonably have concluded that these children's educational needs amounted to very special circumstances, but standing back from this particular decision letter, it is important to remember that the policy guidance in PPG2 is directed to all those responsible for taking planning decisions affecting the Green Belt: the Secretary of State, inspectors appointed by him, and Local Planning Authorities. An approach which in effect defines very special circumstances as <u>any</u> circumstances which in the decision taker's view clearly outweigh the harm to the Green Belt, would potentially drive a coach and horses through Green Belt policy which, as PPG2 explains, has been an essential element of planning policy for some four (now nearly five) decades: see paragraph 1.1 of PPG2.

71.. The words "very special circumstances" must be given their ordinary and natural meaning, and the policy requirement that an applicant must demonstrate the existence of such circumstances must be given full weight and effect. The decision taker here was the Secretary of State. If a Local Planning Authority had granted planning permission for inappropriate development in the Green Belt merely because the applicant's two children attended a local school within walking distance of the site and had settled in there and would have to move if planning permission was refused, could it seriously be contended that if proceedings for judicial review were brought to quash the planning permission, that the Local Planning Authority had been entitled to conclude that there were "very special circumstances" which justified the grant of planning permission? If advanced on behalf of a Local

Planning Authority, the proposition that the circumstances must be very special, because the Local Planning Authority had concluded that they outweighed the harm to the Green Belt, would surely receive short shrift.

72.. No different standard should be applied merely because the decision taker is the Secretary of State. The Secretary of State may choose to depart from his policies, including those in PPG2; he may choose to publish revised policy guidance in relation to gypsy caravan sites in the Green Belt if the problem is perceived to be a more general one; but if he purports to determine an application in accordance with PPG2, he must abide by its terms. Accordingly, this application succeeds on ground (2) and the decision is quashed.

73.. MR GREEN: My Lord, in those circumstances, the claimant seeks its costs which are in the agreed sum of £4,590.

74.. MR JUSTICE SULLIVAN: Mr Mould, it is a pleasant surprise to see you here.

75.. MR MOULD: It is very unusual for me to be in your Lordship's court dealing with a planning matter. My Lord, I do not resist the order sought. I can tell your Lordship that we accept that we must pay the costs in the sum that my learned friend has just mentioned.

76.. MR JUSTICE SULLIVAN: Then the application is allowed and the decision is quashed. The first defendant is to pay the claimant's cost. Those costs are summarily assessed in the agreed sum of £4,590. Does that include VAT? I am so sorry, I should say, otherwise it leads to arguments later. What have you agreed? I have not seen any particulars, you see.

77.. MR GREEN: My Lord, I can hand up the schedule; it does not refer to VAT at all. Because it is a Local Authority, I do not imagine it features.

78.. MR JUSTICE SULLIVAN: Fair enough, I shall just say £4,590.