Sheridan & Ors v Basildon Borough Council (formerly Basildon District Council)

Case No: B5/2011/1369

B5/2011/1370

B5/2011/1368

Court of Appeal (Civil Division)

21 March 2012

[2012] EWCA Civ 335

2012 WL 609197

Before: The Chancellor of the High Court Lord Justice Patten and Lord Justice Pitchford

Date: 21st March 2012

On Appeal from the Southend on Sea County Court

HH Judge Peter Dedman

0BQ00819, 0BQ00930 and 0BQ00931

Hearing date: 29th February 2012

Representation

Mr Alex Offer (instructed by Davies Gore Lomax LLP) for the Appellants.

Ms Galina Ward (instructed by Basildon Borough Council) for the Respondent.

Judgment

Lord Justice Patten:

Introduction

1 The common issue raised by these three appeals is whether Basildon Borough Council ("the Council") has discharged its duty under s.193(2) of the Housing Act 1996 ("the 1996 Act") to provide suitable accommodation for occupation by the appellants. Each of the appellants is an Irish traveller. Until recently they lived on the unauthorised site at Dale Farm which was cleared last year. This followed unsuccessful challenges by the residents to the Council's decision to take direct action pursuant to s.178 of the Town and Country Planning Act 1990 ("the 1990 Act") in support of enforcement notices served to prevent infringement of the planning controls over the development of green belt land: see *Basildon District Council v McCarthy [2009] EWCA Civ 13* . Mr and Mrs Sheridan and their children are living temporarily (but illegally) on the authorised site at Dale Farm. Mrs Flynn has remained in her caravan on the entrance road to the site.

2 It is common ground that all three appellants are eligible for housing assistance; are not intentionally homeless; and are in priority need. The provisions of s.193 of the 1996 Act therefore apply: see s.193(1) . Section 193(2) provides that:

> "Unless the authority refer the application to another local housing authority (see section 198), they shall secure that accommodation is available for occupation by the applicant."

3 The discharge of that housing duty must be performed in accordance with s.206(1) which provides that:

> "A local housing authority may discharge their housing functions under this Part only in the following ways—
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> (a) by securing that suitable accommodation provided by them is available,
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> (b) by securing that he obtains suitable accommodation from some other person, or
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> (c) by giving him such advice and assistance as will secure that suitable accommodation is available from some other person."

4 In this case there is no prospect of suitable accommodation being provided by a third party and the Council therefore made offers to all three appellants of accommodation from within its housing reserve. I should mention at this stage that Mr and Mrs Sheridan are separated and they made separate housing applications (in Mr Sheridan's case as a single person) rather than an application to be accommodated together.

5 On 23rd September 2009 Mr Sheridan was offered a one-bedroom flat at 49 Eldeland, Basildon. On 14th October 2009 Mrs Sheridan and her three children were offered a tenancy of a three-bedroom house at 20 Southwell Link, Laindon. On 25th November 2009 Mrs Flynn (with her late husband) was offered a one-bedroom flat in sheltered accommodation at 28 Bartlow Side, Pitsea.

6 All of the appellants rejected the accommodation offered as unsuitable and requested a review of the Council's decision that it was suitable for the purpose of discharging its duty to them under s.193(2) . A right to review such a decision is conferred on an applicant by s.202 of the 1996 Act (see s.202(1)(f)) and, on receipt of a request, the housing authority must review its own decision: see s.202(4) . The review is normally carried out by a senior housing officer who was not involved in the original decision and an applicant who is dissatisfied with the review decision has a further right of appeal to the County Court on a point of law under s.204 thereby rendering the review procedure Article 6 compliant: see *Begum (Runa) v London Borough of Tower Hamlets [2003] UKHL 5* .

7 In the case of each of the appellants the request for a review was made on the sole ground that the appellant had an aversion to bricks and mortar accommodation. In the case of Mrs Flynn, this was put largely on cultural grounds. There is no suggestion that she will suffer any physical or psychiatric harm if she is compelled to take up the offer which has been made. But in the case of Mr and Mrs Sheridan, the Council's review panel was provided with psychiatric reports prepared by Dr Mark Slater who is a consultant psychiatrist to the Hertfordshire Partnership NHS Foundation Trust and has specific experience in treating travellers with mental health problems.

8 His report on Mr Sheridan was based on an interview with him in December 2009. As Dr Slater sets out in his report, Mr Sheridan was born in April 1977 to a family of Irish travellers. He received no formal education and is illiterate. He is married with three children but, as mentioned earlier, is now separated from his wife. However, they continued to live on the same plot at Dale Farm and he has remained dependent on Mrs Sheridan for support and assistance. He has two brothers and three sisters who also live locally to Dale Farm with their own families.

9 Mr Sheridan has a number of medical and psychiatric problems. He has diabetes as well as raised cholesterol and high blood pressure. These conditions are exacerbated by excessive drinking, smoking and, on occasions, the use of cannabis. He is also extremely overweight. Dr Slater says in his report that Mr Sheridan is also prone to depression which can be triggered by anxiety or a sense of loss. A particularly difficult time for him occurred after the death of his parents in the 1990's. Mr Sheridan says that he began drinking heavily; could not sleep; and had thoughts of killing himself. He was admitted to hospital in a diabetic coma but then had no alcohol

for six or seven months.

10 When asked by Dr Slater about his impending move from Dale Farm and the possibility of his being accommodated in bricks and mortar accommodation he gave several different responses. He told Dr Slater that he could not survive if he was forced to move out and away from his wife and children because he would be unable to manage his medication and would probably drink himself to death. He also complained that he would not be able to see as much of his family. Although he referred to not wanting to live in bricks and mortar, he did not suggest in terms that this would have a serious impact on his mental health in itself. The recurring theme in all his reported complaints is that, without the close support of his wife and family, he would be unable to manage his medication and his life would collapse.

11 Dr Slater expresses the opinion that Mr Sheridan is of low intelligence bordering on a mild mental impairment. He is therefore less competent in dealing with ordinary aspects of life including taking his own medication. For the same reason, he is more vulnerable to stress and depression than most. Dr Slater believes that Mr Sheridan's former dependence on his parents may have been transferred to his wife who has taken charge of various aspects of his life including the management of his medication.

12 Mr Sheridan has been on antidepressant medication since his discharge from hospital after his diabetic coma. Dr Slater says that it is unclear what type of depression Mr Sheridan had and that it is more likely that it is reactive in nature rather than a kind of depressive illness. His medical history from 2002 (when he registered with a new GP) indicates bouts of depression occurring irregularly over a six year period. He is therefore likely to be at risk of further periods of depression. Dr Slater says that:

> " The risk would be particularly high at times of stress, and especially if he lost the support he receives from his wife and siblings, had reduced contact with his children, and was living in an isolated setting alien to his culture.
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> 19.18 The prognosis for his drinking is that his alcohol intake will increase dramatically at times of stress, especially if the containing influence of his wife is not there.
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> 19.19 Mr Sheridan has limited understanding of his diabetes, is poorly organised and has low motivation to manage his diabetes effectively. Although only 32 years old, he also has raised cholesterol and blood pressure and is extremely obese. Without adequate support, in particular someone to supervise his medication, his physical health would deteriorate.
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> 19.20 The depression, drinking, and poor diabetic control would all worsen each other, leading to a recurrence of the life threatening condition Mr Sheridan had after the death of his parents.
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> 19.21 Mr Sheridan reports that he comes from an Irish traveller background, has always lived in caravans and mobile homes, as have all his family. He describes how several of his siblings live on the same site and says how distressed and unable to cope if he were to lose the support of his wife. I have no reason to disbelieve his account.
>
> 19.22 Mr Sheridan has a general aversion to bricks and mortar accommodation, and this is in keeping with his cultural background.
>
> 19.23 I believe that if Mr Sheridan was forced to move to any bricks and mortar accommodation his mood would deteriorate as a direct result. Secondary effects would be the loss of the social and practical support he currently receives from his wife, siblings and others on the site. It would also be more difficult for him to maintain contact with his three children.
>
> 19.24 As a result, Mr Sheridan would become deeply depressed and, for the reasons and via the mechanisms I have outlined above, this would be life threatening. He has stated that he would become suicidal, and he told me that he would "drink himself to death", something he nearly did after his parents died.
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> 19.25 Even if Mr Sheridan did not destroy himself through alcohol, failing to keep to his

diabetic, cholesterol and blood pressure medication would dramatically increase his risk of suffering a fatal heart attack or stroke.

19.26 As I have stated in the report on Mrs Sheridan, if Mr Sheridan was forced to move to bricks and mortar accommodation, or just away from the support of his wife and siblings, Mrs Sheridan would worry about him. Her mental health would suffer and there would be additional adverse consequences for the children.

19.27 Overall, I believe that there would be a significant risk of Mr Sheridan suffering psychiatric harm if he was forced to accept the accommodation proposed by the Council. I do not think it would be overstating it to say that it could amount to a death sentence for him."

13 At her interview with Dr Slater, Mrs Sheridan said that she had never lived in bricks and mortar and was likely to have a nervous breakdown if compelled to do so. Like her husband Mrs Sheridan had no formal education but, unlike him, she has no serious medical problems, although she has suffered from depression on several occasions in the past.

14 She was asked by Dr Slater about having to move to the house at Laindon:

"17.3 I asked her what her views were about bricks and mortar accommodation and she said "I could not live in a house, I never have". I asked her what effect it would have on her if she was forced to do so and she said, "It would put my nerves at me, like I was locked in jail".

17.4 She went on, "Here I can get the shopping, friends visit me, talk to them. In a council house, people I don't know, I'd be a nervous wreck, terrified of people watching through the window, perverts taking the kids". She added, "I get depressed thinking about it."

17.5 I asked how she would feel if members of the community from the current site moved to the same area, i.e. she would have the same social contacts. She said, "It would be beautiful", but added, "but I still couldn't stay. We're quite happy here, want to stay"."

15 On the basis of this evidence coupled with some evidence of depression in the past, Dr Slater expressed the following opinion:

"19.7 In the documentation I have read, Mrs Sheridan has expressed multiple concerns about the accommodation she was offered by the Council. This includes a general aversion to bricks and mortar accommodation, something she reiterated to me. She also states that she would be unable to cope without the practical and social support from the other people on the current site. I have no reason to disbelieve this aspect of her account.

19.8 I believe that if Mrs Sheridan and the children were forced to move into any bricks and mortar accommodation, she would experience significant depression and anxiety, even if the house was of high quality. Her sense of dislocation would relate to losing her familiar location, a heightened sense of isolation from her culture and loss of the ready access to support she currently enjoys.

…

19.11 It is difficult to predict just how depressed Mrs Sheridan would become if she was forced to move to the house in Laindon, or other bricks and mortar accommodation. It is possible that her distress about what she would see as an impossible situation might drive her to deliberately harm herself, although I believe that any such act would not be with the intention of killing herself."

16 Before the Council's review panel met they received written submissions from the appellants'

solicitors setting out their clients' various objections to the accommodation offered. These included the depression and anxiety which Mr and Mrs Sheridan would experience if isolated from their family, community and culture and the loss of practical help in dealing with everyday problems. In the case of Mrs Sheridan, this includes getting her children to hospital appointments. In the case of Mr Sheridan, it is primarily assistance with his medication.

17 The Council were reminded of their obligations under Article 8 ECHR ; of the need to consider suitable temporary alternatives to the provision of permanent accommodation; and of the guidance contained in Circular 01/2006 in relation to planning for gypsy and traveller caravan sites. More specifically, the Council were also provided with a report by a planning consultant (Ms Alison Heine) dated 19th February 2010 which the appellants asked to be taken into account on the s.202 review.

18 Ms Heine's report contains a critique of site provision by the Council in the years leading up to the decision to close the unauthorised site at Dale Farm. It is said that in January 2009 there were 206 caravans on authorised pitches in the district and a further 90 on private authorised sites. The last site to be granted planning permission was in 1999. According to the report, the Council has demonstrated a lack of willingness to find suitable alterative sites or to release green belt land for that purpose.

19 The report then lists and analyses the proposed sites which the Dale Farm Housing Association had submitted to the Council for consideration. Some of these had already been rejected by the Council as unsuitable for various reasons. In respect of others, the Council had yet to comment. The Council was also asked by the appellants' solicitors to consider making available as temporary accommodation land in its ownership which the Council was proposing to sell in order to raise money for a Sporting Village.

20 The review panel considered this material together with the psychiatric reports on Mr and Mrs Sheridan but decided in each case that the property offered was of a suitable size and type for the appellants' housing needs. The decision letters state:

> "The review panel have taken into consideration your strong cultural aversion to bricks and mortar accommodation. As a result, there has been a genuine consideration of ways and means to meet the needs arising from your way of life.
>
> However, recent enquiries within confirm that there are, at present, no pitches available on any of the caravan sites provided by Essex County Council. The position will be monitored and, should any sites become available, you will be informed."

21 There is then a response given to the ten proposed sites referred to in Ms Heine's report. Five of the sites are not within the district. Two (at Billericay and Crays Hill) cannot be identified. The remaining three are rejected as unsuitable due to their location. The purchase of land as a site for the appellants is rejected as lying outside the scope of the Council's housing duty under s.193 on the basis of this Court's decision in *Lee v Rhondda Cynon Taf County Borough Council [2008] EWCA Civ 1013* which I will come to later in this judgment.

22 There is then specific consideration of the psychiatric evidence. In the decision letter in respect of Mr Sheridan the review panel says this:

> "We have taken into consideration the medical evidence provided, which comprises the report of Dr Slater. The panel notes your medical history and the finding of Dr Slater that there would be a significant risk of psychiatric harm were you forced to accept the accommodation that has been offered. However we have made extensive enquiries throughout Essex in relation to site availability and, at present, there are no available plots or pitches. Should you feel that your mental health was deteriorating at any time you should contact your G.P. for further medical input, which may include a referral to the mental health services.
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> We have also taken into account the submissions that you need to live alongside your extended family, and that you are dependant upon your estranged wife to administer your medication. However, your application was made as a single person household.

> The Council would have considered a joint homelessness application if you and your estranged wife wished to reside together. If you require specialist support whilst in the accommodation the Council can make referrals to the relevant agencies to ensure that support is provided."

23 The decision letter in relation to Mrs Sheridan was in similar terms:

> "We have taken into consideration the medical evidence provided, which comprises the report of Dr Slater. The panel notes your medical history and the finding of Dr Slater that there would be a significant risk of psychiatric harm were you forced to accept the accommodation that has been offered. However we have made extensive enquiries throughout Essex in relation to site availability and, at present, there are no available plots or pitches. Should you feel that your mental health was deteriorating at any time you should contact your G.P. for further medical input, which may include a referral to the mental health services.
>
> We have also taken into account the submissions that you need to live alongside your extended family, and that you offer your husband support in relation to administering his medication and that your children currently have daily contact with their father. However, your husband has made a separate homeless application and the Council would have considered a joint application had this been requested. Should your husband require specialist support whilst in Council accommodation referrals to the relevant agencies can be made to ensure that support is provided. In relation to your extended family, we can confirm that there are excellent public transport services within the District to enable you to continue to have contact with and support of your family and friends and there is no reason to suggest that Richard and John Sheridan would be unable to continue to provide transport to and from hospital appointments."

24 The letter concludes with a reference to Circular 01/2006 and the criticisms made of the Council in relation to site provision. The review panel declined to go into these matters on the ground that what they described as overreaching issues were beyond their remit when considering the suitability of the accommodation offered.

25 Each of the appellants exercised their right of appeal to the County Court under s.204 of the 1996 Act. The appeals were heard together in the Southend County Court on 20th October 2010. In a reserved judgment handed down on 4th November 2010 His Honour Judge Peter Dedman (sitting as a Deputy Circuit Judge) dismissed all three appeals and refused permission to appeal to this Court. Permission to appeal was granted for what is a second appeal by Aikens LJ on limited grounds which I subsequently enlarged so as to enable all the grounds of appeal to be argued. Although therefore this is an appeal from the judge's decision on the s.204 appeal, it is in substance a further challenge to the lawfulness of the s.202 decisions. If any of those is set aside it will then be for the review panel to reconsider that decision in the light of our judgments but, as Ms Ward realistically accepted, the consequence may be that the Council will have to re-consider its offer of accommodation.

The s.193 duty

26 The conflict between the needs of gypsies and other travellers and the interests of the settled community is long-standing and has been addressed legislatively in different ways. Section 24 of the Caravan Sites and Control of Development Act 1960 ("the 1960 Act") empowers local authorities to provide sites within their areas either for temporary or for permanent use. Until its repeal in 1994 this was supplemented by s.6 of the Caravan Sites Act 1968 ("the 1968 Act ") which imposed upon County, County Borough and London Borough Councils a statutory duty to exercise their powers under s.24 of the 1960 Act to provide adequate accommodation for gypsies residing in or resorting to their area. As between County Councils and District Councils, the duty imposed on the County was limited to identifying and acquiring the necessary land for this purpose and it was left to the District Councils to exercise their powers under s.24 in order to establish and run the sites.

27 But neither the 1968 Act nor the 1960 Act gave the relevant local authorities any powers to override the normal planning procedures and many potential sites were unable to proceed in the face of strong objections to the change of use by local inhabitants. Where sites were provided the local authority usually found that they were over-subscribed and that site provision could not keep pace with demand.

28 The planning guidance now contained in Circular 01/2006 recognises the fact and consequences of the historic under-provision of gypsy sites. These include the illegal and anti-social behaviour associated with unauthorised encampments which often take place on green belt land with a total disregard of the interests of the settled community. Conduct of this kind in turn leads to hostility and discrimination against gypsies which could be reduced or eliminated by well-managed sites established in suitable locations.

29 The Circular therefore contains guidance about the assessment of pitch numbers and the translation of these objectives into development plan documents. But it also recognises that site identification depends for its success on community involvement and the proper consideration of those who are most likely to be affected by the development proposals. One of the common (and often successful) objections to a proposed site at a planning inquiry was that the local authority had failed to give adequate consideration to the alternative possible sites which were said to be more suitable. And the circular itself expressly recognises that sites in the green belt will normally be inappropriate developments and that alternatives should be explored.

30 The particular problems of accommodating the gypsy and traveller community have therefore been and continue to be addressed for the most part through the planning guidance contained in Circular 01/2006 and through s.24 of the 1960 Act. The two obviously go hand in hand. Local housing authorities are also required by s.225 of the Housing Act 2004 to carry out an assessment of the accommodation needs of gypsies and travellers residing in or resorting to their district as part of their housing strategy review but the legislation stops short of making any special provision for their accommodation.

31 The 1996 Act likewise is not legislation which is specifically designed to cater for the needs of gypsies and travellers. These are general statutory powers and duties designed to deal with the problems of homelessness and in the case of s.193 in respect of those with a priority need.

32 The relevant legal principles are not seriously in dispute. As mentioned earlier, the s.193 duty, when read with s.206 , is to secure that “suitable accommodation” is made available to the eligible applicant. “Suitable” means suitable as accommodation for the person to whom the duty is owed. The duty is also an absolute one. Although the resources and availability of accommodation are relevant factors in determining suitability, there is always a minimum standard in every case below which the duty is not discharged. If the only accommodation available falls below this line then a lack of resources or inability to provide more suitable accommodation is no answer. The housing authority will not discharge its s.193 duty unless and until suitable accommodation is actually provided.

33 Some further analysis of these principles is needed where (as in this case) the challenge to the suitability of the accommodation is not directed to the standard of the accommodation but to its type. *Codona v Mid-Bedfordshire District Council [2004] EWCA Civ 925* has many features in common with the present case. The applicant was also a gypsy who refused an offer of temporary bed and breakfast accommodation of the conventional bricks and mortar type. Mrs Codona was a member of an extended gypsy family which had occupied an unauthorised site in breach of planning controls. This was eventually cleared by the local authority using the powers contained in s.178 of the 1990 Act. She then applied to the council for accommodation asking them to provide her with a pitch for six or seven caravans on which her family could remain as a unit. Like Mrs Flynn in the present case, she said that she had a cultural aversion to bricks and mortar accommodation and would find it claustrophobic and “unbearable” to live in. There was, however, no evidence that either she or her family would suffer psychiatric harm if forced to live there. The council said that it had no land to offer as a caravan site and that the only accommodation available would be property within its own housing stock or that of a housing association. Her s.204 appeal to the County Court and then to the Court of Appeal was dismissed.

34 In his judgment Auld LJ accepted that s.193(2) does not oblige the local authority to provide accommodation to gypsy and travellers in the form of a pitch for their caravans but that the

provision of such land to a gypsy who is ready and willing to place his own caravan on it will undoubtedly have the effect of discharging its duty to provide suitable accommodation. I am also prepared to assume (without deciding) that "accommodation" can include a site without a building so that the range of accommodation which the Council had to consider in deciding what was suitable to the appellants' needs did include any land which was or was likely to be available for that purpose.

35 The issue therefore in Codona was whether a present lack of available land for use as a caravan site should be taken into account in deciding whether the bricks and mortar accommodation offered to Mrs Codona and her family was suitable. Auld LJ dealt with that issue in paragraphs 36-39 of his judgment:

> "36. Third, the duty to provide suitable accommodation is absolute in the sense that there is no statutory entitlement of, or duty on, a local housing authority, when determining suitability, to have regard to its resources or general practicability of offering accommodation to homeless persons. For that reason, I do not, with respect, consider that it would be sufficient, as Carnwath LJ suggested in *Kayes & Traylen v. Waverley BC [2003] EWCA Civ 433* , in paragraph 12 of a short judgment dismissing an application for permission to appeal, that:
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> > "suitability has to take account of practicality. There is no point in … [an] authority being required to provide sites which do not exist".
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> 37. Nevertheless, as Dyson J observed in *ex p. Sacupima* , at paragraphs 23 and 24 of his judgment, suitability is not itself an absolute concept. It may have various levels, though there is a *Wednesbury* minimum depending on the circumstances of each case, below which it cannot fall. In the following passage in paragraph 24 (seemingly accepted by this Court on appeal ((2001) 33 HLR 18, per Latham LJ at para 21, with whom Sir Murray Stuart-Smith and Henry LJ agreed), he explained what he meant, citing in part from a judgment of Collins J in R v. Newham LBC, ex p Ojuri (No 3) (1998) HLR 452 , at 461:
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> > "Although financial constraints and limited housing stock are matters that can be taken into account in determining suitability, 'there is a minimum and one must look at the needs and circumstances of the particular family and decide what is suitable for them, and there will be a line to be drawn below which the standard of accommodation cannot fall'. If the accommodation falls below that line, and is accommodation which no reasonable authority could consider to be suitable to the needs of the applicant, then the decision will be struck down, and an appeal to the resources argument will be of no avail."
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> 38. And, fourth, where it is shown that a local housing authority has been doing all that it could, the court would not make an order to force it to do the impossible. Its duty was to secure the availability of suitable accommodation within a reasonable period of time, the reasonableness of that period depending on the circumstances of each case and on what accommodation was available. In ex p Begum , Collins J said, at 816:
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> > "… Parliament has not qualified the duty in any way: it could have done. However, the situation for the council is not quite so desperate as might be thought. While the duty exists, no court will enforce it unreasonably. Mr Luba [counsel for the applicant] accepts that it would be unreasonable for an applicant to seek mandamus within a few days of the duty arising if it were clear that the council was doing all that it could, nor, in its discretion, would a court make such an order. Indeed, permission would probably be refused."
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> 39. It is plain from the reasoning of Collins and Dyson JJ in those cases that suitability in this context should be regarded as an elastic concept in that the line below which no reasonable authority could consider accommodation to be suitable in an individual case

> is the *Wednesbury* line. So, on that approach, and subject to Article 8 considerations, the question for the Council and for Judge Farnworth, applying those general principles would be whether the offer by the Council of "bed and breakfast" accommodation to Mrs Codona and her extended family, given her aversion to "bricks and mortar" accommodation, falls below that line."

36 He then considered the application to the process of Article 8 and the decision of Newman J in R (on the application of Margaret Price) v Carmathenshire County Council [2003] EWHC 42 (Admin) ; another case involving the provision of housing accommodation for an Irish traveller with a cultural aversion to bricks and mortar:

> "44. As to Article 8 , Newman J, at paragraphs 13 and 15 of his judgment, drew on the ruling of the European Court in *Chapman* , in particular at paragraphs 96 and 98 of its judgment, that, although Article 8 imposes a positive obligation on contracting states to facilitate the gypsy way of life, it does not oblige them to make available to their gypsy communities an adequate number of suitably equipped sites. As to our domestic legislation, he noted the effect of the Criminal Justice and Public Order Act 1994 in: 1) its repeal of the duty formerly imposed on local authorities to provide caravan sites by Section 6 of the Caravan Sites Act 1968 to make sufficient site provision to meet the needs of gypsies in their areas, leaving it simply with the power to do so conferred by section 24 of the Caravan Sites and Control of Development Act 1960 ; and 2) its imposition in cases of homelessness resulting from insufficient provision of a duty to provide them with suitable alternative accommodation. In paragraph 15 of his judgment, he distilled the practical outcome of those two conclusions by reference to the following words of the European Court in paragraph 96 of its judgment in *Chapman* in explanation of its ruling that Article 8 imposes a positive obligation on contracting states to facilitate the gypsy way of life:
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> > "… 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 decisions in particular cases. …"
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> 45. Newman J, in paragraph 20 of his judgment, gave practical application to such "special consideration" in this context by holding that if the respondent council in that case had concluded that:
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> > "the claimant's cultural commitment to traditional life was so powerful as to present great difficulty in her living in conventional housing, it was not bound by duty to find her a pitch, but it would have been a significant factor in considering how far it should go to facilitate her traditional way of life."
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> 46. In my view, there is no conflict in the mostly first instance authorities from which I draw three main criteria for "suitability" of an offer by a local housing authority of accommodation to homeless to vulnerable people like gypsies to whom it owes a statutory duty to secure the availability of accommodation: 1) suitability to a *Wednesbury* minimum level of suitability in the nature, location and standard of condition of the accommodation having regard to the circumstances of the applicant and his or her resident family, including the duration of their likely occupation of it; 2) the absolute nature of the duty which, though coupled with an elastic concept of suitability taking account of financial constraints and limited availability of accommodation, is not so elastic as to permit an offer below the *Wednesbury* minimum standard (or, as Mr Watkinson put it, outside the margin of appreciation); and 3) special consideration, in the regulatory provision for and in decision-making in individual cases, for the housing needs of particularly vulnerable applicants such as traditional gypsies with a view, so far as practicable and when considered with all the other circumstances, to facilitating their traditional way of life.

47. In my view, those criteria are not only supported by a consistent line of authority, but, together, are also a sound combination of principle and practicality. I respectfully endorse, in particular, the reasoning and approach of Newman J in Price with particular reference to the special needs of gypsies. I include in that his reservation in paragraph 15 of his judgment, having regard to paragraph 96 of the judgment in *Chapman* , of the suggestion in the last two sentences of the former paragraph 11.40 of the Code of Guidance] that gypsies or travellers should be considered on the same basis as any other applicant:

> "11.40 Under s 175(2) applicants are homeless if their accommodation is a caravan, houseboat, or other movable structure and they do not have a place where they are entitled, or permitted, to put it and live in it. If a duty to secure accommodation arises in such cases, the housing authority are not required to make equivalent accommodation available (or provide a site or berth for the applicant's own accommodation), but they should consider whether such options are reasonably available, particularly where this would provide the most suitable solution to the applicant's accommodation needs. *These circumstances will be particularly relevant in the case of gypsies and travellers, whose applications must be considered on the same basis as all other applicants. If no pitch or berth is available to enable them to resume occupation of their moveable home, it is open to the housing authority to discharge its homeless obligations by arranging for some other form of suitable accommodation to be made available* ." [my emphasis]

48. Clearly, in the light of the judgment in *Chapman* , "special consideration" given to the genuine needs of gypsies requires more effort on the part of a local housing authority than that suggested by the emphasised sentences in that paragraph. Newman J said, in paragraph 19 of his judgment in Price:

> "In order to meet the requirement to accord respect something more than 'taking account' of an applicant's gypsy culture is required. As the court in *Chapman* stated, respect includes the positive obligation to act so as to facilitate the gypsy way of life, without being under a duty to guarantee it to an applicant in any particular case."

49. It requires the authority carefully to examine a gypsy's claim for such special consideration and, if satisfied that it is genuine, whether in all the circumstances of the case, it should attempt to meet it, and, if so, how. Those circumstances should, of course, include the likely duration of occupation in respect of which an offer is to be made. However, if despite such examination and, where appropriate, a genuine consideration of ways and means of meeting the gypsy's claim, an authority fails to provide a caravan site or pitch, it would only amount to a breach of its statutory duty or violate Article 8 if it produced an offer falling below the *Wednesbury* minimum line. It follows that where land is not available, or cannot readily be made available, on which a gypsy applicant can station his or her caravan, it is open to a local authority to provide other accommodation of the conventional bricks and mortar kind, providing that it satisfies the *Wednesbury* minimum line of suitability. As Collins J indicated in the passage from his judgment in ex p Begum that I have cited at paragraph 34 above, that line itself may vary according to the length of the expected likely stay in the accommodation offered."

37 Mr Offer, for the appellants, accepted that if a caravan site could not be made available, the provision of bricks and mortar accommodation would not fall below the *Wednesbury* line merely on account of the applicant's cultural aversion to living in such accommodation. What Auld LJ is, I think, saying is that if the local authority has proper regard to a traveller's cultural way of life by making proper enquiries as to whether accommodation in the form of a caravan site could be made available, its inability to provide such accommodation will be both Article 8 and s.193 compliant even though the applicant has a cultural aversion to being housed in accommodation of that type. It will therefore only be if there are other particular circumstances which render bricks and mortar accommodation unsuitable that the *Wednesbury* standard of suitability may not be achieved. This is made clear by paragraphs 58-60 of Auld LJ's judgment:

> "58. From all of this I conclude that the Council and the Judge in the way they respectively approached the effect of Mrs Codona's and her extended family's aversion to conventional bricks and mortar accommodation, identified the applicable domestic law, as I have summarised it, and properly, and compatibly with human rights principles, applied it to the facts of the case. It is plain too that the Judge did not simply consider the Article 8 balance by asking himself whether the Council's decision was, on the facts, one that it was entitled to make. As required by the decisions of the House of Lords in *Porter* and by this Court in *Tonbridge & Malling BC,* he formed his own view on the matter.
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> 59. Put at its simplest, this was a case in which the Council was required as a matter of relative urgency to find accommodation for an extended family occupying some six or seven caravans, who were insisting, because of their aversion to conventional housing, on being provided an alternative site for all of their caravans on which they could continue to live together. Despite careful enquiries by the Council it could find no such site. Nor could it provide at short notice long-term conventional bricks and mortar housing for the extended family. It was driven, therefore, as a short-term measure, to offer short-term accommodation of a bed and breakfast nature. In doing so, it was clearly acting as a matter of last resort and with the clear understanding, as required by paragraphs 12.5 — 12.6 of the Code of Conduct, that the duration of their stay in such accommodation was to be kept as short as possible.
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> 60. In my view, depending on the quality of bed and breakfast accommodation offered and, on the reasonable assumption that the Council will see to it that their stay there will only be for a short time, the Council has, so far, discharged its statutory duty to secure accommodation for the Codona family, and has done so without violation of Articles 8 and/or 14 ECHR . I say "so far" because the bed and breakfast accommodation offered could become unsuitable as a matter of domestic law and/or in violation of Article 8 if it goes on too long before suitable long-term accommodation in the form of conventional housing or, if it can be found, a caravan site can be provided."

38 The other authority which I need to refer to is the decision of this Court in Lee v Rhondda Cynon Taf County Borough Council . It will be recalled that this was expressly relied upon by the Council's review panel in their three decision letters. This was yet another case involving a gypsy who had been evicted from a caravan site. She was offered the tenancy of a council house but rejected it as unsuitable on account of her cultural aversion to bricks and mortar accommodation. Again there was no evidence of potential psychiatric harm.

39 The council, on a review, took account of these objections but decided that the accommodation was suitable for her needs. Both the Recorder at first instance and then the Court of Appeal dismissed her s.204 appeal. The decision of the Court of Appeal is little more than a re-affirmation of the Codona principles. But two matters are referred to which are relevant to the issues in the present case. The first is whether it is part of the role of the reviewing panel to consider issues such as whether the local authority should historically have passed a more rigorous policy of site provision or should have taken steps to acquire land for the purpose of accommodating the applicants; the second is whether the risk of psychiatric harm takes the case below the *Wednesbury* line. In his judgment Longmore LJ said this:

> "11. In the course of his decision the learned Recorder held that the complaint that RCT had not had proper regard or respect for the fact that Ms Lee was a gypsy and had an aversion to settling in bricks and mortar accommodation had not been made out. He said that there was no evidence that RCT had failed to make relevant enquiries about the feasibility of accommodating Ms Lee on a caravan site. The evidence was that they had made enquiries inside their own area and that there were no available sites. He further held, in paragraph 22, that it was unrealistic to require RCT to inquire into the possibility of acquiring a piece of ground for the siting of a single caravan for Ms Lee, nor was it appropriate for a panel, which was conducting a review of the decision to offer particular accommodation, to question or revisit strategic decisions about the provision of accommodation for gypsies in general. It is these conclusions that are challenged on

this appeal brought with the permission of Arden LJ, who thought that it was arguable: 1) that RCT should have expressly considered whether to acquire a site for Ms Lee; 2) that the local authority could not be the final judge of what inquiries it should make; and 3) that the local authority had not satisfactorily applied their mind to the criticism of the relevant code of guidance, issued pursuant to section 182 of the 1996 Act, which was made in the case of *Codona v Mid-Bedfordshire DC [2004] EWCA Civ 925* .

….

15. It follows that, where land is not available or cannot readily be made available on which a gypsy applicant could stage his or her caravan, it is open to a local authority to provide other accommodation of the conventional bricks and mortar kind provided that it satisfies the Wednesbury minimum line of suitability. It is in the light of that legal position that Mr Knafler's arguments fall to be considered in the present case. It is clear from RCT's decision letter that RCT did give special consideration to Ms Lee's position as a gypsy since there is a paragraph headed “Aversion to bricks and mortar/change of lifestyle”; so the only question, as Newman J said, was whether that consideration was lawful and adequate.

16. Mr Knafler submits that it was not lawful and adequate because RCT did not consider whether they should acquire an alternative site. That however seems to me to be, in the context of a homelessness application, to be wrong, substantially for the reasons helpfully given by Mr Beglan for the local authority in his skeleton argument. Homelessness applications are expected to be determined within a short timeframe, ideally at least within 33 days of an acceptance of a requisite duty. If a new site is to be acquired for stationing a caravan for residential purposes, that will usually mean a new use which will typically require planning permission. That will require determination by the local authority planning committee, especially if it means a departure from the local development plan, which it may well, and any decision so made is liable to be appealed. After all that, land would have to be bought if it is not already owned by the local authority itself. All this is, in my judgment, inconsistent with the manner in which homelessness applications are expected to be dealt with by the housing department, and especially since they are expected to be dealt with with a degree of promptness. As, moreover, the Recorder himself observed, that is really inconsistent with the law as laid down by *Price* and Codona , to the effect that bricks and mortar accommodation is at any rate capable of being suitable accommodation even for a gypsy.

17. All that is not to say that there might not be unusual circumstances in which a local housing authority might be expected to do more than consider availability and sites within their own area. If, for example, there was a question of an applicant being at risk of suffering psychiatric harm, it might well be that the local authority should take that consideration into account, specifically in deciding what, or what further, enquiries they should make. In the present case, however, there is no risk of any such psychiatric harm and, moreover, the applicant has herself expressed a wish to live not merely in the local authority area but in a specific part of it, and that wish has been accommodated.”

The appeals

40 As I have mentioned, there is no challenge as part of these appeals to the standard or condition of the accommodation which was offered. In essence, there are three grounds of appeal although broken down into a number of different sub-issues. The first (which applies only to the appeals by Mr and Mrs Sheridan) is that the review panel made an error of law in deciding that the accommodation satisfied the minimum *Wednesbury* standard given the evidence of Dr Slater about the consequences for Mr and Mrs Sheridan of being housed there. The second principal ground of appeal (which also applies only to the Sheridans) is that the Council was not entitled to rely on the lack of any available caravan pitch as part of its determination of suitability when this state of affairs was the direct result of its own failure to make adequate site provision for gypsies and travellers since 1999. The third ground of appeal (which applies in all three cases) is that the Council in fact failed to conduct sufficiently extensive enquiries as to the current availability of either permanent or at least temporary sites which could accommodate the

appellants' caravans.

41 I turn first to the issue of suitability in relation to Mr and Mrs Sheridan. This turns, as I have said, on the treatment by the Council and the review panel of the psychiatric assessments carried out by Dr Slater. It goes without saying that the Council was bound to consider the psychiatric evidence when formulating its offer of accommodation. As stated earlier, the duty is one owed to Mr and Mrs Sheridan and must take account of their own needs. Although it can be said with some justification that parts of Dr Slater's prognosis is based on conjecture rather than evidence and may be over-pessimistic, the Council and its review panel were prepared to accept at face value his opinion that a move away from Dale Farm and into separate bricks and mortar accommodation would pose a risk in both cases of future depression which in the case of Mr Sheridan might lead to a break down in his medication with future serious health consequences.

42 Mr Offer emphasises that it is important to keep separate the issues of whether (having regard to these circumstances) the Council's offer of accommodation was suitable and the much more general issue of whether it could rely on a lack of pitches when that was the result of its own inadequate response to the need for site provision. He submits that the *Wednesbury* minimum line is crossed in the case of Mr and Mrs Sheridan by accommodation which may cause injury to their health and that, in accordance with the Codona principles, a current lack of available sites is no answer to that.

43 The judge, he says, conflated these two issues by asking himself whether the Council had done all that it reasonably could to find an available pitch for the Sheridans. As a consequence, he did not really answer the first question which is whether, in their case, anything less than a pitch would be *Wednesbury* suitable.

44 The judge dealt with these issues in paragraphs 44-49 of his judgment:

> “44. The Council, through Ms Ward, says relying upon the judgment in Lee v. Rhondda that it cannot be argued that land had to be purchased, since Longmore L.J had said in terms that the Recorder at first instance had held that it was unrealistic to require the Council to inquire into the possibility of acquiring a piece of ground for the siting of a single caravan for the Appellant and that it was not appropriate for the reviewing panel to question or revisit strategic decisions about the provision of accommodation for gypsies in general. The Court of Appeal said that once it is decided that the Council is not obliged to make such enquiries “it is not clear …what further enquiries the authority could be expected to make. She says that if there are unusual circumstances such as evidence of possible psychiatric harm to be suffered by an Appellant then the Council is or may be expected to do more than consider availability and sites within their own area and that the evidence in this case is that the Respondent has in fact done this by investigating the possibility of sites outside its own area. She says that the case of Lee, which is essentially the high point of the Appellants' cases does not go further than this even when the nature of the psychiatric evidence is not challenged.
>
> 45. Citing paragraph 16 of the judgment in Lee Ms Ward says that in determining a review the officer conducting it cannot off his or her own bat determine issues such as general planning duties of the Council in relation to, for example, the local development plan and their own strategic planning which are dealt with outside of the housing department and within a much longer time frame.
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> 46. If it were right that a Council was obliged to provide a site for caravans where none exists this, says Ms Ward, would countermand the repeal of the statutory duty legislated by the 1994 Act.
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> 47. Bearing all of these considerations in mind I was persuaded that Ms Ward was right. I think it is correct to say that it was not for the Review Panel to decide upon strategic issues nor to attempt to decide or subvert the planning process, even in connection with temporary planning permission, nor to act as an arm of social services, that their observation that any health problems could and should be addressed through the NHS or support services was sensible and realistic and the description of emergency accommodation under Part 7 of the Housing Act 1996 as it now is, is a “lifeline of last resort” as Lord Brightman described it in R. v. Hillingdon LBC ex p. Puhlhofer .

> 48. I was not convinced that the Council could have done more than they actually did when special consideration for gypsies and travellers and the obligations under the Race Relations Act are taken into account and I am unable to see what further enquiries they could have made when they had in fact made those enquiries envisaged by Longmore L.J. in Lee , i.e. considering whether other sites were available in Essex.
>
> 49. Whilst accepting for the argument under Article 8 pursued by the first and second Appellants that there has been an interference where there is an aversion to living in bricks and mortar nevertheless bearing in mind the duties of the Council towards all of its residents such interference was in the pursuit of a legitimate aim and proportionate to the problem faced by it as a whole. I agree."

45 The question whether accommodation falls below the *Wednesbury* minimum line cannot be answered solely in terms of whether the decision-maker took account of all relevant circumstances. It does also require the court on a s.204 appeal to consider objectively whether the decision taken was one which a reasonable housing authority in possession of that information and having regard to the statutory test could have reached.

46 But the starting point must be to examine whether the Council did properly take into account all relevant considerations because its failure to do so may inevitably vitiate the decision-making process. The judge accepted that the reports from Dr Slater had been taken into account and it is difficult to see how any other conclusion is possible in the light of the passage from the decision letter quoted earlier in paragraphs 22 and 23. But the critical question is whether their conclusions about suitability can stand in the light of Dr Slater's assessment.

47 Subject to Mr Offer's point about lack of site provision, there is no material to contradict the review panel's statement that there are no available sites in the district which could be used to accommodate the caravans of Mr and Mrs Sheridan. The panel considered the ten sites referred to in Ms Heine's report, none of which appears to be either available or suitable for these purposes. I will consider later Mr Offer's alternative submission that the Council's duty extends (if necessary) to acquiring land for the purpose of providing pitches but even if correct that does not really bear upon the first ground of appeal. Mr Offer's case is that the absence of available pitches at the present time does not assist the Council because nothing less than a pitch would be suitable accommodation for Mr and Mrs Sheridan. It therefore follows that the accommodation which has been offered is not suitable and it does not become suitable simply because no pitches can be provided.

48 The review panel's treatment of this issue relies upon two matters which are said to redress the balance created by the risk of psychiatric harm. The first is the availability of NHS support services; the second is the fact that Mr and Mrs Sheridan have not made an application to be treated as a single family unit and so to be accommodated as one household. The judge described the review panel's reliance upon the availability of NHS treatment as sensible and realistic. Mr Offer says that it may be realistic to expect existing health problems to be dealt with in this way. But it is not reasonable for a housing authority to expose an applicant to additional health risks by the type of accommodation offered and then to seek to minimise the impact by relying on the services which the NHS will be able to provide.

49 It seems to me that there are no absolute standards to be applied to this issue. There will obviously be exceptional cases where the degree of impairment to the physical or mental wellbeing of the applicant consequent on their being housed in the accommodation will be so serious that nothing can justify it being treated as suitable. *R v Brent London Borough Council, ex p Omar (1991) 23 HLR 446* was just such a case involving, as it did, the accommodation of a Somalian refugee who had been imprisoned and tortured in her own country in a filthy, cockroach infested basement flat with high windows and soaking walls. But at the other end of the scale the risk (e.g.) of depression may be slight and the consequences easily contained. It is clear that in Lee Longmore LJ (albeit obiter) did not regard the possibility of psychiatric harm as sufficient to take the accommodation below the *Wednesbury* line. In principle, I agree with this. If the local authority has no available accommodation in the form of a caravan site it is not, in my view, required to acquire land as part of its duty to provide accommodation for the applicants. As Longmore LJ explains in paragraph 16 of his judgment in Lee , the provisions of s.193 contemplate the performance of the duty using the housing authority's existing resources within a limited timescale. A cultural aversion to bricks and mortar is not enough to make the offer of such

accommodation *Wednesbury* unreasonable even if (as in Mrs Sheridan's case) it may risk bouts of depression. It is reasonable for those to be treated if they occur in just the same way as she has sought and obtained treatment for depression in the past.

50 But on these appeals the issue of whether the risk of psychiatric harm is sufficient to make the offers of accommodation unsuitable does not really arise in that stark way. The answer to the s.204 appeals of both Mr and Mrs Sheridan is that the risk of depression (and in the case of Mr Sheridan of a possible collapse in his medical regime) is the consequence not of the offers of accommodation which have been made but of the applicants' removal from Dale Farm. It is clear from Dr Slater's reports that what Mr Sheridan will lose is the close support of his wife and family which he depends on. Even though the distances between them (if accommodated in what has been offered) will not be excessive by the standards of most people, they may be sufficient to induce in Mr Sheridan the sense of loss which can trigger in him a depressive state. On the evidence contained in Dr Slater's report, the same would exist even if the offer of accommodation made to Mr Sheridan had been of a separate caravan pitch some distance away from his wife.

51 The physical separation of Mr and Mrs Sheridan is the inevitable result of their removal from Dale Farm under the powers sanctioned by the court in the earlier proceedings coupled with their decision not to seek accommodation together as a single family unit. Faced with these circumstances, the review panel was entitled in my view to treat the risk of psychiatric harm as an existing problem which would not be avoided by any offer of accommodation within the terms of the separate applications which they had to consider. It was not therefore *Wednesbury* unreasonable of them to proceed on the basis that Mr Sheridan's psychiatric problems should be dealt with through the use of local NHS services. The same applies to Mrs Sheridan who also faces separation from her husband and extended family in the events which have happened.

52 Mr Offer also relies as part of his first ground of appeal on there being an interference with his clients' Article 8 rights. These, he submits, are engaged not merely by the removal of the Sheridans from the unauthorised site at Dale Farm but also by whatever decision the Council makes in relation to their re-accommodation. Accepting this, it is still difficult to see what the appellants' reliance on Article 8 really adds to their case. It seems to me that any consideration of suitability under s.193 is bound to involve a proportionate assessment of the effect of the proposed accommodation on Mr and Mrs Sheridan and their family life. Mr Offer accepts that he cannot rely as part of this challenge on the fact that they will be accommodated separately and, in these circumstances, I have been unable to identify any other factor which reliance on Article 8 brings into play.

53 The remaining issue in relation to Mr and Mrs Sheridan is whether the Council can rely upon the absence of any available caravan pitches when that state of affairs is arguably the consequence of its own failure to bring sites forward for use under the powers contained in s.24 of the 1960 Act. This is a separate point from Mr Offer's more general ground of appeal that the Council has failed to make all reasonable enquiries about possible sites which are currently available.

54 The general thrust of this argument is that the Council cannot rely on what is said in paragraphs 37 and 49 of Codona when it has failed to do enough to provide sites for those who need them. In such a case its lack of resources is the product of its own policies. Mr Offer relies on the statutory obligations contained in s.3(1) of the Homelessness Act 2002 to produce a homelessness strategy as part of which the Council should have assessed and then taken into account the need for site provision.

55 The complaint made against the Council is that it has consciously chosen not to make adequate site provision for gypsies and travellers within its area. The July 2009 Revision to the Regional Spatial Strategy for the East of England contained a policy (H3) that local authorities should make provision through development plan documents for at least 1,237 net additional pitches by 2011 of which 62 should be in the district of Basildon. But, as mentioned earlier, the last site to be given planning permission was in 1999. Its current Homelessness Strategy simply states that there is no suitable land for mobile accommodation. Mr Offer submits that this is an abandonment of any policy for site provision and does not amount to a homeless strategy at all. In these circumstances, the Council is not entitled, he says, to pray in aid the absence of available sites as a relevant factor in assessing the suitability of the accommodation which has been offered.

56 Although these are powerful points, I am not persuaded that they can be addressed through the medium of a s.204 appeal. It seems to me to be completely unrealistic to expect a housing officer on a s.202 review to conduct a general inquiry into strategic questions about the preparation of a homelessness strategy and the adequacy of site provision. This would require the officer to review the planning policies of the local authority; the history of site provision; the inadequacy or otherwise of decisions taken about the change of use of land from a planning perspective; and the accuracy of its estimates of gypsy and traveller numbers over the relevant period. These are matters which fall well outside the expertise of a housing officer and would require detailed and probably extensive evidence. I do not accept that Parliament can have intended the review machinery provided by s.202 to encompass an inquiry of that kind. The review must have been intended to have a much narrower focus of whether the offer of accommodation from within the housing authority's existing resources adequately met the applicant's needs.

57 That leaves the more general question (which applies in all three appeals) of whether the Council has taken all reasonable steps to identify a possible site or sites on which the appellants could live in their caravans. As mentioned earlier, the review panel received representations from the appellants' solicitors on this point and was supplied with a copy of Ms Heine's report. The sites referred to in that report were considered by the review panel but rejected as unsuitable for the reasons which they gave. That assessment is not challenged on this appeal. Mr Offer's argument came down to saying that the Council should have considered acquiring land for site provision and should have solved the immediate problem of accommodating the appellants by granting them temporary planning permission to remain on the Dale Farm site or on other land within the Basildon area.

58 As indicated earlier, I reject the submission that the Council should have acquired land in order to accommodate the appellants for the same reasons as Longmore LJ gave in paragraph 16 of his judgment in Lee . The suggestion that the appellants should be permitted to remain on the Dale Farm site is also not tenable. The legality of their removal has already been considered and approved by this Court. I reject the submission that there were other possible sites because there is really no evidence to support it. The specific points raised by Ms Heine were considered and there is really no material from which it could be said that the Council or the review panel had overlooked an obviously suitable site even if of a temporary kind. There is some reference in the evidence to land at Gardiners Lane South which is zoned for residential development but there is no evidence to show that this was not considered or that it would have been a suitable site for a temporary caravan site.

Conclusion

59 In these circumstances, I have concluded that the s.202 decisions reached by the review panel do not disclose any error of law and I would therefore dismiss these appeals.

Lord Justice Pitchford:

60 I agree.

The Chancellor of the High Court:

61 I also agree.