Case No: CO/4594/2017

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

Date: 19/06/2018

Before :

HIS HONOUR JUDGE COTTER Q.C.

- -

Between :

JBS PARK HOMES (A firm) **Claimant**

- and –

(1)SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

(2) MENDIP DISTRICT COUNCIL

Defendants

- -
- -

Timothy Jones (instructed by Stephens & Scown LLP) for the Claimant
Daniel Stedman-Jones (instructed by the Treasury Solicitor) for the First Defendant

Hearing dates: 25th May 2018

- -

APPROVED JUDGMENT

His Honour Judge Cotter Q.C.:

Introduction

1. This is the hearing of the Claimant's challenge pursuant to section 288(1) of the Town and Country Planning Act 1990 against the decision of the First Defendant's appointed Inspector, Mr Fox, dated 30 August 2017 to dismiss the Claimant's appeal under section 78 of the Town and Country Planning Act 1990 against the Second Defendant's refusal to grant permission for the Claimant's application under section 73 of the 1990 Act for development at Old Down Caravan Site, Old Down, Emborough, Wells, Somerset, BA3 4SA without complying with conditions subject to which previous planning permission dated 16 May 1988 was granted.

2. Permission was refused on the papers by His Honour Judge Jarman QC on 11 January 2018.

3. I granted permission on two grounds and refused permission on a third by my order of 14th February 2018.

The Facts

4. The site to which this Claim relates is a longstanding caravan site; the Old Down Caravan Site, Emborough, Wells, Somerset, BA3 4SA.

5. On 16th May 1988 the Second Defendant granted planning permission for ;

> *"use of land for holiday static and touring vans as confirmed by letter of 22nd April 1988"*

Nobody has suggested that the letter of 22nd April is relevant to the matters in issue before me. The grant of permission was subject to nine conditions. It expressly related to "*holiday* static and touring caravans" (emphasis added) although there is no condition to this affect.

6. The relevant conditions for the purposes of this application are numbers 2 and 5.

7. Condition 2 stated:

> (2) *"No more than ten touring caravans and twenty static caravans shall be stationed on the site at any one time";*

It continued

> *" in the interests of visual amenity, highway safety and because of the limited capacity of the existing septic tank"*

Condition 3 required all foul drainage from the twenty static caravans hereby permitted shall be drained into a sealed tank to avoid pollution into the public water supply.

8. Condition 5 stated

> (5) *"Between 1 April and 31 October in any one year, none of the caravans hereby permitted shall be in the same occupation for a continuous period exceeding 31 days, with no return within the following 31 days by the previous occupier."*

It continued

> *"the permanent residential occupation of the site would be contrary to structure plan policy SP8 and would exacerbate the drainage constraints of the site".*

9. There were also conditions in relation to access in the interests of highway safety.

10. Planning permission was subsequently granted for alteration of condition 5 to allow an extended season from 1st March to 30th November.

11. On 5 January 2017, a Lawful Development Certificate was issued by Inspector Drew in an appeal by the Claimant against a refusal by the Second Defendant to issue a certificate. The certificate was for

> *"Use of land for the purposes of siting of caravans for the purposes of human habitation, excluding the months of May, July 2nd to August 1st and September 2nd to October 2nd"*

12. In his appeal decision Inspector Drew stated :

9. … my starting point is to interpret the planning permission and, in particular, condition 05 in order to try to give it a sensible meaning.

10. … I start from identifying common ground that planning permission 003 permitted the use of land for both the siting and residential use of caravans and touring vans. …

11. … I agree with the Appellant that the condition is silent as to the use of the caravans between 1st November in one year and 31st March in the next. The only restriction as to their occupancy is between 1st April and 31st October. Condition 5 does not include any phrase in respect of the use of the caravans outside of this period and nor is there any limitation in the description of development. …

12. … no more than 30 caravans can be occupied between 1st November in any one year and 31st March in the next. The Council could have expressly imposed a condition to preclude the use of the site during the winter months but did not do so. Residential use for 5 months over winter is therefore permitted by planning permission…

15. Condition 5 does not preclude either the whole site or each individual caravan thereon from being used continuously between 1st April and 31st October. The way that it seeks to prevent permanent residential occupation is to ensure a turnover of residents in each caravan. The Appellant therefore submits that residents could move between caravans on the site broadly in alternative months; I agree. In the alternative the description of development envisages that residents vacate their respective caravans during the year, as follows. The residents can stay in April, being a continuous period of 30 days, but have to vacate in May, being a continuous period of 31 days. Residents can then return in June but have to vacate before July 2nd, which would be the 32nd day. Residents can return after 1st August for up to 31 days, which requires them to vacate by 2nd September and then return again 31 days later on 2nd October. …

18. … planning permission … expressly permitted: "… <u>holiday</u> static caravans and touring vans…" [my emphasis], but it must be common ground that there is no condition to this effect. As Hickinbottom J held in Cotswold Grange Country Park LLP v SSCLG and Tewkesbury BC [2014] EWHC 1138 (Admin): "If a limitation is to be imposed on a permission granted pursuant to an application, it has to be done by condition".

21 In terms of on site effects, given the terms of condition 2, I can be satisfied that there would be no increase in the number of caravans which are not required to be moved out of season

24. … there is no evidence of traffic generation… The Appellant says that the site would be subject to an age occupancy condition… if that assumption is ill-founded or subsequently changed then it might give rise to the need to re-assess materiality. An LDC is declaratory based on the information provided. However on that assumption I accept that there would be a lower level of traffic generation in comparison to a conventional dwelling. Amongst other things there would be no trips to school. Conversely residents on holiday might have a greater propensity to travel by car to see local attractions. … the site is an excellent base for the surrounding area, including Bath and Cheddar. Accordingly when comparing the permitted use with that proposed, whilst there might be an increase in the overall number of vehicle movements, there is no evidence to support a finding that this change would be material.

13. So the practical effect was that the site could be used for residential use other than during three months being May, July and September.

14. On 25th January 2017 the Claimant made an application under Town and Country Planning Act 1990 s73 in respect of planning conditions (2) and (5) and seeking their removal. The supporting statement pointed out that whilst it may have been foreseen that planning conditions would effectively create a seasonal holiday caravan site this was not in fact what conditions provided. All that was now needed was that the caravans had to be vacated by their residents for the relevant three months and it did not prevent them swapping between units or staying in touring caravans and so managing to remain on-site. It was stated that there was no possible planning objective in requiring residents to swap between caravans every 31 days during a five month period.

15. The reference was to the site being "a residential site" and there being no purpose in retaining the distinction between static and touring caravans.

16. So the supporting statement made it clear that the aim was to enable, to the extent that it was not currently achieved (albeit with some inconvenience), all year round residential use (with no need to distinguish between static and touring caravans).

17. The planning officer's report on the application reported the County Council's Highways Officer's comments on the application as follows:

> *"I have now fully reviewed the site and I would say that if by removing a condition there is potentially* [sic] *of increasing the use on the site then the highway authority would raise an objection to this it would not wish to see any increased use of a substandard access. The existing access currently has poor visibility particularly to the left upon exiting the site. Visibility splays of 2.4m x 43m would need to be provided if there were to be any intensification of use."*

18. The Planning officer continued as follows

> *"The SCC Highway Officer considers that the site access is currently substandard because it has poor visibility, particularly to the left on exit, where "visibility splays of 2.4m x 43m would need to be provided if there were to be any intensification of use". The land to the left of the exit is not shown within the red line on the location plan submitted with the application. Therefore, the land required to secure the required visibility is not shown to be within the ownership of the applicant. There is currently a stone wall with further wooden fencing above, which would apparently need to be resited to improve visibility to the necessary standard.*
>
> *The proposed removal of condition 2, which could result in unrestricted numbers of caravans on the site, and an intensification of the use of the access* [sic]. *It is considered that additional use of an access with substandard visibility splays would cause harm to highway safety, and would therefore be contrary to DP 9 of the Local Plan."*

19. So the Claimant was put on clear notice of the concern about the means of entering/leaving the site. The Officer also gave the view in relation to condition 2 that;

> *" .. a proposal for increase of tourist accommodation could be supported, providing long term use as such is controlled by condition, and numbers are restricted to that which is considered appropriate. However, this application proposes to remove conditions 2 and 5 and not vary them…"*

and

" *the impact of the removal of condition 2 would potentially result in a more intensive concentration of caravans on site…."* (although this was considered on balance not to have an unacceptable impact on the character and appearance of the area).

20. In respect of condition 5 the planning officer noted (referring to the Inspector's view) that whilst there were a number of deficiencies with the conditions imposed, and

> *"whilst not an ideal method of preventing , year-round residential occupation of each caravan, it is considered the condition would deter such use"*

that the condition

> *" ..remains both reasonable and necessary in planning terms . Unrestricted occupancy for permanent residential use is likely to make the individual caravans more attractive as a main all year round residence ... the current restriction .. is considered to be effective in deterring permanent occupation as it is considered very unlikely that a resident is likely to move , in alternative months , during this period as it would be disruptive to normal day -to- day living"*

21. The conclusion of the report was that removal of condition 2 ;

> *"would result in unrestricted numbers of caravans, which would result in the increased use of a substandard access to the detriment of highway safety, and further exacerbate the issues generated by the intensified residential use in an unsustainable location".*

22. On 28th March 2017 the Second Defendant refused this application.[1] It was refused on highway safety and sustainability grounds as follows:

> *"The application site is located in open countryside where residential development is strictly controlled in accordance with CP1 and CP2 of the Mendip District Local Plan Part 1: Strategy and Policies 2006-2029. The site is isolated from key services, employment opportunities and good transport links, and this would be likely to result in people whose main year-round residence is at the application site having to use the private car meet the majority of their everyday needs. The removal of condition 5 would result in unrestricted occupancy of the site and an unfettered residential use is likely to make the caravans more attractive as a main residence year-round. The current condition (5), even though it applies only between the 1st April and 31st October in any one year and allows for residents to move between caravans on the site broadly in alternative months during this summer period,*

[1] CB 19-20.

is considered to still serve a planning purpose as it ensures a turnover of residents in each caravan during this summer period which is likely to be undesirable for most occupiers who might otherwise live on site within a single caravan as their main year round residence. Furthermore, the removal of condition 2 would allow for an unrestricted increase in the number of caravans that could be sited on the land which would have the potential to materially increase the demand for trips by private car. The proposed removal of conditions 2 and 5 would therefore result in an unsustainable form of development that would increase the need to travel by private car due to the site's rural location and would contrary [sic] *to the strategy for the delivery of sustainable development in the District and would not accord with Policy CP1, CP2 and DP9 of the Mendip Local Plan Part 1: Strategy and Policies 2006-2029 and advice in the NPPF, with particular regards to paragraph 55."*

23. So when summarised the reasons given were that the removal of condition would result in unrestricted numbers of caravans (touring and static) and unfettered residential use. The current requirements imposing a turnover made it undesirable for most occupiers who might otherwise live on-site within a single caravan to use it as their main year-round residence. The proposed removal of the conditions would result in an unsustainable development.

24. The Claimant appealed the refusal under the s78 of the 1990 Act. The appeal statement made clear that the Claimant now wished the conditions to be varied rather than removed.

25. It was repeated that "*the reality is that residential use of the site exists"* although no details were given as to how many people were prepared to reside on the site as a main residence given the impact of condition 5. It was said there was no planning policy that would support a requirement that people merely swap residences. It was also pointed out the condition did not require the site to be closed in alternative months or indeed even the caravans themselves be unoccupied and without knowing the exact movements of each occupier it would be impracticable for local authorities to detect a breach of the condition.

26. It was said that there would be no objection to a condition for occupation by people over 50 years which would reduce some of the private car reliance identified as likely to take place e.g. school journeys.

27. In relation to condition two it was stated that the effects of occupancy of touring caravans was the same static caravans and there was no requirement for touring caravans ever to be removed from the site i.e. they could therefore "*effectively be static"* and there was no purpose served by distinguishing between the two. It suggested the condition could simply be that the must be no more than 30 caravans on the site.

28. It is of considerable significance that there was no mention was made of any proposal to improve the access to the site. Rather the sole response to the highway issue focussed on a proposed condition to reduce the number of journeys out by residents.

29. The Second Defendant continued to rely in the appeal on the reasoning in the officer's report and submitted a letter (dated 17 July 2017) further outlining its case in the Appeal and noting that the Claimant had changed its case in the Appeal to a request for the variation of the two conditions rather than their removal. The letter set out the planning policy background which constrained the potential development of the Appeal Site as follows:

> *"The appeal site is outside any settlement limit. Contrary to the appellant's appeal statement, there is a defined policy context to strictly control development outside settlement limits, in accordance with Core Policy 1 and Core Policy 2. The appeal should therefore be determined in accordance with Local Plan policies, as affirmed in the appeal at Pool View Caravan Park, specifically paragraph 13. Clearly, the appeal site would not be a location where the LPA would accept unfettered residential use."*

30. On the substance of the Appeal, the Second Defendant set out that

> *"The appeal statement refers to maintaining the overall number of caravans to 30, but that they can be either static or touring caravans It is the LPA's view 30 touring caravans would materially alter the nature of traffic* movements *onto and off of the site, where the access visibility is considered to be substandard. In addition the ability of the* [Claimant] *to secure improvements to the access visibility has not been demonstrated.*
>
> And

"The age restriction would not materially affect traffic movements on and off site".

31. In its 'Final Comments of the Applicant', the Claimant denied a change of tact and stated that

"If the imposition of a condition can overcome a reason for refusal the application should be approved. In this case simply because the application was to remove the condition does not prevent the LPA from considering whether an alternatively worded condition could be imposed."

32. Given the content of ground two of this application and the argument advanced that the Inspector should have, of his own volition, put in place a condition in relation to works upon the access/egress to the site, it is in my judgment very important to note that even at this stage there was still no reference whatsoever made by the Claimant as to any proposal to alter/improve the access to the site. The only comments upon traffic were that it was difficult to see how the retention or removal of condition 5 would result in any difference in traffic movements and that the First Defendant's comments suggested that the prevention of touring caravans would be preferable to the Highway authority. So the Claimant solely engaged on the issue of the likely number of journeys as opposed to any consideration of alteration of the access. As I shall set out in due course I find that that meant that the Inspector was entitled to proceed on the basis that the Claimant had no interest in any physical works (of course as had been pointed out the Claimant did not own the relevant land).

33. The appeal was considered on written representations by Inspector Fox BA and by a decision letter dated 30th August 2017 he dismissed the appeal. He stated the main issue was whether the disputed conditions were reasonable or necessary having regards the principles of

i. sustainable development,
ii. impact on the character and appearance of the surrounding countryside and
iii. highway safety.

34. The Inspector correctly characterised the Claimant's case in the Appeal in respect of Condition 2 and 5 as follows

> *"4. The Appellant contends that, in light of the LDC, condition (5), to control occupancy, can now be considered to be wholly inadequate for its original stated purpose. The Appellant also argues that there is no practical purpose served by maintaining any distinction between static and touring caravans, as condition (2) does, and that a limit of 30 caravans permitted on the site could be inserted into a rewritten condition."*

35. There can be no doubt that the Inspector understood the Claimant's case as presented.

36. The Decision letter stated as follows;

> *8. Condition (2) restricts the capacity of the site to no more than ten touring caravans and twenty static caravans. The Appellant states that there would be no practical purpose served by maintaining any distinction between static and touring caravans, whilst the condition could be rewritten to state that there shall be no more than 30 caravans on the site. However, even if the condition were varied to a limit of 30 caravans, the number of touring caravans could increase by up to threefold; this would significantly change the nature and volume of traffic movements at the junction with the B3139, which is a classified road where the national speed limit operates, with the additional hazard of cars towing caravans entering and egressing from the site.*
>
> *9. The highways authority has advised that there is poor visibility at the egress to the B3139 and that if the use of this substandard access to the site intensified visibility splays of 2.4m x 4.3m would need to be provided. This, however, would necessitate acquiring land which is not in the ownership of the Appellant, including part of a stone wall. The lack of the Appellant's ability to demonstrate safe access/egress is a sufficient reason on its own to dismiss the appeal in relation to condition (2). The proposed variation of condition (2) would therefore harm highway safety and as such would be contrary to Local Plan policy DP9 (transport impact of new development).*
>
> *…*
>
> *11. Condition (5) has the intention of restricting the use of the caravans to certain times of the year, so is preventing permanent, year-round residential occupation. This objective is appropriate for such an isolated area, where access to shops, employment, schools and other facilities would have to be by private car. So development would be highly unsustainable, contrary to the National planning policy, as expressed in paragraph 55 of the Framework, which states that local*

planning authorities should avoid new isolated homes in the countryside, and clearly, none of the exceptional special circumstances apply in this appeal. Would also be contrary to Core Policies 1 (Mendip spatial strategy) and two (provision of new housing).

…

13. Whilst the LDC Inspector opined that the condition might prove very labour intensive to enforce, he also stated that is no reason why it cannot be enforced. I agree with this opinion. I also disagree with the appellant that the primary purpose of the condition is to frustrate rather than prevent the achievement of a planning purpose. If condition (5) were to be removed, there is no doubt in my mind that there would be an unfettered residential use of the site, which inevitably would result in more private car journeys to access facilities and services, contrary to the principles of sustainability are set out in national policy and development plan.

14. The Appellant suggests varying the condition by limiting occupation to persons over 50 years of age, so as to reduce traffic movements to and from the site. However, the current retirement age for a person aged 50 is 67 years, and this is likely to increase in the foreseeable future. Residents in their 50s are still likely to commute to work and make a wide range of other trips for shopping, schools, health and other community facilities and for leisure/private purposes. I therefore do not consider that the proposed variation would significantly affect traffic movements in a sustainable direction.

37. In my judgment and taking his decision letter as a whole (for the reasons which I shall set out in more detail in due course) in summary the Inspector found;

a) There was a purpose to the current distinction between touring and static caravans as it produced limits for both and as a result only sustainable use. Any removal of the distinction between touring and static caravans could result in 30 touring caravans with associated impact on traffic safety, alternatively 30 static caravans with associated unsustainable impact due to the isolation of the site and the increased number of journeys

b) The Appellant had not presented any argument or produced any evidence in relation to the concerns as to safe access/egress ;

c) If condition (5) were to be removed there would be an unfettered residential use of the site also with more private car journeys to access facilities and services, contrary to the principles of sustainability. The proposed new condition limiting residence to people over 50 would not significantly affect traffic movements in a sustainable direction;

d) The conditions could be policed;

e) Both conditions were necessary and reasonable in the interests of highway safety and sustainability, in accordance with national policy and the development plan.

Grounds

38. There are two grounds.

39. The first is that, whilst paragraph 8 of the decision letter provides a reason why there should be no more than 10 touring caravans on the site, no reason is given (and none can be inferred) as to why there should no more than 20 static caravans. Indeed on the inspector's reasoning, 30 static caravans and no touring caravans would be an improvement. A new condition could easily have been imposed in the following (or similar) terms:

> *"No more than thirty caravans shall be stationed on the site at any one time, of which no more than ten shall be touring caravans."*

Further, neither the Second Defendant or the Inspector, gave any reason why 30 static caravans would cause any harm and on the evidence they would not.

40. The second ground is that if there were a significant concern about the adequacy of the access to accommodate the proposed variation, it could have been met by a "Grampian" condition (see generally **Grampian Regional Council *v* City of Aberdeen DC** (1984) 47 P&CR 633) preventing the s73 variation coming into effect unless and until a suitable access had been created. It is well established that planning permission should not be refused if it is possible to make it acceptable by condition.

41. Briefly, the response of the First Defendant is that both grounds are impermissible attacks on the planning judgement of the Inspector and that the claimant now seeks to advance under both grounds a case which it did not make before the Inspector. As regards the first ground the contention now advanced was that the Inspector should have considered limiting touring caravans, when in the appeal submissions what was sought was removal of any distinction between static and touring caravans. As regards second ground there was no evidence or argument put forward whatsoever at any stage to demonstrate that there was a possibility that access could be improved; it was simply not raised by Claimant.

42. I shall briefly deal with the relevant legal principles in respect of the grounds. The background statutory provisions need no exegesis from me.

43. General judicial review principles are applicable to a section 288 challenge. It is necessary for the Claimant to identify an error of law in the Inspector's approach to the decision; a misdirection in law, irrationality, a failure to have regard to relevant considerations, or procedural impropriety. An application is not to be a vehicle for a challenge, whether direct or disguised, to the Inspector's decision on the underlying planning merits of an application. Matters of planning judgment are within the exclusive jurisdiction of the planning authority (see generally Lord Hoffman in **Tesco Stores v Secretary of State for the Environment** [1995] 1 WLR 759 at 780).

44. As regards what was before the Inspector whose decision is being challenged Richards J (as he then was) considered this in **West v First Secretary of State** [2005] EWHC EWHC 729 (Admin), stating :

> *"In my judgment, and as submitted by Mr Mould, the general rule is that it is incumbent on the parties to a planning appeal to place before the inspector the material on which they rely. Where the written representations procedure is used, that means that they must produce such material as part of their written representations. The inspector is entitled to reach his decision on the basis of the material put before him."*[2]

[2] At §42.

45. This statement of principle remains good as it is wholly consistent with subsequent Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 where Regulation 16 provides as follows:

> *"(1) The Secretary of State may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits*[…]
>
> *(3) In this regulation "relevant time limits" means the time limits prescribed by these Regulations, or where the Secretary of State has exercised the power under regulation 17, any later time limit."*

46. Although there is no general rule preventing a party from raising new material in the section 288 application, it will only be in very rare cases that it will be appropriate for the court to exercise its discretion to allow such material to be argued and it would not usually be appropriate if the new argument would require some further findings of fact and/or planning judgement (see **R (Newsmith Stainless Ltd)-v-Secretary of State** [2001] per Sullivan J (as he then was).

47. In respect of "**Grampian"** conditions the Planning Practice Guidance provides, at paragraph 21a-009-20140306, that:

> *"Conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. It may be possible to achieve a similar result using a condition worded in a negative form (a Grampian condition) – ie prohibiting development authorised by the planning permission or other aspects linked to the planning permission (eg occupation of premises) until a specified action has been taken (such as the provision of supporting infrastructure). Such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission."*

Analysis

48. I turn to the two grounds

Ground one

49. It bears repetition that it is necessary for the Claimant to establish an error of law. An application is not to be a vehicle for a challenge, whether direct or disguised, to the Inspector's decision on the underlying planning merits of an application.

50. This ground relates to condition 2 which sought to ensure a sustainable mix of use through limiting the numbers of the two types of caravan. The Inspector had to consider the effect of the condition upon the site with any owner or business model i.e. someone who wanted to focus on residential use or someone who wished to concentrate on holiday use, or a mixture of both.

51. The original planning officer's report concluded that removal of condition 2 potentially produced twin evils in that it

> *"would result in unrestricted numbers of caravans, which would result in the increased use of a substandard access to the detriment of highway safety, and further exacerbate the issues generated by the intensified residential use in an unsustainable location".*

52. The Inspector's conclusion was that both conditions (2) and (5) were necessary and reasonable

> *" in the interests of highway safety and sustainability in accordance with national policy and the development plan"*

So he was also of the view that there were twin evils. It is necessary to read back through the decision to identify his support for this conclusion.

53. The Claimant's appeal statement had stated

> *"the occupancy of the touring caravans is the same as the static caravans and as there is no requirement for the touring caravans to ever be removed from the site and they can thereby effectively be static, there would not appear to be any*

purpose to distinguishing between static and touring caravans, touring and starting caravans are not defined separately by legislation and if the touring caravans do not need to be taken on tour and can be occupying the same manner as the static caravans there is no practical purpose served by maintaining any distinction"

54. Mr Jones's submission was that the Second Defendant or the Inspector did not give any specific reasons why 30 static caravans would cause any harm, and none could be inferred and he proposed (for the first time) the condition.

> *"No more than thirty caravans shall be stationed on the site at any one time, of which no more than ten shall be touring caravans."*

A first and obvious point is that Mr Jones advocates by this proposed condition that a distinction be maintained which is directly contrary to the case advanced before the Inspector i.e. that there should be no distinction between static and touring caravans with an unfettered ability to have up to 30 of either. Any criticism based on a failure to impose such a condition is unsustainable. It also ignores the full reasoning of the Inspector.

55. In my view, in contrast to the case advanced in this application, the Claimant did not advance a clear argument before the Inspector (including through the final comments) that what was sought through variation of the condition was that up to 30 static caravans should be allowed on the site and that it had no desire to increase use of touring caravans (or it appears use or allow them at all on the site). Rather the argument was only that there should be no distinction between types of caravans; ignoring the obvious distinction (by very definition) of size. Had the representation been clearly made then the Inspector would doubtless have solely focused his written reasoning upon the impact that any increased residential use following up to a 50% increase in the number of static caravans would have upon traffic flow and the other sustainability issues as set out in paragraph 11 i.e. the twin evils he identified in his conclusion. The Inspector was fully entitled if not obliged to procced on the arguments as placed before him without straining to interpret what intention lay behind the submissions. So the Claimant did not nail its colours to the mast and in consequence the Inspector has to consider the arguments as presented

56. Although in my view it is not of direct impact when considering this ground I do not accept Mr Jones' argument for the purposes of a section 288 application that "material" that was placed before an Inspector, as referred to by Richards J in **West** can properly be divided into two separate categories of facts/evidence on the one hand and arguments/representations on the other; with the obligation only having been to put the former before the Inspector and with a residual ability to have free range after the decision in respect of the latter i.e. to raise new arguments/representations. The obligation is to put the case to be considered before the Inspector. Nothing should be held back. On any reasonable reading the Claimant did not clearly put the argument/representation made in this application before the Inspector; rather seeking a removal of the distinction because there was in effect a distinction without a difference between touring and static caravans. Merely making a general comment as set out in the appeal grounds that alternatively worded conditions could be imposed was not enough to make matters sufficiently plain as Mr Jones now does.

57. Given the lack of any clear argument/representation of the nature now advanced, with a consequential and understandable lack of direct focus by the Inspector, it is all the more important that the decision is read and understood as a whole. It is certainly not for me to substitute any reasoning or planning judgment, rather to faithfully interpret the Inspector's decision. However I should not fail to have regard to the full extent of that reasoning, including through legitimate inference, and should be particularly cautious when considering an alleged omission in regard to an argument or representation that was not clearly and directly raised by a party.

58. It is well established that planning decisions are not to be subjected to the kind of scrutiny appropriate to the determination of the meaning of a contract or a statute, should not be expected necessarily to flow in a linear manner and should be read fairly and as a whole and without excessively legalistic textual criticism, (see generally **Seddon Properties Ltd v Secretary of State for the Environment** (1981) 42 P. & C.R. 26); **South Lakeland DC v Secretary of State for the Environment [1992] 2 A.C. 141**. Conclusions may be reached at various stages of the analysis , although stages should not be considered in isolation. Thus a statement at a particular part of the decision might underpin and impact upon a statement elsewhere without

repetition or direct cross- reference. As I have stated legitimate inference is permissible, although it is necessary to be careful not to stray into filling true gaps in consideration of issues. The touchstone is that the decision be read as being internally consistent and understood as a whole without the addition of any supporting reasoning or gloss by the reader.

59. Applying these principles I cannot accept Mr Jones' submissions that there was no evidence upon which Inspector could properly have come to the conclusion that 30 static caravans with no touring caravans would cause harm, that this was not his stated conclusion and cannot be inferred as his conclusion. It is very clear from the decision letter that the Inspector, who expressly stated he had "no doubt in my mind", was of the view that any increased residential use of the site would inevitably result in more private car journeys to access facilities and services contrary to the principles of sustainability. He was obviously concerned by the effects of such increased residential use given relevant policy and the development plan. In my judgment it is a matter of fact that the Inspector did not need to expressly spell out within brief reasons that (as every reasonable person knows) static caravans are by their very definition larger than touring caravans and as a result more attractive for long term and/or more intensive residential use (including as to number of occupants). The contrary is simply unarguable. Indeed static caravans can be readily used for residential use and it was the Claimant's stated case that the site was already to be considered "residential". The Inspector considered year round residential occupation as "highly unsustainable". Putting these matters together in my judgment it is clear that the Inspector viewed any increased residential use as unsustainable and that the conditions should not be removed and relaxed if they would have this effect.

60. It is also plain that the Inspector considered that any significant increase in the volume of traffic movements was not sustainable given the access/egress from the site (paragraphs 8 and 9).

61. These reasons underpin his conclusion as to the twin evils. This was the exercise of planning balance which cannot be impeached.

62. As a result I conclude that there is no merit in Mr Jones' submission that the Inspector's planning judgment cannot be determined and that he was not of, or did not reach, the view that increasing the number of static caravans with the result of increasing, or encouraging the increase in, residential occupation, would lead both to an increased number of journeys and unsustainable demands given the site's rural location. Rather when the decision is considered as a whole it can be seen that Mr Jones' argument ignores the inspectors underlying reasoning and opinion in relation to the likely harm caused by any significantly increased residential use.

63. I view any deficiencies in the presentation of the Inspectors reasoning, with consequential need to carefully analyse the whole decision, to be the fault of the Claimant to nail its colours to the mast and that when the decision is properly considered the Inspector's view on whether there should be a variation so as to allow an increase in the number of static caravans can be identified. This being so, and as submitted by Mr Stedman Jones the ground can be seen as an impermissible attack on planning judgment.

64. The Claimant has not established any legal error and accordingly this ground does not succeed.

Ground two

65. As stated in **West** the general rule is that it is for the parties to a planning appeal to place before an inspector the material upon which they intend to rely.

66. Here the Claimant was very well aware of the concerns in relation to the access to and egress from the site. At no stage after receipt of the officer's report was any suggestion raised about the possibility of improvement; no "material", not even a general representation was provided in respect of any proposal. Indeed given the content of representations which focussed on there being no likely increase in the number of journeys the Inspector was fully entitled in the circumstances to assume that the Claimant had no proposals to make. In face of the comments made about the access/egress the silence by the stage of the final comments made by the claimant could be quite properly taken to speak for itself.

67. I reject with little hesitation Mr Jones's submission that there was a failure by the Inspector to consider "a very obvious condition". In my judgment it was not for the Inspector, when faced with the absence of any suggestion whatsoever from the claimant that there was something to which he should address his mind, to make any assumption that potential improvement of the access was a live issue a fortiori to construct a condition. If the matter had been raised then it would have been a matter for planning Judgment; but such judgment cannot be required to be exercised in a vacuum. I cannot proceed on what I think the judgment would have been and it would be wrong to allow the Claimant to now rely on lacuna for which it is responsible.

68. So in my view it is wrong and simply unfair to criticize the Inspector for the failure to consider a Grampian condition which appears, at best to have been an afterthought by the Claimant at worst merely an academic ground of challenge. I therefore would refuse the ground on this basis alone.

69. Further whilst it is in principle possible, where development is otherwise desirable, to impose a **Grampian** condition given what I have set out in relation to Ground one it is clear that the Inspector did not, as a matter of planning judgment, view the removal of either condition as otherwise desirable. It was not therefore incumbent on him to propose a **Grampian** condition in any event.

70. So there is no merit in ground 2

Discretion

71. Finally, I should add that had I been of the view that the Inspector had fallen into error in respect of either or both grounds I would not granted relief in any event given the nature and extent of the case advanced before him. The grant of relief is discretionary, although I recognise that in most cases where a decision has been found to be flawed it would not be a proper exercise of discretion to refuse to quash it; so any discretion is narrow in scope. However the conduct of the party seeking relief is relevant and in my judgement the Claimant would only have itself to blame for failing to advance a clear case before the Inspector thus causing him to fail to focus on an issue. This was not a complex appeal and there is a very strong public policy

argument in favour of requiring parties to put their cases fully and clearly to an inspector and not make only oblique references and /or to keep matters in reserve and then to apply to the court under section 288.

72. So the application fails. The judgment will be handed down in the absence of the parties. I leave it to the parties to seek to agree a form of order or if this cannot be achieved to notify the court as to the outstanding issues and whether they can be determined through written representations or require a further hearing (and of what duration).