Basildon District Council v McCarthy & Ors, Culligan & Ors, Coyle & Ors, Taylor & Ors v Equality & Human Rights Commission

Case Nos: C1/2008/1204

C1/2008/1205

C1/2008/1188

C1/2008/1202

Court of Appeal (Civil Division)

22 January 2009

[2009] EWCA Civ 13

2009 WL 6138

Before: Lord Justice Pill Lord Justice Lloyd and Lord Justice Moses

Date: 22/01/2009

On Appeal from Queen's Bench Division Administrative Court Mr Justice Collins

[2008] EWHC 987 (Admin)

Hearing dates: 4 and 5 December 2008

Representation

Mr D Elvin QC and Mr P Epstein QC and Mr R Taylor (instructed by Basildon District Council) for the Appellants.

Mr J Luba QC and Mr A Offer (instructed by Messrs Davies Gore Lomax) for the Respondents in McCarthy & Ors and Culligan & Ors.

Mr J Luba QC and Mr D Watkinson (instructed by Messrs Bramwell Browne Odedra for the Respondents in Taylor & Ors).

Mr J Luba QC and Mr D Watkinson (instructed by Southwest Law Limited for the Respondents in Coyle & Ors).

Robin Allen QC by written submissions, instructed by the Equality and Human Rights Commission as Interveners.

Judgment

Lord Justice Pill:

1 This is an appeal against a judgment of Collins J given on 9 May 2008 whereby he quashed a decision of Basildon District Council (“the council”) to take direct action pursuant to section 178 of

the Town & Country Planning Act 1990 ("the 1990 Act") to force compliance with enforcement notices in respect of land in Billericay, Essex occupied by the claimants and their families, and made on earlier dates and 13 December 2007. The judge described the proceedings before him:

> "There are before me four claims by over 40 families of mainly Irish Travellers or Gypsies who are resident on unauthorised sites in the Council's district. The land which they occupy is in the Green Belt and planning permission has been refused. Enforcement notices have been served and upheld on appeal. The Council now seeks to remove their caravans from the land they occupy and to enforce compliance with the notices by removing the hard standing which has been placed on the land so that it is restored to its natural state."

2 The judge gave further particulars of the occupation at paragraphs 2 to 5 of his judgment. To summarise, there are 2 sites at Dale Farm, Oak Lane, Billericay known as the Horseshoe and Middle Plots. On one of them are at least 39 pitches and on the other 12 pitches. There are 7 pitches at Five Acres Farm, Hove Fields Drive, Wickford and 5 on land close by and north of Hove Fields Drive. All the sites are in the Green Belt and in Basildon District. It was common ground at the hearing that the relevant decision of the council was by its Development Control and Traffic Management Committee ("the committee") on 13 December 2007, when earlier decisions were reconsidered.

3 I would pay tribute to the care with which the judge has described the history of the dispute and the more general issues which have arisen over many years because of the limited accommodation on which Gypsies and Travellers may lawfully park their caravans and vehicles. Different approaches to the problem have been attempted over the years. The duty on local authorities to provide sites was abolished in 1994. The present duty is to make provision for sites in development plans and to perform duties under the Housing Act 1996 ("the 1996 Act"). The current guidance from the government is in Office of the Deputy Prime Minister ("ODPM") Circular 01/2006 entitled "Planning for Gypsy and Traveller Caravan Sites".

4 The sites on which the caravans are parked are owned by the claimants. The occupation, without planning permission, has been for different periods, the earliest being from late 2001. Enforcement action has been taken by the council under section 172(1) of the 1990 Act and the claimants have sought to defeat it by applying for planning permission. In each case the Secretary of State for Communities and Local Government ("the Secretary of State") has upheld the enforcement notice and refused permission, including temporary permissions, the most recent of the decisions being in January 2008. Extensions of time have been granted but have been used, the council submits, to consolidate the present use of the site. Temporary permissions have been granted on other sites in the Basildon District. The claimants have also applied for the present judicial review, the first claim being issued in July 2005, the second in February 2006 and the remainder in 2007.

5 Section 178(1) of the 1990 Act provides:

> "Where any steps required by an enforcement notice to be taken are not taken within the period for compliance with the notice, the local planning authority may –
>
> (a) Enter the land and take the steps;
>
> (b) Recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so."

Section 178 also empowers the making of regulations to permit provisions in the Public Health Act 1936 to apply to any steps required to be taken by an enforcement notice. Section 178(6) provides that any person who wilfully obstructs a person acting in the exercise of powers under sub-section (1) "shall be guilty of an offence …"

6 There are 116 authorised pitches for travellers within the council's district. One of the authorised sites adjoins the Horseshoe at Dale Farm. When it took its decision to act under section 178 , no lawful alternative sites were available in the Basildon District to which the claimants could lawfully decamp. It is noted in paragraph 3.15 of the council's Core Strategy

Issues Paper ("CSIP") that "despite its being a relatively small area geographically, [the District] has the sixth highest number of caravans on authorised sites of any District/Borough in the country."

7 For the claimants, Mr Luba QC accepts that the claimants have reached the end of the road in their attempts to regularise their position by obtaining planning permission or temporary planning permission. That has been considered on a plot by plot basis. The extreme difficulty involved in obtaining planning permission for caravan and trailer sites in the Green Belt is acknowledged. Mr Luba accepts that the claimants are on the land unlawfully and that, even if the appeal is dismissed, they will still be on land unlawfully. He accepts that the most recent planning decisions of the Secretary of State reflect the planning situation. He accepts that the council could lawfully evict each and every one of the claimants provided they lawfully and appropriately direct themselves. His submission is that the judge was correct to hold that the decision of 13 December 2007 should be quashed because all relevant matters had not been properly taken into account by the council.

8 The judge's conclusions were:

> "65. There can be no doubt that the claimants cannot remain where they are and that the time must come when they will have to leave, whether voluntarily or by means of forcible eviction. Despite the difficulties they face and the absence at present of sufficient sites to meet their needs, Travellers and Gypsies must appreciate that the law will not tolerate developments without planning permission being obtained, particularly on Green Belt land, and will be likely to uphold enforcement action where the individual circumstances of those affected have been properly considered against the harm to the environment and to relations with the community. Nevertheless, it is necessary for all relevant matters to be properly taken into account and it is impossible not to have some sympathy with the problems created for Gypsies and Travellers by the lack of sufficient sites to cater for their proper needs.
>
> 66. I have no doubt that a decision to enforce under s.178 is likely to be unassailable in respect of most and perhaps all of the claimants in due course. But there are concerns which I have already spelt out. It seems to me that the approach to need has been too restrictive and that, following in particular the EERA report (albeit not accepted by the Council), further consideration should be given to whether any sites can be found in the district and whether any families can be allowed to remain for the time being. In addition, I do not think the possible effects of the homelessness duty have been sufficiently dealt with in the advice given to the Committee. Finally, I think that the approach has been that the sites should be cleared rather than a consideration of whether there are any individual families whose circumstances are such, whether because of serious ill-health or the needs of their children, that in their individual cases eviction would be disproportionate. I am not to be taken as saying that there necessarily are any such, but I think that possibility should have been drawn to the Committee's attention.
>
> 67. I am conscious that this decision may mean no more than that a little more time is given to the claimants and the Council may feel that yet further delay is to be deprecated. Nonetheless, the decision, whichever way it goes, must be based on consideration of all that is relevant. But in the circumstances for the reasons I have given I am persuaded that the decisions of 13 December 2007 cannot stand."

9 The concerns already spelt out were those stated at paragraph 36:

> "… it is necessary for the Council at least to consider whether any other sites can be found. I appreciate that this may not provide for all those affected by the decision to enforce, but, if there is a question of priorities, the individual circumstances of the various families will have to be taken into account."

10 Paragraph 40 :

> "The [officers'] reports had annexed the individual circumstances of the various families … there was a possibility that enforcement action could be taken against some but not all the occupants. A small number who had serious health or educational difficulties might be permitted to remain at least on a temporary basis. I think that option should have been spelt out."

11 Mr Luba defines the claimants' relevant right as a right not to be evicted save by a lawful decision. Planning considerations are now only a matter of history, he submits, though the duty on the council to look for alternative sites, to meet need, continues. Particularly in the absence of such a search, it was incumbent upon the council to consider the claim of each occupant not to be evicted, one by one and plot by plot. The personal circumstances of each of them should be considered. The council's aim was for site clearance, which, it is submitted, did not have regard to individual cases and was unlawful.

12 In this context, the council should have considered its duties under the Housing Act 1996 in the same way, it is submitted, case by case. Mr Luba submits that all the claimants have been lumped in together. There are likely to be some cases in which the only lawful discharge of Housing Act duties is to provide an alternative site for a caravan rather than bricks and mortar. There may also have been people who should have been given a little further time to stay.

13 Reliance is placed on Circular 18/94 , Gypsy Sites Policy and Unauthorised Camping, in which it was stated at paragraph 10:

> "The Secretaries of State expect authorities to take careful account of these obligations [Children Act 1989 and Housing Act 1985] when taking decisions about the future maintenance of authorised Gypsy caravan sites and eviction of persons from unauthorised sites."

14 Reliance is also placed on Circular 01/2006 to which it will be necessary to refer in more detail. Paragraph 40 of the Circular also requires local authorities to have regard to their statutory duties, including those under Part VII of the Housing Act 1996 and the Race Relations Act 1976 , as amended. It does not specify a procedure as to the stage at which or the manner by which that is to be done.

15 The council submits that it has at all times stated that it will perform its duties under the homelessness legislation, and that it will do so. A process was initiated in 2005 but when judicial review proceedings were commenced it was not carried forward, pending the outcome of these proceedings. The determination of the claimants to stay on site regardless of the unlawfulness of the occupation renders any investigation of housing duties in particular cases impracticable, it is submitted. The claimants have sought to consolidate their position on site during the period since the dispute arose. In these circumstances, it would not be possible, while the present proceedings are pending, to make a sensible investigation. If the council's action under section 178 is approved, steps will be taken immediately.

Statistics

16 Since 1990, the total number of Gypsy and Traveller caravans has increased nationally by 44%. In the Basildon District of Essex, the increase is over 475%. In 1990 only 12% of Essex's gypsy caravans were in the District; that proportion had risen to 40% by 2007. Having remained at around the figure of 40 for 11 years, from 1990 to 2001, the number of unauthorised caravans in the district increased to 194 by January 2007. The numbers in the District do not show a seasonal pattern and there is no clear pattern to the ebb and flow of unauthorised caravans. The largest unauthorised group of sites is at Dale Farm where there are 51 pitches.

17 Having stated those figures, the officers reported to the committee, ahead of its meeting on 13 December 2007:

> "To accept that demand must be satisfied at the point at which it arises is overly simplistic, it will inevitably give rise to disproportionate site distribution and lead to overly large settlements that are unlikely to be sustainable. Accordingly the Council has not allowed any land to further Gypsy / Traveller site development ahead of the issue of the draft Gypsy / Traveller Single Issue Review RSS [regional spatial strategy]."

18 The East of England region for present purposes comprises Bedfordshire, Cambridgeshire, Essex, Norfolk, Suffolk and Peterborough. Notwithstanding that Essex and Cambridgeshire provide the great majority of authorised caravan pitches in the East of England, the estimated figures for unauthorised sites, at January 2006, is overwhelmingly larger in those counties. The figure for Essex is well over double that for Bedfordshire, Hertfordshire, Norfolk and Suffolk combined (East of England Regional Assembly consultation document May 2007). I am not aware of evidence of the relationship between the toughness of enforcement procedures and the number of unauthorised pitches in the counties.

19 It is suggested by the council that the cheapness of Green Belt land, because of severe constraints on its development, is a major factor in attracting travellers to Basildon District. The judge referred to that submission (paragraph 32 of his judgment) and stated that it did not "give the whole picture". He considered that the lack of other sites, and the proximity of friends and relations, were also factors.

20 The draft Regional Assembly policy for Gypsy and Traveller accommodation dated February 2008 (that is after the impugned decision and shortly after the hearing before Collins J) provides:

> "To contribute to housing provision in the east of England as a whole, provision will be made for at least 1,187 net additional residential pitches for Gypsy and Traveller caravans over the period 2006 to 2011."

21 A regional allocation is proposed in the document and the number of pitches provisionally allocated to Basildon is 81. In an earlier document, the figure had been 95. That figure has since been the subject of consultation, including consultation between local authorities. These figures were not brought to the attention of the December 2007 committee by its officers. On the day before the meeting, the Regional Planning Panel had endorsed a figure of 1,190 as a "robust estimate of additional pitches required" in the East of England region and maintained the figure of 81 for Basildon. That, submits Mr Luba, is the best evidence of need and the absence of a reference to it in the committee's deliberations reveals a failure to have regard to a material consideration. The panel report was confirmed by the Regional Assembly in the draft policy of February 2008. There has been a clear indication that Basildon will be required to provide a substantial number of sites, submits Mr Luba.

22 On behalf of the council, Mr Elvin QC submits that the procedure by which the figure of 81 has been reached is misguided, because, amongst other things, the allocation failed to take account of the amount of Green Belt, where caravan sites are not normally permitted, in Basildon District. There is likely to be considerable debate before a decision is taken on the final figure for the District, it is submitted. The council proposes to adduce Green Belt and other arguments. The council has consistently argued that demand generated by the availability of cheap Green Belt land and need are not one and the same and that other districts must play their part in allocating land for Traveller pitches.

23 Mr Elvin submits that the Green Belt constraint has not been factored into the Region's draft calculation notwithstanding the Department for Communities & Local Government's Document of March 2007 headed "Preparing Regional Spatial Strategy Reviews on Gypsies and Travellers". Directed to regional planning bodies, it recognises, in answer to Q5.4, that Green Belt is a "potentially serious constraint". The "great potential effect" of the Green Belt is also acknowledged in the document.

24 Since the hearing of the appeal, the respondents have submitted further documents demonstrating the evolution of the RSS Review on Gypsy and Traveller Accommodation. I am prepared to refer to them notwithstanding the council's understandable objection. A panel of planning inspectors submitted a report to the Secretary of State on 17 December 2008. The

Government's response is expected to be issued in the spring of 2009 and this will be followed by a period of consultation before the final plan, planned for summer 2009. The provisional allocation of sites to Basildon District is now proposed to be 71. Save for confirmation that the development plan process is proceeding, this material cannot bear upon the lawfulness of a council decision taken in December 2007.

The officers' report

25 The council's officers reported to committee prior to the meeting of 13 December 2007. The report refers to the judicial review proceedings and the interim injunction precluding the council from taking action under section 178 . By way of background, the officers stated:

> "In considering whether to take action to secure compliance with the requirements of the extant Enforcement Notices issued in respect of unauthorised development, the Council must balance the public interest in securing the removal of development that has occurred, which is now in breach of criminal law, against any personal circumstances of the occupiers of the site, should that be relevant, and any hardship which could be caused. The decision should also take into account the accommodation needs of the [claimants]."

26 The report was a long one and referred in detail to National Planning Policy Guidance, the development plan framework and notation, planning considerations and the Green Belt function of the land. The conclusions on "harm" were stated:

> "It follows that the following factors continue to weigh against allowing the development or permitting it to remain notwithstanding the extant enforcement notices:
>
> (1) There is clearly a very significant impact upon the Green Belt by reason of the inappropriateness of the development. This is a matter, which is to be afforded substantial weight;
>
> (2) There are highway objections, which clearly weighs against the development;
>
> (3) The development clearly has an adverse affect upon the living conditions of neighbouring residents in the settled community and this could be taken into consideration, although the weight that could be given to this factor should be limited."

27 The report referred in detail to the Secretary of State's planning decisions, including her consideration of the personal circumstances of the occupiers, and to emerging plan policies, including those already mentioned. It was stated:

> "The emergence of regional policy guidance is an ongoing process and the issue of gypsy site provision will clearly not be resolved in the short term. It is therefore considered that little weight can be attributed to the emerging policy guidance in the consideration of this report."

28 Human rights and racial discrimination were considered and enforcement options set out. The officers commented:

> "The personal circumstances included in part ii of this report [information relating to personal circumstances], is compiled from information the Council received from both the Travellers and their legal representatives. The Council has no reason to believe that those circumstances relied upon in August 2006 have changed in any significant way that would indicate that a different conclusion should be reached at this present time than that reached by the Secretary of State in relation to the planning appeals.

> As this is a report to consider and decide upon what if any enforcement action should be taken to achieve compliance with the extant enforcement notices, the decision maker whilst undertaking the balancing exercise should take the following factors into consideration. A resolution to proceed with any action is likely to result in the occupiers being required to leave the site, consequently interfering or preventing access to the healthcare and education that they had hitherto been afforded. It should also be noted that there are no available alternative sites in the vicinity and those that would be affected by an adverse decision may be required to leave the site, with nowhere else to go, other than to resort to illegal camping. Members should therefore assume that if enforcement action is taken those required to leave the land will have to resort to camping on the roadside.
>
> It is furthermore considered that the First Secretary of State's decision to refuse planning permission and uphold the Council's Enforcement Notices requiring breaches of planning control to be remedied remains relevant today and it has not been overridden by any changes in circumstances, which may have occurred if any since those decisions.
>
> Information relating to the personal circumstances of the occupiers of these sites has been disturbed to Members of the Committee separately."

29 Personal circumstances, plot by plot, were set out in a 16 page supplement (part ii) to the report. Before the impugned decision was taken at the meeting, there was a two hour closed session at which these circumstances were considered by the members of the committee.

30 In the report, the officers concluded:

> "Clearly the continued use of the land for residential purposes involving the siting of static and touring caravans, portable utility structures and the formation of hardstandings on the land is in flagrant breach of valid enforcement notices and is a criminal offence. The development is inappropriate within the Green Belt, which is a consideration that should be given substantial weight. The Secretary of State concluded in the recently dismissed appeals that there was significant harm to the Green Belt. It was also concluded there was harm to highway safety because of the limitations of the highway network in the locality. The issue of need and the personal circumstances of the occupiers did not outweigh the identified harm.
>
> The key issue for Members to weigh in the balancing exercise is whether the impact of taking action to secure compliance with the enforcement notices on the occupiers of the sites is such that the public interest in enforcing planning control should be set aside in favour of allowing the unauthorised development to remain.
>
> It is for Members to judge the weight that should be attached to each consideration. If they conclude that the circumstances of the occupiers, and the hardship suffered if enforced against, are insufficient to outweigh the upholding of the Council's and national planning policies then Members must consider what option to pursue to secure compliance with the enforcement notices."

31 It appears from the minutes of the meeting of the committee that:

> "Members were reminded that, in considering whether to take action to secure compliance with the requirements of the extant Enforcement Notices issued in respect of unauthorised development, there was a need to balance the public interest in securing the removal of development that has occurred, which was now a breach of criminal law, against the personal circumstances of the occupiers of the site, including their human rights, and any hardship which could be caused. The accommodation needs of the Gypsy and Traveller community in the context of current national policy contained in circular 1/2006 were also considered."

32 Following reference to a February 2007 decision of the Secretary of State, mentioned later in this judgment, on an enforcement notice appeal and planning application, it was stated:

> "The Secretary of State considered that the issue of need and the personal circumstances of the occupiers did not outweigh the identified harm."

(The 2008 decisions of the Secretary of State were to the same effect).

33 The minutes continued:

> "Given the conclusions of the appeal decision of 22 February 2007, officers' view was that there was no prospect of any full or temporary planning permission being granted on appeal should any further application be made.
>
> Members complimented officers on the comprehensive report and discussed the history of the site, the breaches of planning law, and the personal circumstances of the residents on the unauthorised sites. Having full regard to all updated and new information it was not felt that there had been any substantial change in the overall circumstances. There was insufficient evidence to demonstrate that the residents of the site needed to be based within the Basildon district for the provision of health care or education. The majority view was that the decision to serve Enforcement Notices had been correct and supported by the Secretary of State. Whilst being deeply sympathetic to the needs and circumstances of the residents of the site and the likelihood that a decision to take direct action would force residents to illegally camp on the roadside or other land, most Members did not feel that these outweighed the requirement to end the continued breaches of existing valid Enforcement Notices and the uncertainty for both the travellers and the local settled community. Members also had regard to the 3 prongs of the race equality duties and the adverse impact identified in the racial impact assessments. Most Members considered that direct action was justified as it corresponded to a legitimate aim and was proportionate."

Circular 01/2006

34 The main intentions of Circular 01/2006 are set out in paragraph 12 . These include:

> "(b) to reduce the number of unauthorised encampments and developments and the conflict and controversy they cause and to make enforcement more effective where local authorities have complied with the guidance in this Circular;
>
> (c) to increase significantly the number of gypsy and traveller sites in appropriate locations with planning permission in order to address under-provision over the next 3-5 years;
>
> (g) to ensure that DPDs [development plan documents] include fair, realistic and inclusive policies and to ensure identified need is dealt with fairly and effectively;
>
> (i) to help to avoid gypsies and travellers becoming homeless through eviction from unauthorised sites without an alternative to move to."

The tension between intentions (b) and (i) is obvious.

35 Paragraph 23 provides:

> "The RSS [regional spatial strategy] revision should identify the number of pitches required (but not their location) for each local planning authority in the light of the GTAAs [gypsy and traveller accommodation assessments] and a strategic view of

needs across the region."

Paragraph 30 provides:

> "The number of pitches set out in the RSS must be translated into specific site allocations in one of the local planning authority's DPDs that form part of the LDF [local development framework]."

Paragraph 8 provides that "site-based decisions and allocations are made at the local level" and the DPDs "will identify the location of appropriate sites". In paragraph 37 it is stated that all DPDs are subject to independent examination. It may be noted that paragraph 3.16 of the council's CSIP provides that "once the target number of pitches is finally decided in the SIR of the RSS, the Gypsy & Traveller DPD will identify specific sites to meet the target required."

36 Paragraph 40 , already mentioned, provides:

> "Local authorities will also need to have regard to their statutory duties, including those in respect of homelessness under Part VII of the Housing Act 1996 and to their obligations under the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 ."

37 Paragraph 43 provides:

> "Where there is clear and immediate need, for instance evidenced through the presence of significant numbers of unauthorised encampments or developments, local planning authorities should bring forward DPDs containing site allocations in advance of regional consideration of pitch numbers, and completion of the new GTAAs.
>
> …
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> Where there is an urgent need to make provision, local planning authorities should consider preparing site allocation DPDs in parallel with, or in advance of the core strategy."

38 Paragraphs 45 and 46 provide:

> "… Where there is unmet need but no available alternative gypsy and traveller site provision in an area but there is a reasonable expectation that new sites are likely to become available at the end of that period in the area which will meet that need, local planning authorities should give consideration to granting a temporary permission.
>
> Such circumstances may arise, for example, in a case where a local planning authority is preparing its site allocations DPD. In such circumstances local planning authorities are expected to give substantial weight to the unmet need in considering whether a temporary planning permission is justified. The fact that temporary permission has been granted on this basis should not be regarded as setting a precedent for the determination of any future applications for full permission for use of the land as a caravan site. In some cases, it may not be reasonable to impose certain conditions on a temporary permission such as those that require significant capital outlay."

39 As to the Green Belt, it is stated (paragraph 49):

> "There is a general presumption against inappropriate development within Green Belts. New gypsy and traveller sites in the Green Belt are normally inappropriate development, as defined in Planning Policy Guidance 2 : 'Green Belts' (PPG2). National planning policy on Green Belts applies equally to applications for planning permission from

> gypsies and travellers, and the settled population. Alternatives should be explored before Green Belt locations are considered. Pressure for development of sites on Green Belt land can usually be avoided if the local planning authority allocates sufficient sites elsewhere in its area, in its LDF, to meet identified need. Criteria-based policies in DPDs for the location of gypsy and traveller sites (see paragraph 31 and 32 above) should not depart from national planning policy as set out in PPG2 ."

At paragraph 51, it is stated:

> "Alterations to the Green Belt boundary can be used in exceptional circumstances for housing and other types of development inappropriate for the Green Belt … Such a proposal should be brought forward through the plan making process."

Need

40 There is an issue as to the sense in which the word "need" should be used in relation to caravan pitches. Though the difference between the parties is not in my view crucial to the decision under consideration, it is necessary to consider it. The judge cited the officers' report to committee:

> "There is a … significant demand for accommodation. Whether the demand is to be equated with "need" depends upon whether (a) there is any functional requirement for the demand to be met in Basildon and (b) any functional need for the land to be within the Green Belt."

41 The judge regarded that as a "somewhat too narrow assessment of need" (paragraph 35). The judge understood the council's assertion to be that "the need must be shown to be in the district of Basildon rather than somewhere else in the east of England because of some particular requirement for access to facilities or family ties or whatever."

42 The expression "functional requirement" is unclear as used in this context. I agree with the judge that a claimant does not necessarily have to establish either family ties in Basildon or a necessity to live on this part of the Green Belt to establish need. In that paragraph of the report, need is too narrowly defined. However, at paragraph 32, having stated that "unmet demand can result in need", the judge stated the issue:

> "… the Council must take into account the existence of the need and take such steps as it can reasonably take to cater for that need. But it may be impossible for the Council to make any provision or reasonable for it not to do so having regard to the dangers caused by and the circumstances of the unlawful occupation in which case the need, albeit a weighty factor in favour of avoiding eviction if reasonably possible, cannot require that enforcement action not be taken."

43 I have set out the contents of the officers' report and minutes in some detail. Having considered these as a whole, it does not appear to me that the Committee failed to address the correct issues when deciding whether to take action under section 178 . Need and the absence of alternative sites in the District was recognised, as it had been in the Secretary of State's planning decisions. On the other hand, it does not follow from a claimant's wish to live on a site in Basildon District that he is entitled to have one there. The council was entitled to regard the situation of the sites in the Green Belt as a factor of substantial weight when doing the exercise they acknowledge was required. However, both when considering whether planning permission should be granted and when making an assessment under article 8 of the Convention, such personal circumstances as the proximity of family members may also be a factor. I accept the formulation of Ouseley J in *O'Brien v Basildon District Council [2007] 1 P&CR 16* . Ouseley J stated, at paragraph 171, that "the question of local connection could be a live issue in the assessment of needs." He also stated that the Green Belt factor is also "a matter for legitimate

debate."

44 That there is a perceived need for additional sites in the east of England is clear from the emerging regional plan. It will provide an allocation to districts. The figure for Basildon District may or may not turn on the importance to be attached in the allocation process to the Green Belt factor and, for example, to family ties. The council's case is that the requirement is to be specified in the course of the continuing planning process. Having regard to the Secretary of State's view of the planning issues, as expressed in her decisions, the absence of alternative sites does not, at the present stage of regional and local planning in the council's submission, render action under section 178 unlawful. The Secretary of State has upheld enforcement notices, and refused even temporary planning permission, having considered the individual cases and the absence of alternative sites. The Secretary of State was not even prepared to grant the temporary permission contemplated in paragraphs 45 and 46 of Circular 01/2006 . Moreover, further consultation and further decisions are necessary as to the allocation to Basildon and as to how further sites should be provided before the absence of alternative sites can, if ever, render action under section 178 unlawful, it is submitted. This accords with the development plan led approach provided in the statutes, circulars and decisions of the Secretary of State.

45 The council has not in the event departed from the approach stated by the judge at paragraph 32. Need was acknowledged. While the allegedly restrictive approach to need is mentioned in his paragraph 66, the judge's actual criticisms are those echoed in Mr Luba's submissions; failures at the time of decision to look for other sites, to consider homelessness duties and to consider individual cases. Subject to these issues, the judge appeared to consider eviction under section 178 inevitable.

Authorities

46 The questions of planning and enforcement measures against Gypsies was considered by the *European Court of Human Rights ("ECtHR") in Chapman v United Kingdom [2001] 33 EHRR 18* . The court acknowledged the margin of appreciation left to national authorities when making judgments as to a particular use of land where there are legitimate planning objections (paragraph 92). The court acknowledged that enforcement measures taken in respect of a person in a caravan on land constituted an interference with the right to respect for private life, family life and home under article 8 of the Convention (paragraph 78). In its statement of principles, the court stated:

> "96. Nonetheless, although the fact of being a member of a minority with a traditional lifestyle different from that of the majority of a society does not confer an immunity from general laws intended to safeguard assets common to the whole society such as the environment, it may have an incidence on the manner in which such laws are to be implemented. As intimated in the *Buckley* judgment, the vulnerable position of Gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in arriving at the decisions in particular cases. To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the Gypsy way of life …
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> 98. The Court does not, however, accept the argument that, because statistically the number of Gypsies is greater than the number of places available in authorised Gypsy sites, the decision not to allow the applicant Gypsy family to occupy land where they wished in order to install their caravan in itself, and without more, constituted a violation of Article 8 . This would be tantamount to imposing on the United Kingdom, as on all the other Contracting States, an obligation by virtue of Article 8 to make available to the Gypsy community an adequate number of suitably equipped sites. The Court is not convinced, despite the undoubted evolution that has taken place in both international law, as evidenced by the Framework Convention , and domestic legislations in regard to protection on minorities, that Article 8 can be interpreted to involve such a far-reaching a far-reaching positive obligation of general social policy imposed on States …
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> 101. In this connection, the legal and social context in which the impugned measure of expulsion was taken against the applicant is, however, a material factor.

> 102. Where a dwelling has been established without the planning permission which is needed under the national law, there is a conflict of interest between the right of the individual under Article 8 of the Convention to respect for his or her home and the right of others in the community to environmental protection. When considering whether a requirement that the individual leave his or her home is proportionate to the legitimate aim pursued, it is highly relevant whether or not the home was established unlawfully. If the home was lawfully established, this factor would self-evidently be something which would weigh against the legitimacy of requiring the individual to move. Conversely, if the establishment of a home in a particular place was unlawful, the position of the individual objecting to an order to move is less strong. The Court will be slow to grant protection to those who, in conscious defiance of the prohibitions of the law, establish a home on an environmentally protected site. For the Court to do otherwise would be to encourage illegal action to the detriment of the protection of the environmental rights of other people in the community."

47 In *O'Brien & Ors v South Cambridgeshire District Council [2008] EWCA Civ 1159* , the circumstances were similar to those in the present cases to the extent that planning permission had been refused and an enforcement notice had not been complied with. The council then applied for an injunction under section 187B of the 1990 Act. On behalf of the residents, who were Gypsies, it was submitted that the council should first have sought to identify some alternative site for them. A development plan, entitled "Gypsy and Traveller Development Plan Document", was in course of preparation. Giving the judgment of this court, with which Carnwath LJ and Maurice Kay LJ agreed, Keene LJ, at paragraph 15, referred to the "plan-led system" now in operation under the 1990 Act. Keene LJ stated, at paragraph 40 :

> "Mr Allen's suggestion that the sub-committee should have considered bringing forward sites outside the scope of the development plan process was not a course of action which was realistically open to the respondent. Contrary to his submission, it would not have been in accordance with the Secretary of State's policy as set out in Circular 1/2006 . Despite that circular's recognition of the need for more sites for Gypsies and Travellers, it contains repeated references to meeting the need by means of the development plan process. Thus paragraph 8 states

> "The Development Plan Documents (DPDs) will identify the location of appropriate sites",

> And the same point is made at paragraphs 19 ("Overview"), 21 and 33, the last of which emphasises the need for local planning authorities to be able to demonstrate that sites are suitable. Even when dealing with Transitional Arrangements the Circular still adheres to the development plan process, making the point in paragraph 43 that, where there is clear and immediate need, local planning authorities should bring forward DPDs in advance of regional assessments. Nowhere is there any encouragement to authorities to take action outside the development plan process, and that is entirely understandable, first because we have a development plan-led system, and secondly because to try to bring forward a site by by-passing the system would be likely to exacerbate the controversy which generally attends proposals for sites for Gypsies and Travellers. It would not be a recipe for speedy provision."

48 The present situation is not entirely on all fours in that a regional planning dimension is involved though it will in due course become part of the development plan for Basildon. Keene LJ's statement does, however, strongly support the council's submission that, having regard to the consistent approach of the Secretary of State to planning applications on the relevant sites, and the stage regional and local strategy had reached, the council's decision to act under section 178 without further consideration of alternative sites was not unlawful. Planning decisions have been taken in the knowledge that alternative sites are not available in the District. Paragraph 43 of the Circular 01/2006 does not contemplate action by a local authority outside the development plan process.

49 In *R v Hillingdon LBC Ex Parte McDonagh [1999] 31 HLR 531* , the issue was whether, under earlier statutory provisions and policy guidance, the local authority was bound to carry out

investigations under the Children Act 1989 , Part VII of the Housing Act 1996 or the Education Acts prior to instituting eviction proceedings against Gypsies or unauthorised campers. Carnwath J stated, at page 542:

> "It is one thing to say that an authority exercising eviction powers should be aware of the traumas and upsets that it likely would cause, and of the implications for their own responsibilities under the various statutes to which I have referred. It is another thing to say there is a binding obligation in law on them to carry out all of the investigations under those statutes before initiating proceedings. In my view, there is no legal basis for such a proposition."

50 In R (Maughan) v Leicester City Council [2004] EWHC 1429 Admin, it was not necessary for Richards J to decide the point but he stated that there seemed to him "to be much force in that line of argument", namely that there was simply no link between the decision to evict and the powers and duties of the council under the homelessness legislation.

Further submissions by respondents

51 I have incorporated the points made by way of Respondents' Notice in my summary of the respondents' submissions. Mr Luba submits that the question rightly considered by the local planning authority and the Secretary of State in a planning context, whether there are very special circumstances which justify the grant of permission on the Green Belt, is not a relevant consideration when considering the lawfulness of action under section 178 . Further, the council failed to have regard to the duties which arise when a local authority is embarking on a programme of mass eviction rendering numerous households homeless. It should have had regard to the requirement in the Circular urging councils to take careful account of the obligations on Social Service Departments under the Children Act 1989 and under the relevant Housing Act . Neither the relevant provisions of the Housing Act 1996 nor the council's own Homelessness Strategy were referred to in the report to committee. It is further submitted that the judge was correct to find, at paragraph 66, that the council's approach "has been that the site should be cleared rather than a consideration of [individual families]". That being its approach, the legitimacy of the decision depends on success on the least favourable individual cases. The decision ought also to have been quashed for non-compliance with article 8 of the Convention.

52 The current Homelessness Code of Guidance (July 2006) noted, at paragraph 16.38:

> "Some Gypsies and Travellers may have a cultural aversion to the prospect of "bricks and mortar" accommodation. In such cases, the authorities should seek to provide an alternative solution. However, where the authorities are satisfied that there is no prospect of a suitable site for the time being, there may be no alternative solution. Authorities must give consideration to the needs and lifestyle of applicants who are Gypsies and Travellers when considering their application and how best to discharge a duty to secure suitable accommodation, in line with their obligations to act consistently with the Human Rights Act 1998 , and in particular the right to respect for private life, family and home."

On the basis of *Codona v Mid-Bedfordshire DC [2004] EWCA Civ 925* , it is accepted that an offer of bed and breakfast accommodation may in some circumstances be a discharge of duties under the Housing Act , at any rate in the short term.

53 The council states that it is conscious of its duties and responsibilities towards the respondents. A liaison officer has been appointed. The council will encourage early homelessness applications to be made and make special arrangements for the processing of urgent applications. Temporary accommodation, including that for the storage of possessions, will be provided where appropriate. Advice will be available about the identification of health and educational facilities. The council will have due regard to its obligations under section 71 of the Race Relations Act 1976 ("the 1976 Act"), as amended, and section 49A of the Disability Discrimination Act 1995 ("the 1995 Act"). These obligations are referred to as the Race Equality Duty and the Disability Equality Duty by the Equality and Human Rights Commission ("the

Commission") in its submissions.

The statutory equality issues

54 In written submissions on the statutory equality issues, the Commission submits that in all its work a public authority must consider what can be done to minimise any adverse impact on good relations and equality of opportunity. Mr Allen QC, on its behalf, refers to the very well known vulnerability of Gypsies and Irish Travellers. Their traditional ways of life have led to them frequently coming into conflict with other persons. Each time they camp, without permission, the relationship with the local community is strained. In making its orders in that context, the council failed to give consideration to the individual welfare needs of the claimants, it is submitted. A phased eviction would make it more possible for the appropriate authorities to address the needs of those evicted. If an eviction order was to be made, more consideration needed to be given to how the eviction should be conducted so as to minimise the grave adverse effects. Consideration has not been given to the impact of a decision to evict on already very disadvantaged people. It should have carried out impact assessments, conducted consultations and gathered information when deciding whether to evict. As to the need to seek alternative sites and the requirement for individual consideration of the case of each respondent, the Commission's submissions are consistent with those made on behalf of the claimants

55 The judge referred in considerable detail to the Commission's submissions on section 71 of the 1976 Act. He referred to the decision of this court in the *R (Baker & Ors) v Secretary of State and London Borough of Bromley [2008] EWCA Civ 141* and cited at length the judgment of Dyson LJ. Dyson LJ stated, at paragraph 31:

> "In my judgment, it is important to emphasise that the section 71(1) duty is not a duty to achieve a result, namely to eliminate unlawful racial discrimination or to promote equality of opportunity and good between persons of different racial groups. It is a duty to *have due regard to the need* to achieve these goals. The distinction is vital. Thus the Inspector did not have a duty to promote equality of opportunity between the appellants and persons who were members of different racial groups; her duty was to have due regard to the need to promote such equality of opportunity. She had to take that need into account, and in deciding how much weight to accord to the need, she had to have *due* regard to it. What is *due* regard? In my view, it is the regard that is appropriate in all the circumstances. These include on the one hand the importance of the areas of life of the members of the disadvantaged racial group that are affected by the inequality of opportunity and the extent of the inequality; and on the other hand, such countervailing factors as are relevant to the function which the decision-maker is performing."

56 The judge concluded:

> "57. It is suggested that the officers' reports fail to discuss or consider properly ameliorative measures, in particular the giving of time until an alternative site is found. But the committee was well aware of the planning decisions which had considered but rejected the possibility of temporary permission or, beyond the extensions of time for compliance granted on earlier enforcement appeals, any further time within which there could be compliance. Under the heading 'enforcement action' in each report the officers have clearly set out the relevant obligations to consider the effect on the claimants if they are to be evicted. The lack of alternative sites and the view of the Secretary of State and her Inspectors that there was a need disclosed by the extent of the unauthorised encampments (a view which was not entirely accepted by the Council) were drawn to member's attention as material considerations.
>
> 58. Despite Mr Allen's lengthy and detailed submissions, I have no doubt that it is impossible to conclude that the Council was merely paying lip service to the race equality duty. The officers' reports spelt out correctly the considerations that had to be taken into account. It has not been submitted that the decision to evict was perverse. In those circumstances, it cannot properly be suggested that the committee ignored the advice given to it in the reports."

57 As to the 1995 Act, as amended, the judge concluded that the absence in the officers' report of reference to the duty was of no relevance (paragraph 62). The balancing exercise relevant to the Race Equality Duty is the same as that for the Disability Equality Duty. The judge added (paragraph 63) that it was "of some materiality that those advising the claimants did not until the [Commission] raised the points seek to rely on an alleged breach of section 49A of the Act". The judge concluded that the council had properly taken into account the health problems. He was not persuaded that there had been a breach.

58 The council seek to uphold the conclusion of the judge on these issues and adopt his reasoning. There was evidence before the judge that the attention of members of the Committee was drawn to the need to consider the three prongs of the general Race Equality Duty. An initial Race Impact Assessment had been carried out. The duties were to be considered in a context in which the claimants had carried out unauthorised development in the Green Belt and were liable to criminal sanctions for non-compliance with enforcement notices. The context included the tension between the claimants and those in the settled community, by reason of the unlawful use. The council would have regard to its duties when considering when and how to evict the claimants. As to the Disability Duty, the council comment that it must not be assumed that all, or even many, of the claimants are disabled persons. The council had had regard to the health problems of some claimants and had considered the personal circumstances of the occupants in detail.

Decisions on enforcement notices

59 The judge considered, in considerable detail, the planning decisions made by the Secretary of State about the relevant sites. There are conflicting submissions as to their relevance. Mr Elvin submits that the decision under section 178 cannot be divorced from the planning process. The planning situation can form the basis for subsequent action under the section by the council. Mr Luba, accepting the planning background and its exhaustion for planning purposes, submits that its relevance is limited when taking a decision under section 178 . I do not propose to give as much detail as the judge did, especially having regard to the concession made on behalf of the claimants that they have reached the end of the road as far as planning procedures are concerned.

60 The Secretary of State stated, in a decision letter dated 22 February 2007, that she "has attached substantial weight to the general need for additional gypsy sites" (paragraph 22). She has acknowledged that the absence of alternative sites and the disruption to educational needs and health care problems should carry considerable weight. However, her conclusion, at paragraph 31, was:

> "The Secretary of State has agreed with the Inspector that all 7 of the appeal proposals amount to inappropriate development in the Green Belt and that they are harmful as such. Furthermore, she has agreed that the proposals all cause further harm to the openness and purposes of the Green Belt and harm to highway safety. The Secretary of State has balanced these harms against the need for additional gypsy sites in the area, the appellants' need for sites, the lack of alternative accommodation options and the appellants' health needs and, with the exception of appeal D, their education needs. The Secretary of State concludes that those elements weighing in favour of allowing one or more of these appeals do not outweigh the harm caused by each of the appeal proposals."

61 It was added, at paragraph 35:

> "… The Secretary of State agrees with the Inspector that it is reasonable to assume that if the appeals are dismissed then eviction will follow and this would result in interference with the appellants' home and family life. However, the Secretary of State also agrees with the Inspector that the interference has to be balanced against the harm to the Green Belt and to highway safety caused by the developments and she further considers that the public interest in pursuing the legitimate aims of Article 8 must include the protection of the environment."

Temporary permission was also refused.

62 There was a further appeal against a refusal of temporary permission for three years. That was dismissed by the Secretary of State on 21 January 2008. The Secretary of State noted the factors in the claimants' favour, including the lack of alternative sites and health and educational needs. In relation to the need for sites, it was stated, at paragraph 5:

> "The Secretary of State has also taken into account the emerging Regional Spatial Strategy (RSS) for the East of England (the East of England Plan). The Secretary of State's Proposed Changes, and Proposed Further Changes have been published, and it carries significant weight. Policy H4 deals with provision for Gypsies and Travellers, and Policy SS7 confirms that no strategic or local review of Green Belt boundaries in this area is proposed. The East of England Regional Assembly is undertaking a single issue review of the East of England Plan to identify the number of Gypsy and Traveller pitches required across the East of England, and an issues and options consultation paper was published in May 2007. However, as the review is still at a very early stage, the Secretary of State considers that it should carry little weight."

63 It was also stated at paragraph 14:

> "The Secretary of State considers that the exact extent of the local needs is not known, and that there is no certainty at this stage that Basildon District Council will in the future be required to provide more sites. The district level allocation of pitch numbers will not be finalised until the East of England single issue review is complete, and work on this is currently at an early stage. However, she does consider that a current need in this area has been demonstrated. Circular 01/06 makes it clear that factors such as the presence of significant numbers of unauthorised developments can provide evidence of need (Paragraph 43)."

64 At paragraph 13, it was noted that both the Local Plan Policy and emerging East of England Plan Policy SS7 "confirm that there is no intention to review the boundaries of the Green Belt in this area." At paragraph 21, the application for temporary permissions for a period of three years was considered in relation to Circular 01/2006 . Agreement was expressed with the Inspector's conclusion that the development is causing unacceptable harm to amenity. "[The Secretary of State] further agrees that it is unlikely that the situation regarding alternative sites will be significantly different in three years."

65 That approach is reflected in the officers' report to Committee:

> "The Gypsy/Traveller Draft Single Issue Review of the RSS is due to be published in January 2008 and it will contain details of the number of pitches the Regional Assembly for the East of England will expect Basildon to provide. The issue of this document will signal the commencement of work in accordance with the council's LDF on the production of the council's Gypsy/Traveller Development Plan Document."

66 The decision in appeal 6082/2007 in January 2008 was by an Inspector appointed by the Secretary of State. The judge summarised his findings:

> "The inspector concluded, on the basis of information before him, that, planning circumstances were likely to change within Basildon within the next 3 to 4 years as Gypsy accommodation needs were finalised and additional Gypsy sites were identified. However, the harm that the appeal proposal caused to the Green Belt, to local character and residents' living conditions was unacceptable even on a temporary basis. Thus dismissal of the appeals was proportionate despite the effects on the appellants and their families."

Conclusion

67 I consider first the Race Equality and Disability Equality Duty. I agree with the judge's conclusions on these issues and with his reasons. I consider below the timing of the decision to act under section 178 .

68 The scope of duties owed to Gypsies and Travellers was considered by the ECtHR in Chapman . The case establishes that the court will be “slow to grant protection to those who, in conscious defiance of the prohibitions of the law, establish a home on an environmentally protected site. For the court to do otherwise would be to encourage illegal action to the detriment of the protection of the environmental rights of other people in the community” (paragraph 102). Viewed against the factual background described, that statement of principle is of particular relevance. Notwithstanding the claimants' endeavours, they remain in conscious defiance of the prohibitions of the law.

69 Moreover, as I read paragraph 98 of the judgment in Chapman , there is no positive obligation of general social policy to provide as many sites as the Gypsy community seek. The obligation that arises is not demand driven to that extent. The judge's conclusions were based on the premise that “there can be no doubt that the claimants cannot remain where they are and that the time must come when they will have to leave” (paragraph 65 of his judgment).

70 The procedure which has been followed, the refusal of planning permission, consistently supported by the Secretary of State, the taking of enforcement action under section 172 of the 1990 Act, and the flagrant disregard of enforcement orders upheld by the Secretary of State, can legitimately form the basis for a decision to take action under section 178 of the 1990 Act. In taking that decision, the persistent breaches both of planning control and the criminal law are factors which may be taken into account. The council was not required to act as if the decisions on the enforcement notices had not been taken.

71 Given the planning context, I do not consider that the council has erred in law in failing to give further consideration to alternative sites at the time the decision to take action under section 178 was taken. As appears from Circular 01/2006 , sites are to be provided through the development plan process. I have referred to that process and to the Secretary of State's comment on its current stage. In his planning decisions, the Secretary of State has plainly been mindful of factors in favour of the claimants and has declined to grant planning permission. Temporary permissions, contemplated in paragraphs 45 and 46 of the Circular have been refused by the Secretary of State, mindful of all the factors involved. I agree with the approach to this issue of Keene LJ in O'Brien , including his reference to the planning system being development plan-led and the likely exacerbation of controversy by by-passing the system. Whether an attempt should be made to bring forward DPD allocations (paragraph 43 of Circular 01/2006) may be the subject to debate but failure to do so does not, in my judgment, and in this particular context, render a decision to act under section 178 unlawful.

72 While the basis for action under section 178 is present a council taking such action must, however, be mindful of its duties under the homelessness legislation and the need to consider cases individually. In my judgment, the council has not failed in either respect. The judge's criticism of the council may be summarised as a failure to perform sufficiently its homelessness duty, and a failure to give consideration to individual families in a context in which further consideration has not been given to finding alternative sites.

73 A homelessness procedure was instituted in 2005 and was put on hold pending resolution of the present proceedings. On the homelessness duty, the judge's concern is primarily as to timing. I have no doubt that the council is aware of its duties under the 1996 Act and will give effect to them. Evidence has been provided as to how that will be done. The council was not required to take further action while the proceedings were pending.

74 I agree with Mr Elvin's submission that enquiries of the claimants would not have been fruitful. I do not doubt that the claimants are aware, particularly having regard to the legal advice available to them, of their rights under the 1996 Act. They have remained on the sites. That being so, it would be fanciful to conclude that the claimants would have cooperated with enquiries about, or offers of, bricks and mortar accommodation. That, along with other possibilities, will be considered if and when action under section 178 is approved. I agree with the approach of

Carnwath J in McDonagh . The council was not obliged to take further measures in this respect before resolving to act under section 178 .

75 A decision to rely on section 178 required a consideration of the case of each claimant but the decision was not unlawful because, at that stage, at what moment, and in what manner, each individual claimant would be evicted has not been set out. The difficulties faced by the claimants were acknowledged by the council, as was their status and lifestyle, and, before the decision was taken, a balancing exercise which had regard to the appropriate factors was carried out.

76 In my judgment, sufficient consideration was given to the case of each claimant. Considerable information was provided to council members about each of them and was considered by members in a two hour closed session. While some of the terminology used by the council might suggest an approach by way of “site clearance”, the documents should be considered as a whole. They demonstrate, in my view, that individual cases have been considered. Evidence available to, and considered by, the Secretary of State upon the appeals against the enforcement notices was properly taken into account and the need to update recognised. On the evidence, the judge was, in my view, in error in holding that consideration had not been given to the needs of individual families.

77 In my judgment the council's decision to take action under section 178 of the 1990 Act was a lawful decision lawfully taken. I would allow this appeal and give counsel an opportunity to make submissions as to the contents of the Order.

Lord Justice Lloyd:

78 I agree that the council's decision taken on 13 December 2007 to enforce under section 178 of the Town and Country Planning Act 1990 was lawful and was properly reached, and that these appeals should therefore be allowed.

79 The decision was that officers should be authorised to take such action as was deemed necessary to allow the council to secure compliance with the enforcement notices, under section 178 . It was not a decision as to what action should be taken, or when.

80 I do not wish to add anything to what Lord Justice Pill has said about the question of the council's consideration of the individual circumstances of the persons subject to the enforcement notices.

81 In the course of submissions which, like those of Mr Elvin, were powerful, eloquent and very well presented, Mr Luba for the claimants pointed out that the duties of the council as a local housing authority under Part VII of the Housing Act 1996 extend to persons threatened with homelessness, meaning those likely to become homeless within 28 days: see section 175(4) . That is not yet the case as regards the claimants, because of the effect of the judicial review proceedings, but it will come to be the case at some stage, according to how the council goes about the process of enforcement. Under section 195 , where a person is threatened with homelessness and has a priority need (and assuming that the council is not satisfied that he or she has become so threatened intentionally), then the council's duty is to take reasonable steps to secure that accommodation does not cease to be available for that person. Thus the council is likely to be obliged, in at least some, perhaps many, of these cases, to take reasonable steps to secure continuity of accommodation notwithstanding enforcement.

82 For the council Mr Elvin accepted all of that, as he accepted the other duties arising under Part VII of the 1996 Act. His position was that, although the question of homelessness was embarked upon at an earlier stage, it has, properly, been in abeyance until now, and that if the council's decision stands, as a result of the appeal, the housing department will engage with those affected, to see which of them wish to apply under section 183 of the 1996 Act, and the council will comply with its duties under the Act in relation to those who do so apply. None of that had to be addressed as a pre-condition of proceeding to enforcement under the 1990 Act. Officers will take the necessary steps to comply with Part VII of the 1996 Act as part of the process of deciding how and when to carry out their delegated functions under the council's decision.

83 For these reasons, and for those given by Lord Justice Pill, it seems to me that the judge was wrong to strike down the decision on the basis that proper account had not been taken of the position under the 1996 Act.

84 On the other point, whether the council had properly addressed the issue of “need”, covered in paragraphs 31 to 36 of the judge's judgment, it seems to me that it is necessary to bear in mind the nature of the new policy approach set out in Circular 01/2006 . Lord Justice Pill has set out relevant provisions of that Circular at paragraphs 34 to 39 .

85 The approach adopted by the Circular seeks to ensure that appropriate provision for the accommodation of gypsies and travellers is made by way of Development Plan Documents. As such, it is bound to be slow in coming into effect, even with the preparation of a Regional Spatial Strategy devoted to this aspect as a single issue. It cannot provide a swift response to the need which exists as a result of the overall inadequacy of the number of lawful sites as compared with the demand for such accommodation. However, this is the current policy. It carries with it the need to observe the time-consuming statutory processes intrinsic to the formulation of detailed planning policies on a regional and local basis. But by doing so, first, it proceeds on the basis that a problem of this kind cannot properly be coped with unless a regional view is taken as to how the need should be met. Secondly, controversial and difficult as the process may be, it may be hoped that, if the provision which is to be made is established as a result of these regional and then local processes, they will be the more robust and sustainable.

86 Paragraphs 41 to 46 of Circular 01/2006 deal with transitional arrangements; Lord Justice Pill has quoted the most pertinent provisions at paragraphs 37 and 38. The Circular recommended the possible use of temporary planning permissions in relation to unmet need.

87 In effect, what the claimants seek by their judicial review application is the equivalent of a temporary planning permission, or (what comes to much the same thing) an extension of time for compliance with the enforcement notices, save that the temporary permission, or the extension, would be open-ended in time. Viewed in that way, it seems to me that the claimants face an insuperable obstacle in the fact that the Secretary of State has refused to grant any temporary planning permission, and the time given (and in some cases extended) for compliance with the enforcement notices has expired. In the light of that I do not see how the council's decision to proceed to enforcement, and not to hold its hand for an undefined period (which is what the claimants say it should have done), can be said to be unlawful.

88 For those reasons, as well as for those given by Lord Justice Pill, with all of which I agree, I would allow the appeals.

Lord Justice Moses:

89 I agree with both judgments.