

Marc Willers QC – Notable Cases

[R \(VC\) v North Somerset Council \(Equality and Human Rights Commission intervening\) \(2016\) CO/3801/2015](#)

North Somerset Council's allocation policy's "local connection" requirement was challenged by way of a judicial review application by an Irish Traveller on a number of grounds. These included that the council had failed to pay proper regard to equality objectives pursuant to s. 149 of the Equality Act 2010 and that the Council's "local connection" requirement was indirectly discriminatory in relation to Gypsies and Travellers and unjustifiably so. The case was supported by the Equality and Human Rights Commission. The case settled on the day before trial and Mr Justice Collins approved an order by which the Council undertook to place the claimant on its housing register and to review its allocations scheme (specifically with reference to s.149 of the Equality Act 2010). The judge also ordered the Council to pay the claimant's costs of the judicial review claim.

[Kingsley v Stockport MBC \[2015\] \(unreported\)](#). Lord Justice Lindblom dismissed a renewed application for permission to appeal in a judicial review challenge to the grant of planning permission for the redevelopment of Woodford aerodrome into a 920-home scheme (leading Paul Clark).

[Mulvenna and Smith v SSCLG \[2015\] EWHC 3494 \(Admin\)](#) These two claims for judicial review followed the judgment of Gilbart J in the case of [Moore and Coates v SSCLG and EHRC \[2015\] EWHC 44 \(Admin\)](#) in which he found that the Secretary of State had unlawfully discriminated against Romani Gypsies and Irish Travellers by recovering all Gypsy and Traveller caravan site planning appeals for his own determination. As a consequence the claimants argued that the Secretary of State should never have been in a position to decide and reject their appeals and that his unlawful recovery decision had a 'domino effect' which rendered his appeal decisions nullities. The EHRC agreed but Cranston J concluded that the unlawful and discriminatory recovery of their appeals did not render his subsequent decisions to dismiss them unlawful, and that having reached his decisions he was functus officio, i.e. that he had no power to take any further action (leading Tessa Buchanan).

Reilly v Secretary of State for Communities and Local Government and Hinckley and Bosworth BC [2015] EWHC 1957 (Admin) 15 July 2015.

[Traveller Movement v J D Wetherspoon PLC \(2015\)](#) Central London County Court, 18th May 2015, HHJ Hand QC. In this landmark discrimination claim the Court held that a pub which had refused entry to Irish Travellers and Romani Gypsies and their companions following an annual conference organised by the Traveller Movement had committed direct race discrimination because the pub landlord made stereotypical assumptions that Irish Travellers and Romany Gypsies were likely to cause disorder. The Court also held that the Travellers' and Gypsies' companions also succeeded in their claims for associative direct discrimination.

[Dear v Secretary of State for Communities and Local Government and Doncaster Metropolitan Borough Council \[2015\] EWHC 29 \(Admin\)](#). In this case Ms Dear had been refused permission by the Council for a Gypsy site and appealed to the Planning Inspector. The matter was recovered by the (SSCLG). His Inspector recommended refusal of both permanent and temporary permission and the SSCLG agreed with his Inspector. Ms Dear appealed to the High Court. HHJ Belcher accepted that an appeal decision in another case that was given at about the same time as this case should have been taken into account in this case. However, she also accepted that, even if that other appeal decision had been taken into account, this would not have changed the decision of the SSCLG.

Stevens v Secretary of State for Communities [2014] EWCA Civ 214

The claimant Romani Gypsy had applied for temporary planning consent to station her mobile homes on her land in the Green Belt. The application was refused by the local council and a planning inspector dismissed an appeal. The High Court rejected a challenge to that decision. The claimant sought permission to bring a further appeal contending that the inspector had failed to apply the approach to the best interests of the claimant's children required by the judgments in ZH (Tanzania) which had been delivered after her decision. The Court of Appeal refused permission. It was held that the inspector had had the interests of the children "in the forefront of her mind" precisely as the Supreme Court had later held was required (in ZH).

R (Ward) v South Cambridgeshire DC [2014] EWHC 521 (Admin)

The claimant was an Irish Traveller. The council operated two official Traveller sites on both of which the predominant community was English Romani Gypsies. The claimant had applied unsuccessfully for pitches on the sites. Her application remained extant but the council indicated that in making any future allocation decision it would take account of the cultural differences between English and Irish Travellers. The claimant sought a judicial review, contending that the council had failed to take account of the public sector equality duty. The High Court rejected the claim. The indication given by the council had not been a decision. When a pitch became available any allocation would fall to be made on the relevant facts and at that stage the council would be bound to comply with its equality duty.

[R \(JM\) v Secretary of State for Justice \[2013\] EWHC 2465 \(Admin\)](#). A case in which the claimant sought judicial review of the Secretary of State's decision to close Ashfield Young Offender Institution (YOI) in circumstances where that would result in the parents of young people from the South West detained in YOIs having to travel great distances in order to visit their children that those visits, such that the number and frequency of the visits made to young people from the South West would be likely to decrease when compared with those enjoyed by young people from other parts of England and Wales. Following the substantive hearing, the Court refused to grant relief.

Solihull MBC v Noah Burton [2013] EWHC 971 (QB), JPL 1280. A case concerning an application to vary an injunction which required Romani Gypsies to vacate an unauthorised development. The Court commented upon the approach to be adopted following the House of Lords judgment in ZH (Tanzania) v Secretary of State for the Home Department[2011] 2 AC 166 when deciding whether or not to vary an injunction already in force.

Turner v Chief Land Registrar [2013] EWHC 1382 (Ch). A case concerning the construction of section 15 of the Land Registration Act 2002.

Stokes v UK [2013] (Application No 65819/10). The Applicant claimed that her rights protected by Articles 6 and 8 of the Convention had been violated in circumstances where she had not been provided with full reasons for the decision taken to evict her from a local authority run site. The parties reached a friendly settlement and the UK agreed to pay the Applicant the sum of 2000 Euros.

[Stevens v SSCLG and Guildford BC \[2013\] EWHC 792 \(Admin\)](#). Gypsies – an unsuccessful challenge brought in respect of a planning inspector's decision to refuse temporary planning permission for a Gypsy site. The Claimant argued that the Inspector had failed to take account of the best interests of the children in accordance with the principles laid down by Baroness Hale in the Supreme Court

decision in *ZH (Tanzania) v SSHD* [2011] UKSC 4. The Judge accepted that the principles were relevant but concluded that on the facts the Inspector had complied with those principles.

[Knowles v Department for Work and Pensions](#) [2013] EWHC 19 (Admin)

A judicial review challenge in which it was argued that the housing benefit regulations relating to the provision of housing benefit to those Gypsies and Travellers living on private sites were discriminatory and incompatible with Article 14 of the Convention (leading Desmond Rutledge).

***Linfoot v SSCLG and Chorley BC* [2012] EWHC 3514 (Admin).** Gypsies – A successful statutory review challenge brought against a decision of a planning inspector to refuse a Gypsy family temporary planning permission – the Secretary of State has conceded that his inspector’s decision was unlawful. Chorley BC did not agree and the case was heard in Manchester Admin Court.

[Buckland v United Kingdom](#) [2012] Application No 40060/08, 18th September. The ECtHR found that the Article 8 rights of a Romani Gypsy had been violated in circumstances where she had not been given the opportunity to challenge the proportionality of a decision to seek possession of her rented pitch on an authorised site before an independent tribunal. The ECtHR awarded the applicant EUR 4000 in respect of non-pecuniary damages.

[Harrow Community Support Limited v Secretary of State for Defence](#) [2012] EWHC 1921 (Admin). The highly publicised unsuccessful judicial review challenge of the decision to deploy a high velocity missile system on the roof of the Fred Wigg Tower in Leytonstone, London as part of the air defence plan for the 2012 Olympics.

***Julie Smith v Secretary of State for Communities and Local Government and Doncaster MBC* [2012] EWHC 963 (Admin).** Gypsies – an unsuccessful challenge brought in respect of a planning inspector’s decision to refuse temporary planning permission for a Gypsy site.

[Medhurst v Secretary of State for Communities and Local Government](#) [2011] EWHC 3576 (Admin).

Gypsy planning case concerning the meaning of Gypsies and Travellers (Gypsy status) for the purposes of planning law and whether the definition in Circular 1/2006 was incompatible with Article 8 of the Convention.

[R \(Mary Michelle Sheridan and Others\) v Basildon BC](#) [2011] EWHC 2938 (Admin). Dale Farm.

Unsuccessful judicial review challenge against the council’s decision to take direct action to evict Irish Travellers from their plots on the site. The case was heard at first instance by Ouseley J and Lord Justice Sullivan refused a renewed application for permission made to the Court of Appeal.

[Patrick Egan v Basildon Borough Council](#) [2011] EWHC 2416 (QB). A case involving the Dale Farm site in which the Court considered the extent to which enforcement notices gave the Council the power to take direct action to remove unauthorised development on the site.

[Doran v Secretary of State for Communities and Local Government and Central Bedfordshire](#)

[Council](#) [2010] EWHC Admin, [2010] All ER (D) 174. Irish Traveller case – an unsuccessful challenge brought in respect of an Inspector’s decision on the basis that he had failed to take account of the Claimant’s personal circumstances and misunderstood and misapplied policy on the grant of temporary planning permission.

[Community Law Partnership v Legal Services Commission \(2010\)](#). A successful judicial review of the LSC's decision not to award CLP a housing contract in which Mr Justice Collins said: 'I am bound to say this is a dreadful decision and on the face of it the approach [taken by the LSC] is totally irrational.' The case was resolved when the LSC changed its decision and granted CLP a contract.

Brent London Borough Council v Stokes [2010] EWCA Civ 626. Irish Traveller case -the Court of Appeal refused an application for permission to appeal against the decision of Mr Justice King to uphold the County Court's decision to grant possession of land in circumstances where it had been decided that the Appellant's 'gateway (b)' defence did not raise seriously arguable grounds to dispute the claim for possession.

[Secretary of State for Environment Food and Rural Affairs v Meier and others \[2009\] UKSC 11](#). New Travellers case – the Supreme Court held that a wide possession order granted to the Forestry Commission in respect of land which it owned and occupied and of which no-one was, at present, in unauthorised occupation, should be discharged and in so doing, the Supreme Court also overturned the Court of Appeal's decision in this case and its decision in the earlier case of *Drury v Secretary of State for the Environment* [2004] EWCA Civ 200.

Wingrove and Brown v Secretary of State for Communities and Local Government and Mendip DC [2009] EWHC 1476 Admin. Gypsies – another challenge to an Inspector's interpretation of the meaning of Gypsies and Travellers laid down by the government in Circular 1/06 was dismissed.

R (McCann) v Secretary of State for Communities and Local Government and Basildon DC [2009] EWHC 917 Admin. An Irish Traveller case – Inspector's decision challenged on number of grounds including the interpretation of the meaning of Gypsies and Travellers (Gypsy status) laid down by the government in Circular 1/06. Decision quashed on other grounds.

Lushey Stanley v Secretary of State for Communities and Local Government [2009] EWHC 404. Gypsies – an Inspector's decision not to grant temporary planning permission for a Gypsy site was upheld.

R (Jordan) v Secretary of State for Communities and Local Government [2008] EWHC 3307 Admin, [2009] JPL 1010. A challenge to an Inspector's decision on grounds that she failed properly to take account of human rights when considering whether to grant temporary planning permission for a mobile home dwelling was dismissed.

South Cambridgeshire DC v Secretary of State for Communities and Local Government and Julie Brown [2008] EWCA Civ 1010. Gypsies – a local authority's application to quash a planning inspector's decision to grant a Gypsy family planning permission was dismissed by the Court of Appeal.

Secretary of State for Environment Food and Regional Affairs v Natalie Meier and Others [2008] EWCA Civ 903. New Travellers case. The Court of Appeal gave guidance on the grant of wide possession orders and supporting injunctions to prevent land being occupied by trespassers).

South Cambridgeshire DC v Harry Price and Others [2008] EWHC 1234 Admin Gypsies – a local authority's application for a planning injunction was dismissed on grounds it would violate the article 8 rights of the defendant Gypsy families.

McCarthy and Others v Basildon DC and the Equality and Human Rights Commission [2008] EWHC 987. A judicial review challenge to a decision to take direct action to evict a large encampment of Irish Travellers living on Dale Farm without planning permission.

R (Lisa Smith) v London Development Agency and SSTI [2007] EWHC 1013 Admin. Gypsies and Irish Travellers – a judicial review challenge to the Compulsory Purchase Order of land used as a Gypsy site for the purposes of the Olympics).

Larkin v First Secretary of State [2007] EWHC 2117. Gypsies – a decision to refuse temporary planning permission for a Gypsy site in the Green Belt was upheld.

University of Oxford v Broughton and Others [2006] EWHC 1233 QB. A case concerning restrictions placed on the right to legitimate protest – articles 10 and 11 of the ECHR.

Patrick McCarthy v Secretary of State for Communities and Local Government [2006] EWHC 3287. An Irish Traveller case – the Secretary of State’s decision to refuse planning permission for a Gypsy site was upheld in circumstances where the decision maker had taken account of the risk that the grant of permission would set a precedent for future unauthorised development.

R (Jeeves and Baker) v Gravesham BC [2006] EWHC 1249 Admin. Gypsies – a successful judicial review of the non-determination of planning application by local authority.

Wychavon DC v Rafferty [2006] EWCA Civ 628. Gypsies – committal for breach of a planning injunction.

R v Billimore [2006] EWCA Crim 506. A successful criminal appeal against a major class A drugs conspiracy conviction in circumstances where fresh evidence had arisen which cast doubt on the veracity of the main witness for the prosecution.

R (O’Brien) v Basildon DC [2006] EWHC 1346 Admin. Gypsies – a successful judicial review of a council’s decision to take direct action – article 8 of the ECHR.

South Bucks DC v Smith [2006] EWHC 281. Gypsies – planning injunctions and the grant of a stay pending the determination of a fresh planning application.

Wilson v Wychavon DC and FSS [2005] EWHC 2970. Gypsies and the compatibility of legislation providing for the service of stop notices with articles 8 and 14 of the ECHR).

Wycombe DC v Wells [2005] EWHC 1012. Gypsies – enforcement notices and the scope of the statutory defence in criminal proceedings.

Smith v FSS and Mid Beds DC [2005] EWHC Civ 859. Gypsies – planning – the fear of crime as a material consideration and discrimination.

Coates v South Bucks DC [2004] EWCA Civ 1378 and [2005] JPL 668. Gypsies – planning injunction – article 8 of the ECHR and proportionality test.

R (Basildon DC) v FSS and Temple and Dennard [2004] EWHC 2759 Admin and [2005] JPL 942. Gypsies – planning – green belt and ‘very special circumstances’ test.

R (Dartford BC) v FSS and William Lee [2004] EWHC 2549, [2005] JPL 546 Admin. Gypsies – planning – green belt.

Basildon DC v FSS and Rachel Cooper [2004] EWCA Civ 473. Gypsies – planning – a case concerning the statutory definition of Gypsy status.

R (William Lee) v FSS and Dartford BC [2003] EWHC 3235 Admin. Gypsies – proportionality – article 8 of the ECHR – temporary planning permission.

-planning permission – availability of education for children.

Doncaster MBC v FSS and John Buck [2003] EWHC 995 Admin. Gypsies

R (Clarke) v Secretary of State for Transport, Local Government and the Regions [2002] EWCA Civ 819 and [2002] JPL 1365. Gypsies – planning permission – a successful statutory challenge to a planning appeal decision in which it was established that the offer of bricks and mortar accommodation to a Gypsy with a cultural aversion to bricks and mortar could constitute a breach of Article 8 of the Convention.

R (U) v Commissioner of Police for the Metropolis and the Secretary of State for the Home Department [2003] 1 WLR 897. A successful judicial review concerning the final warning scheme's compatibility with article 6 of the ECHR.

Gypsy Council v UK [2002] Application no. 66336/01. A complaint to the European Court of Human Rights – article 11 of the ECHR – against the decision to ban a traditional Gypsy horse-fair in Horsmonden in Kent.

R v Kearns [2002] 1 WLR 2815. A criminal appeal – article 6 of the ECHR – compulsory questioning – right to silence and presumption against self incrimination.

R v Thomas Clarke [2002] EWCA Crim 753, [2002] JPL 1372. Gypsies – the scope of defence in enforcement notice prosecution.

Coster v UK [2001] 33 EHRR 20. Gypsies – articles 8 and article 1 of protocol 1 of ECHR – one of the 5 cases considered by the ECtHR when it gave its seminal judgment in [Chapman v UK](#).

R v Basildon DC ex parte Clarke [1996] JPL 866. Gypsies – a judicial review.

Maidstone BC v SSE and Dunne [1996] JPL 584. Gypsies – a planning case concerning the statutory definition of Gypsy status.

R v Lovick [1993] Crim LR 890. A successful appeal against conviction involving an alleged conspiracy between a husband and wife.

Mole Valley v Smith [1992] 3 PLR 22. Gypsies – Court of Appeal gave guidance on the grant of planning injunctions.