

**IN THE MATTER OF AN APPEAL PURSUANT TO S174 OF THE
TOWN AND COUNTRY PLANNING ACT 1990**

**IN RELATION TO LAND AT PLOT 1, LAND WEST OF
STOVOLDS HILL, CRANLEIGH GU68UX**

GROUND G STATEMENT ON BEHALF OF THE APPELLANT

QUALIFICATIONS AND EXPERIENCE

1. My name is Dr. Angus Dougal Stanislaw Murdoch and I have been instructed as Agent by the Appellant in both the s78 and s174 Appeals. I became a Member of the Royal Town Planning Institute in 2008. My qualifications include a BA with Honours (Goldsmith's College, London University, 1989), an MSC (Bristol University, 1996), a Ph D (Bristol, 2000) and an MA in Town and Country Planning (University of the West of England, 2006). Before setting up in private practice in August 2009, I had been employed as a Planning Advisor by the Community Law Partnership solicitors where I was instructed in many planning cases for Gypsies and Travellers at local planning authority (LPA) level, on Appeal to the Secretary of State, to the High Court and Court of Appeal as well as to the House of Lords, including both *South Bucks DC v Porter* [2003] UKHL 26; [2003] 2 AC 558 and *South Bucks DC v Porter (No.2)* [2004] 1 WLR 1953. I have also been involved in training individuals as well as organisations in relation to matters relating to Gypsy and Traveller planning, including LPAs and other public bodies. I am widely published in the field, including in the Journal of Planning and Environment Law (2002 and 2008) and am co-author of the Planning Chapter in the lead text-book on the subject, *Gypsy and Traveller Law* (Commission for Racial Equality/Legal Action Group now on the 3rd Edition 2020). I am a regular contributing author to the Legal Action journal (most recently for the January 2022 edition). I have also been called to give evidence to the House of Commons Select Committee with respect to this area of planning law and policy. I was as the Claimants' Expert Witness *Moore and Coates v SSCLG and Bromley and Dartford Councils, the Equality and Human Rights Commission (interveners)*.

2. In this Ground G Appeal Statement, I am adopting the approach that Inspector Campbell took in the Appeal Decision Letter [DL] that I have attached at Appendix GG1 when considering whether the compliance period in the Enforcement Notice [EN] was reasonable and proportionate in all the circumstances. In that Appeal, the site in question had – unlike here – already had a s78 Appeal dismissed and only Ground G was pleaded in the EN Appeal:

10. The urgent need for more sites and the failure of the planning system to deliver them is recognised in Circular 01/2006 Planning for Gypsy and Traveller Caravan Sites which was published in February 2006 with the expressed intention of increasing sites so as to address under-provision over 3-5 years. Two and a half years have passed. An assessment of need has been undertaken to inform the Regional Spatial Strategy for the South West (RSS). The report of that assessment, also published in February 2006, identifies a need for an additional 57 residential and 30 transit pitches in Mendip for the period 2006 to 2011. For the Appellants it is said that this is an underestimation because it fails to take full account of those obliged to live in conventional housing. But even if the published figures are accepted (they have not yet been finalised for the purposes of the RSS), there is clearly a substantial need for more sites in Mendip.

11. Time moves on and, about half way through the 5 year period, only 12 additional sites have come forward. Putting aside transit pitches, that leaves some 45 residential pitches still to be found and the Council do not anticipate the adoption of a Development Plan Document (DPD) identifying suitable sites until 2011 by which time it will be time to reassess need for a further period. This does not bode well for the intention of the Circular to address under-provision within 3-5 years. Moreover, where there is clear and immediate need as I consider there is in this local authority area, the Circular advises that DPDs containing site allocations are brought forward. At the hearing I was told that while the Council is considering taking some positive action in advance of the DPD there is no commitment to do anything as yet.

12. *Despite the Appellants' seeming reluctance to move which I have recognised, I am nonetheless surprised that the Council should consider 9 months sufficient time for the Appellants to find alternative accommodation knowing as it does the substantial need for more pitches in the area which must raise competition for any suitable site that might become available; being unable to suggest any suitable site that the Appellants might move to; and being aware of the efforts made by the Romani Gypsy Council to identify any potential sites. Nevertheless, the loss of their home has been recognised as a necessary interference when balanced against the public interest and I do not reach any other conclusion. However, interference which deprives a person of their home with no other alternative readily available and with the real possibility of being obliged to live by the roadside, is severe even when that home has been established in breach of planning control. That has to be balanced against the serious on-going harm to the character and appearance of the countryside, listed building and listed park although that harm can be redressed at the end of whatever period is given.*

13. *In my opinion, the interference cannot be seen as proportionate unless a reasonable time is given to seek an alternative site, albeit that at the end of the period a suitable alternative still might not have been identified. With the well known difficulties encountered in finding suitable gypsy sites, and the prevailing conditions for meeting the needs of gypsies in the District that I have described, I consider that a longer period than 9 months is justified. Two years as requested, although not sufficient to await the identification of sites in the DPD, would provide the Appellants time to undertake a thorough search for alternative accommodation and indeed during that period there is also the possibility that the Council might, as has been mooted, take some positive action to address the shortage of sites.*

14. *The Council says that a compliance period of two years would be tantamount to a grant of temporary planning permission but I do not agree. In contrast to a temporary permission; with an enforcement notice in force there is no acceptance that the site is suitable for the use even in the short term.*

Furthermore, at the end of the compliance period the Council can take immediate action against the use should it be continuing whereas if temporary planning permission had been granted it would necessary to commence enforcement proceedings once the permission expired.

*15. It has been suggested in written representations from interested persons that finding a piece of land should be a quicker process than buying a house but that simply isn't so. **It is widely acknowledged that finding acceptable sites for gypsies and travellers is a significant problem nationwide, hence the publication of C01/2006 which aims to tackle it.** It was further suggested that the Appellants might find a pitch at an existing private gypsy site at Bunns Lane which belongs to an uncle. However, as I understand it that site is limited to two pitches both of which are occupied and there is no reason why that owner should be obliged to accommodate the Appellants.*

*16. Some of the Appellants' actions to date, such as adding to the development on the site and giving the impression of not having any intention of moving have not fostered good relations with many of their closest neighbours. That is a pity. However, they have made some attempt to find other sites (estate agents visits and registration for the public site) and, perhaps more significantly, others acting on their behalf have demonstrated in good faith their efforts to identify possible sites for this family and for other members of the gypsy and traveller community in need and to encourage the local authority to identify suitable sites as is required by the Circular. Little progress has been made and an acute need for additional pitches continues. In these circumstances **I consider that a period of two years to comply with the enforcement notice is justified and strikes the appropriate balance between the needs of the Appellants and protection of the public interest.** Whilst the Appellants' rights under Article 8 of the European Convention on Human Rights (Right to Respect for Private and Family Life) are engaged, with a two year compliance period the interference resulting in the loss of their home is proportionate when balanced against the public interest so that there is no violation of those rights. The appeal on ground (g) succeeds."*

3. From Inspector Campbell's analysis, the following issues are material to a Ground G Appeal: the need for and supply of sites; whether suitable, alternative sites are available and the personal circumstances of the Appellant and their family. This is because those considerations are relevant to the Article 8 balancing exercise when considering whether the interference with the Appellant's Convention rights are necessary and proportionate.
4. I will start by considering the issue of personal circumstances.
5. Case-law on this particular issue demonstrates that the personal circumstances of Gypsies and Travellers can have determinative weight: for example, in *Basildon v Secretary of State for the Environment, Transport and the Regions* [2001] JPL 1184 paragraph 34 the Court held that:

"There was no requirement in law on the Secretary of State to find that the personal circumstances of these gypsy families were exceptional amongst the population at large or among gypsies in particular for him to be able lawfully to take those circumstances into account. The exceptional nature or otherwise of those circumstances went only to the weight he attached to them, in particular as constituting very special circumstances. The Secretary of State had to decide how much weight he would give to what I have identified as a material consideration"

6. In the case of *McCarthy and Ors v Basildon DC and Equality & Human Rights Commission* [2008] EWHC 987 (Admin) at paragraph 14, in relation to a Green Belt site, it states:

*"There is no question...that what they have done amounts to inappropriate development in the Green Belt so that planning permission can only be granted if they can show that there are very special circumstances. **It is accepted and the Planning and enforcement decisions confirm that the individual circumstances of the claimants are capable of amounting to very special circumstances** provided that those circumstances clearly outweigh the damage done to the Green Belt by the development and any other harm"*

7. In *Basildon DC v SETR and Ors* [2001] JPL 1184 (paragraph 11) the High Court set out (and later upheld) the reasoning by the Secretary of State that:

“[The Secretary of State] considers that the Inspector gave insufficient weight to [the Gypsy’s] personal circumstances. He is of opinion that their personal circumstances, and in particular the children’s educational needs, carry significant weight. Consequently, when undertaking the Green Belt balancing exercise himself, he finds that the harm to the Green Belt – albeit substantial – is clearly outweighed by the Gypsy families’ personal circumstances and the need for more Gypsy sites in the area. He is satisfied therefore that very special circumstances do exist which justify allowing all three appeal proposals in the Green Belt”

8. In *Doncaster MBC v SOE* [2002] JPL 1509 paragraph 70 the Court had said:

*“Given that inappropriate development is by definition harmful, the proper approach was whether the harm by reason of inappropriateness and the **further** harm, albeit limited, caused to the openness and purpose of the Green Belt was **clearly** outweighed by the benefit to the appellant’s family and particularly to the children so as to amount to **very** special circumstances justifying an exception to Green Belt policy”* (original emphases).

9. On Appeal from *South Bucks DC v Porter (No.2)* [2004] 1 WLR 1953 - in which I was instructed - the Court of Appeal had considered the circumstances advanced by the Gypsy family to be insufficiently “*very special*” but Lord Brown in the House of Lords said:

(a) *“What was required of [the Inspector] was above all a value judgment whether the hardship which would result for dispossessing Mrs Porter from her land was sufficiently extreme and unusual to justify the environmental harm occasioned by her remaining there as long as she needed”*: at p1965 paragraph 38;

(b) *“Should she be dispossessed from the site onto the roadside or should she be granted a limited personal planning permission? The Inspector thought the latter, taking the view that Mrs Porter’s “very special circumstances” “clearly outweighed” the environmental harm involved. Not everyone would have reached the same decision but there is no mystery as to what moved the inspector”*: at 1965 paragraph 41.

10. As Lord Brown pointed out in *Porter (No.2)* paragraph 39:

“Lord Clyde in the South Bucks case [South Bucks DC v Porter [2003] UKHL 26; [2003] 2 AC 558], at p 593, para 75, described Mrs Porter’s (and Mr Berry’s) circumstances as “quite special”: in part because they owned the land in question and in part because, although the land lies within the Green Belt, “it is not suggested that there is any urgent environmental problem”.

11. In *Wychavon DC v the Secretary of State and the Butlers* the Court of Appeal held:

*“I say at once that in my view the judge was wrong, with respect, to treat the words “very special” in the paragraph 3.2 of the guidance [PPG2] as simply the converse of “commonplace”. Rarity may of course contribute to the “special” quality of a particular factor, but it is not essential, as a matter of ordinary language or policy. The word “special” in the guidance connotes not a quantitative test, but a qualitative judgment as to the weight to be given to the particular factor for planning purposes. Thus, for example, respect for the home is in one sense a “commonplace”, in that it is an aspiration shared by most of humanity. But it is at the same time sufficiently “special” for it to be given protection as a fundamental right under the European Convention. Furthermore, Strasbourg case-law places particular emphasis on the special position of gypsies as a minority group, notwithstanding the wide margin of discretion left to member states in relation to planning policy (see *Chapman v UK* 33 EHRR 399; and the comments of Lord Brown in *Kay v Lambeth LBC* [2006] 2 AC 465 para 200). Thus, in *Chapman* the Strasbourg court recognised that the gypsy status did not confer “immunity from general laws intended to*

safeguard the assets of the community as a whole, such as the environment”, but added:

“...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 reaching decisions in particular cases... To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the Gypsy way of life...” (para 96, emphasis added)

The special position of gypsies in this respect is reflected in the 2006 guidance. Against this background, it would be impossible in my view to hold that the loss of a gypsy family’s home, with no immediate prospect of replacement, is incapable in law of being regarded as a “very special” factor for the purpose of the guidance.”

12. In terms of this Appellant’s family’s personal circumstances, we know from the s78 Appeal on this site, that Plot 1 is owned and occupied by Mr Barney Doherty, his wife Elizabeth and their children. Mr Doherty’s Personal Statement, as produced by his Solicitor, was provided with the Statement of Case [SoC]. It is clear from that document and attachments to it that Mr Doherty’s family have compelling personal circumstances:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13. In addition, Mr Doherty has produced a Proof of Evidence in these Appeals which confirms the contents of his Statement and addresses issues raised by the LPA in their own SoC.

14. From Mr Doherty's Statement and Proof, as well as the LPA's SoC, it is Common Ground that the Appellant is an ethnic Irish Gypsy Traveller by birth and was brought up in the traditional Traveller way of life. It is Common Ground that the Appellant is a Traveller in terms of Annex 1 Planning Policy for Traveller Site 2024 [PPTS 2024] as well for the purposes of the Public Sector Equality Duty.
15. In my view, Mr Doherty and his family's personal circumstances attract great weight. I note that the LPA do not dispute the Appellant's family's personal and health needs in their SoC.
16. In July 2021, Mr Doherty's Pitch was one of four that were subject to planning application WA/2021/02307 which was refused but not appealed. Neither I, nor any of other experts now instructed, were involved in that application.
17. Two of the four pitches involved in WA/2021/02307 are currently the subject of Planning Appeals¹ that were originally going to be determined at a Public Inquiry before Inspector Clegg ['the Clegg Appeals'] in October 2024 but were adjourned until 3rd June 2025 because of ill health. Although the Clegg Appeals then opened in June 2025, they were adjourned again until 10th February 2026 (due again to ill health). However, on 23rd January 2026, the Clegg Appeals were adjourned again, on this occasion because the Inspector was not satisfied that the Appellants had sufficient time to address the Waverley December 2025 Gypsy and Traveller Accommodation Assessment [GTAA 2025] and Pitch Deliverability Assessment [PDA] Appendix submitted by the LPA on 13th January 2026. In his email of 20th January 2026, Mr Brownjohn, acting for the Appellants, wrote to PINS as follows:

“At the CMC held on 06 October, the LPA advised that the new GTAA was in preparation and the document would be available in the public domain at least four weeks prior to the Inquiry. The LPA stated it should be available in December but it was not. Whilst the Need figures identified by the report are supportive of the appellants case, however provisionally considered an underestimate, the LPA did not advise that it would include a Pitch Deliverability Assessment and as such one was not expected.

¹ APP/R3650/W/22/3313865, APP/R3650/W/23/3314447, APP/R3650/W/23/3322400, APP/R3650/W/23/3323108

That document asserts that the LPA can demonstrate a five year supply, and as such, even were the appellant to accept, for the purposes of these appeals, the need figure to be correct, the parties would still be at odds over whether that need could be met. The appellant considers the submission of that document to be unreasonable under the timings agreed, and sets out that the appellant cannot possibly respond to its content with the time. The appellant does not accept the conclusions set out within that document, and fundamentally disputes Mr. Jarman's assertions that the sites inferred within that document should be considered components of deliverable supply.

The appellant will be unable to respond to the late evidence in the time available to do so due to existing commitments, and therefore seeks the Inspectors view on the acceptance of the Pitch Deliverability Assessment given that the only document parties were advised would be produced was a new GTAA."

18. Alison Dyson of PINS reply of 23rd January 2026 stated:

*"It was agreed at the case management conference held on 6 October 2025 that updates in respect of changes of circumstance could be submitted by 13 January 2026, and it was known then that a revision of the GTAA was underway. The new GTAA was submitted on 13 January by the Local Planning Authority (LPA), together with other supplementary documents. This GTAA includes an additional section 9 - Pitch Deliverability Assessment & 5 Year Supply – which was not part of the previous GTAA, published in 2018. **The supplementary statement of Mr Jarman concerning the general need for and supply of traveller pitches is, moreover, accompanied by a lengthy appendix providing details of sites considered as part of the pitch deliverability assessment exercise.***

*The latest GTAA is a change of circumstance, which the Inspector considers is relevant to the four appeals. As such he has accepted it as part of the LPA's case. However, given **the change in approach**, with the inclusion of the pitch deliverability assessment, he acknowledges that there is insufficient time for*

***the Appellants to respond to this document** before the inquiry is scheduled to resume on 10 February 2026. Updated evidence on general need and supply will, therefore, be heard at later date. **As it would be unsatisfactory for the inquiry to resume to deal with other matters alone, resumption of the inquiry is hereby postponed.** We will contact the main parties to make arrangements for resumption of the inquiry. The LPA is asked to notify parties of this change in arrangements for the inquiry.”*

19. During Barney Doherty’s CMC on 7th January 2026, I drew the parties’ attention to the then-imminent issuing of the GTAA 2025 and specifically asked for that document to be forwarded as soon as it was published, which we were told would be in a “few days’ time.” The LPA did **not** inform the Appellant or the Inspector at the CMC that ORS had by that time already produced the Pitch Deliverability Assessment Appendix or that they would be submitting it.
20. Having not received the GTAA 2025 by 13th January 2026, I wrote to the LPA, copying in Helen Skinner at PINS, asking for the document. Ms Skinner also asked for the GTAA to be forwarded to the parties on 13th January 2026, but it wasn’t. That is a significant date, as we shall see.
21. We now know that the GTAA and accompanying documents **were** sent to the Clegg Appeals on the very same day that Ms Skinner and I had asked for them, namely 13th January 2026, so it would have been straightforward to simply forward them on to the Appellant that same day. However, the LPA chose not to do that.
22. **Ten days later**, on 23rd January 2026, the LPA finally forwarded the GTAA 2025 as well as the Appendices thereto to me. That is the very day when Inspector Clegg had adjourned his Inquiry for the third time, **solely because** of the GTAA 2025 and PDA Appendix. The LPA did not inform the parties to Barney Doherty’s Appeal of the fact that Inspector Clegg had adjourned his Inquiry for the third time just 3 hours earlier that same day, purely on the basis of those very documents.
23. The “lengthy Appendix” referred to by Alison Dyson in PINS email of 23rd January 2026 cited above is described as a “Pitch Deliverability Assessment” [PDA]

Appended to the Supplementary Statement of the LPA's Witness, Mr Steve Jarman of ORS. The PDA Appendix alone runs to 232 pages of dense tabulated data which asserts that the overall need for 134 additional residential pitches over the Plan period is reduced by 83% if so-called 'vacant' pitches and pitches allegedly occupied by non-Travellers were made available; in terms of the 5 year housing land supply [5YHLS] for Travellers, the PDA asserts that there is more than a 5 year supply based on the same assumptions.

24. The length of the PDA of 232 pages contrasts with the length of the GTAA 2025 itself which is only 77 pages long. We can see from the GTAA 2025 that the data collection took place over the period June 2024 to August 2025 (3.22). The Appellant had only a couple of weeks before settling the Proofs of Evidence to consider this new evidence in the GTAA, PDA and the 232 Pro Forma PDA Appendix thereto. When we had the CMC on 7th January 2026, the LPA did not alert the Inspector or the Appellants that they were preparing this PDA and PDA Appendix, even though it had clearly been commissioned well before then. Nor were a PDA and Pro Forma Appendix provided in the previous GTAA for Waverley in 2018.
25. In terms of the Frank's Principles, in particular that of fairness, in the s78 Appeal I argued that, in my view it was essential that the Appellant was afforded sufficient time to interrogate the data *before* they settled their evidence on this issue, something which simply could not be done before the Proofs were filed on 10th February 2026.
26. I note that the Appellants in the Clegg Appeals were allowed to provide a written response to the GTAA 2025 and PDA Appendix (which I will forward by email and refer to as Appendix GG2) in April 2026. That is now a public document available on the Council's website. For the purposes of this EN Statement (as well as the s78 Appeal) I adopt the evidence in Appendix GG2.
27. The evidence in Appendix GG2 reinforces my view that: no suitable alternative site(s) have been identified by the LPA as being *available* for this (or any other) Appellant; that there is significant unmet need for additional pitches in Waverley; and that there is no up-to-date five-year supply of Traveller sites.

28. No prejudice would be caused to the LPA by the Appellant adopting the evidence in Appendix GG2 because the LPA has a) been in possession of that evidence since April 2026; b) has taken the opportunity to respond to it in their own reply dated May 2026 and c) will discuss this at the round table session on need and supply at the Clegg Appeals when they resume on 19th June 2026.

29. Moving on: Pitch 1 lies within a wider area that was subject to an Injunction Order dated 6th September 2023. However, that Order does not apply to Barney Doherty as he and some of the other Defendants challenged the making of a Final Injunction in the High Court and the Deputy High Court Judge, Karen Ridge (herself a former Planning Inspector) refused to make the Final Order against Mr Doherty and some of the other Defendants and quashed the Interim Injunction previously granted. In her judgment the learned judge described Mr Doherty's circumstances thus:

"The 17-year-old son of Barney and Lizzie Doherty has cystic fibrosis and developmental delay and requires round the clock care with daily physiotherapy and nebulisers. He sleeps with a bi-pac machine which requires a constant electricity supply. If evicted from the site, the family would have to resort to a roadside existence since they have no other financial means available and no savings. Barney Doherty explains that he wishes to apply for planning permission for which he would need public funding. His solicitor tells him that she may be able to secure discretionary Exceptional Case Funding but the planning agent she has discussed the case with, is not able to look at any of the papers until September 2023. He has limited literacy skills and would need professional representation to submit an application."

30. In quashing the Injunction against Mr Doherty (Defendant D7) the learned judge held:

"Conclusions on D3, D5, D6, D7, D8

109. The claimant decided that it was expedient to seek injunctive relief at a point where there was unauthorised development on the land. At that point they had little or no information about the personal circumstances of the defendants,

other than their names. The application proceeded on the basis that the site was unoccupied at that time. That position was entirely reasonable.

110. Whilst the claimant continued to visit the site throughout the course of proceedings, this was to gather further information about who was on the site and what further development had taken place, if any, as well as for the purposes of serving court papers and other notices. There is little in the way of the claimant seeking to investigate the welfare position of the defendants as the proceedings continued and as further information came to light.

111. Several of the defendants have significant medical needs and very serious medical conditions. Much of the information relating to those needs has come to light late in these proceedings.

112. I remain conscious of the duty to uphold lawful decisions made by planning authorities. I must also bear in mind the consequences of a final injunction when there are no alternative sites available, and the defendants are likely to resort to unauthorised roadside camping which would lead to further environmental harm and hardship for the families and children in terms of their welfare needs not being met. These are significant factors militating against the grant of a final injunction on the facts of this case.

113. As each of these matters became apparent it was incumbent on the claimant to investigate matters and to re-assess the balance of factors in light of emerging information. The proportionality of the decision should have been revisited when the claimant became aware of these matters. There is scant evidence to suggest that the claimant meaningfully reviewed the original decision at key points when the identity and needs of individual occupants became known. The impression gained is of an initial decision being taken to pursue injunctive relief and the claimant pursuing it to a final injunction without pausing to re-evaluate the appropriateness of the use of coercive measures on becoming aware as to personal circumstances of the individuals they were concerned with.

114. Section 187B gives the court an original jurisdiction which it is to exercise as it thinks right, and subsection (2) states that the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach. The court must exercise its discretion appropriately.

115. As Deputy High Court Judge Timothy Straker QC in Guildford Borough Council v Cooper [2019] EWHC opined:

“Therefore, it is not for the court to act merely as a rubber stamp to endorse a decision of the Local Planning Authority to stop the user by the particular defendant in breach of planning control. Moreover, the court is as well placed as the Local Planning Authority to decide whether the considerations relating to the human factor outweigh purely planning considerations. The weight to be attached to the personal circumstances of a defendant in deciding whether a coercive order should be made against him is a task which is constantly performed by the courts.”

116. I also remind myself of Simon Brown LJ in Porter when discussing the relevance of the local authority’s decision to seek injunctive relief, commenting that the relevance and weight of their decision will depend above all on the extent to which they can be shown to have had regard to all the material considerations and to have properly posed and approached the article 8(2) questions as to necessity and proportionality.

117. Here the defendants accept that there has been a breach of planning control which the court should seek to address. The court must however have regard to all the circumstances, which include the best interests of the children. Given the failures of the claimant to properly engage and grapple with the significant welfare issues of these defendants, and the best interests of the children on site, once they were put on notice of the same, I conclude that there has not been the sort of evaluative exercise properly required before seeking final injunctive relief.

118. I also bear in mind that the local authority chose to seek injunctive relief which carries the threat of imprisonment as opposed to serving an enforcement notice. There is no evidence that upon learning that the site was occupied and upon discovering some of the health difficulties of the defendant, the claimant considered use of enforcement notice powers as an alternative to pursuing its injunction. It is for the local authority to apply its mind to the enforcement tools at its disposal and act proportionately. That remains a requirement as the factual matrix changes and decisions needs to be revisited.

119. There is also my conclusion that the planning status is not yet final given that the Secretary of State, on appeal may take a different view to the local authority. I also must bear in mind the significant impact that a final injunction would have. Having regard to all matters, I am satisfied that it is appropriate for the court to decline to exercise its discretion to make the final injunction requested and to discharge the interim injunction in force.”

31. It is clear from the judgment that the issue of need and supply are pivotal to both the consideration of the planning merits of the s78 Appeal as well as the proportionality of enforcement measures, including the compliance period with the EN.
32. In my view, the lack of suitable alternative site(s) identified as being available, in the context of such a significant level of need, added to the compelling personal circumstances of the Appellant’s family, strongly supports both the s78 Appeal being allowed, as well as an extended compliance period in relation to Ground G.
33. In terms of Ground G, for all these reasons, the Appellant respectfully requests that the Inspector extends the period of compliance from 6 months to 2 years so that the family has the best chance possible of finding a suitable alternative site to move to whilst complying with the requirements of the EN.