Planning Appeal Research

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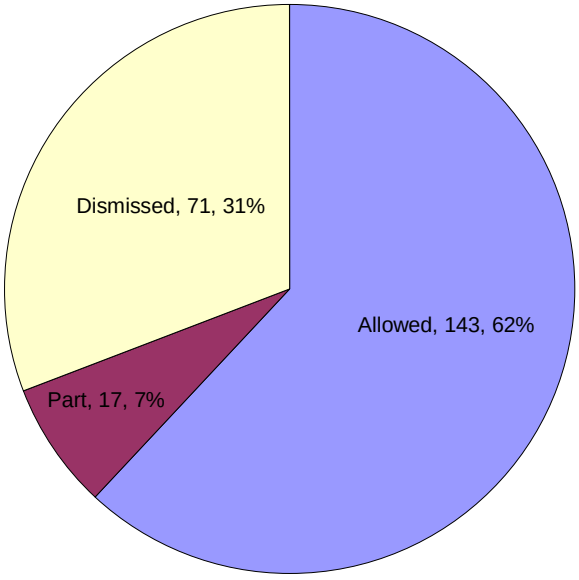
Introduction

This report was commissioned by National Federation of Gypsy Liaison Groups. One of the groups, the Derbyshire Gypsy Liaison Group, undertakes a substantial amount of planning work including representations on planning policy for the East and West Midlands. DGLG provided access to full Planning Inspection Service reports purchased from Haymarket. The report provides some headline information on the number of appeals allowed, and the proportion of temporary and permanent permissions given – and it compares these figures with a previous piece of research for Lord Avebury in 2006. It then goes on to look at some of the more complex issues highlighted in some cases. The report is a work in progress and there will be further analysis of the planning appeals in relation to factors considered by Inspectors.

Key Findings on Planning Appeal Outcomes

231 planning appeal cases in England were input onto a spreadsheet and analysis is ongoing. The cases represent 100% of planning appeals heard from 1st February 2007 to 20th January 2009 (a full two-year period). The outcome of these 231 cases is shown in Fig. 1 below:

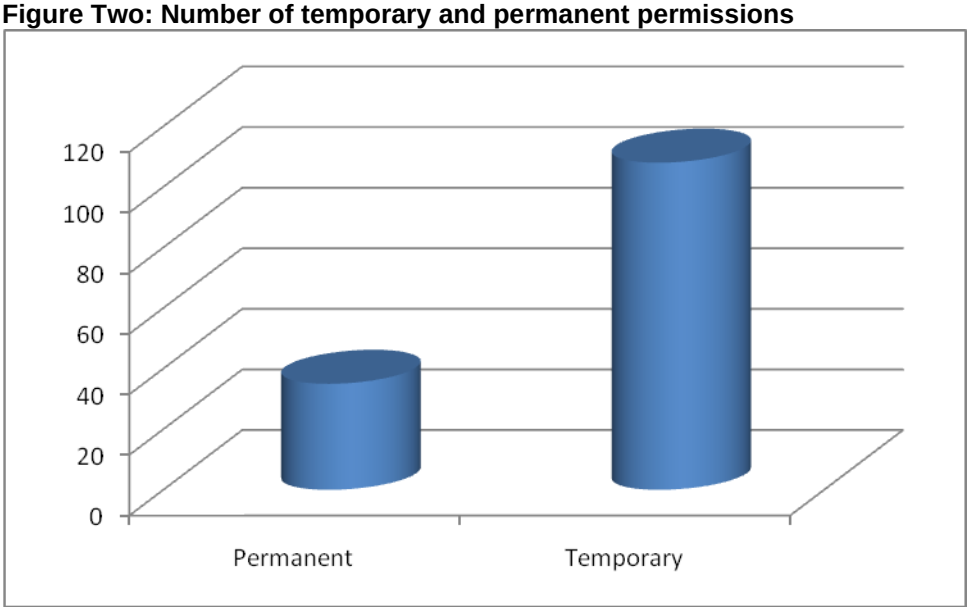
Fig 1: Outcome of Planning Applications



At first glance, the positive picture is of appeals allowed (143) far outweighing appeals dismissed. This is compared to a previous study of a six month period spanning three months prior and three months post the implementation of Circular 1/2006[1] where out of a total of 129 cases 75 were prior to the Circular, and of those 75 a total of 31 were either allowed or part allowed (41%). Of the 54 decisions made after Circular 1/2006, 33 cases were given permission, with a similar trend of temporary permissions to the period before the circular (a small rise from 55% of permissions being temporary to 57% after February 2006 perhaps gave a hint of the growing trajectory in this area). The findings from this previous piece of research showed that of the total appeals allowed 23 were temporary and 41 were permanent.

However, returning to the current analysis of 231 planning appeal cases, an initial analysis of those 143 applications allowed, shows that 108 were given temporary permission ranging from two to five years – often with the conclusion from the Inspector that this will provide accommodation in the interim, whilst councils identify and provide sites through the Regional Spatial Strategy.

Figure Two: Number of temporary and permanent permissions

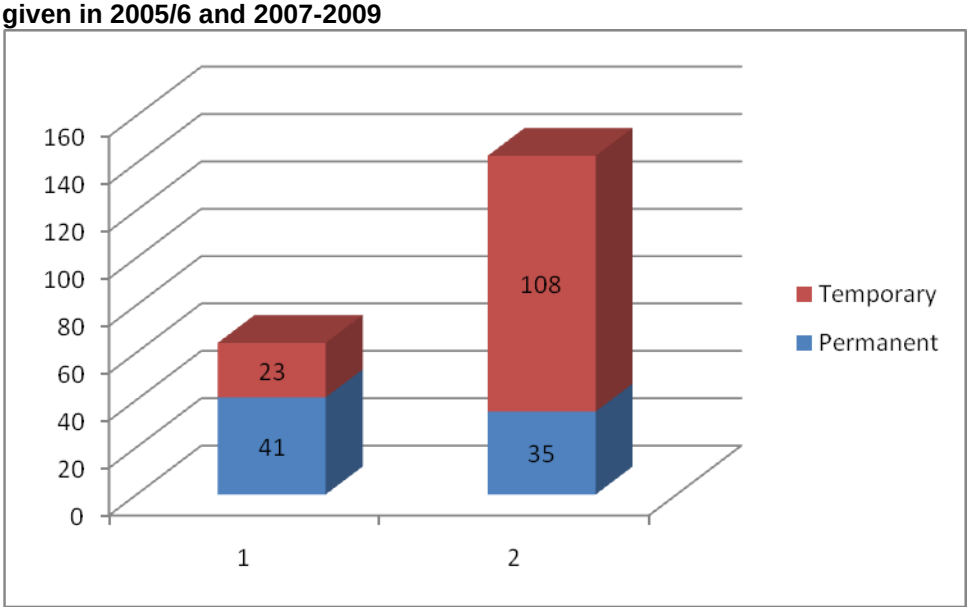


This represents a 21% increase (from 55% prior to Circular 1/2006) to 76% of permissions being given on a temporary basis in the two year period 2007-2009. This figure, of itself, shows a more complex picture in practice with headline figures showing sites being allowed, but a little below the surface the answer is a lot more temporary in solution.

Figure Three, below, shows the proportion of temporary permissions out of all planning appeals allowed, increasing from the 2005/6 research period (shown in column data series one) to the larger proportion shown in the 2007-20099 research period (shown in column two).

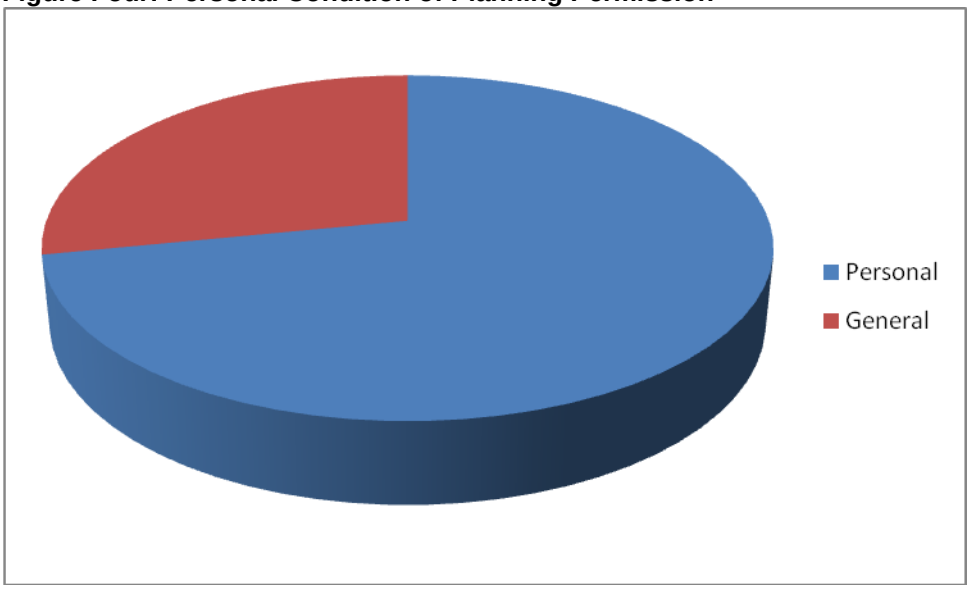
[1] A planning circular for use by councils and inspectors to assess the merit of planning applications for Gypsy and Traveller sites

Figure Three: Comparison of proportion of Temporary and Permanent Permissions given in 2005/6 and 2007-2009



Finally on headline findings from the planning appeal outcomes, the majority of permissions allowed (71%) were specific and personal to the apellant and their family. 115 cases out of a total of 160 allowed or part allowed were personal permissions, the remaining cases although classed as 'general' still required the site to be occupied by Gypsies and Travellers rather than any wider use.

Figure Four: Personal Condition of Planning Permission



<u>Issues arising from analysis of the full reports</u>

A range of themes came out of the Inspectors' discussion in each of the cases; these sometimes demonstrate a lack of understanding of Gypsy and Traveller identity and culture; and in others there is a reflection of the tabloid newspapers anti-Gypsy discourse. There are a range of issues coming out

of the main reason given for a decision too. For example, in a large number of cases there were personal circumstances of the appellant, in relation to education and health issues particularly, that were taken into account. However, it was not clear from analysis across all of the cases, at what point personal circumstances would surely outweigh protection of the Green Belt. For some Inspectors in some cases, protection of the Green Belt was sacrosanct, and for other cases there did seem to be a 'tipping point' at which the personal circumstances outweighed any harm to the Green Belt in granting temporary permission. More research needs to be undertaken on the data in this area to see which personal factors, or combination of factors, dominate the decision making process in granting planning permission at the appeal stage.

Lack of understanding of Travellers lifestyle and culture

Whilst many Inspectors demonstrated some level of understanding of Gypsy and Traveller culture, there were cases where this wasn't always evident. An example of the lack of understanding of Traveller culture can be found in case 46[2] where the Inspector dismissed the appeal for a small family site in Kent. The Inspector acknowledged that the family travelled widely for work but that through disability they now only travelled occasionally. However, there were contradictory points made in the decision report. Firstly the Inspector said: "*They are said to have an aversion to living in a house although Mrs T says that she did live for a time in permanent warden's accommodation at a caravan site at*..." (para. 25). Followed by: "*That building [current day-room on site] is larger than either existing caravan and it provides most of the functions of a permanent dwelling with the caravan only used as sleeping accommodation. That undermines the Appellants' claimed aversion to living in a permanent dwelling.*" (para. 27) But then: "*I acknowledge that without planning permission the Appellants would be left without a lawful home. Notwithstanding some reportedly strained personal relationships within Mrs T's large family, I consider it likely that they would help with her accommodation needs on at least a temporary basis if she had no alternative accommodation. Otherwise, it appears that Mr & Mrs T are accustomed to spending lengthy periods travelling. The limited medical evidence does not demonstrate that they could not continue to travel.*" (para. 28).

Within the space of four paragraphs of his decision, the Inspector has demonstrated a lack of understanding about the cultural use of a day room on site. He has stated that the aversion to bricks and mortar is undermined by the fact that the family is now settled on one site with a day room because of their stated disabilities, but then directly contradicted this by stating the appellants are accustomed to travelling and there is nothing to stop them resuming travelling if they were to lose their current accommodation in the planning appeal.

[2] Each of the cases has been given a unique identifying number by the author for easy location, but which allows for anonymisation of details where necessary.

The debate on 'fairness' and numbers of Travellers in an area

In appeal case (38) a larger site in Epping Forest was proposed, this was dismissed by the Inspector, and subsequently in an appeal to the Secretary of State. This case is interesting because of the contentious ongoing debate in Epping Forest and the previous refusal to outline sites in development plan documents which led to an official direction from central government. The wider debate in the district is on 'fairness' of the numbers outlined in the Single Issue Review of the Regional Spatial Strategy (this is not a unique debate to Epping Forest, but it is a particularly intense debate in that area). The case for the objectors in the Inspector's report included: "*The need for gypsy sites should be spread more evenly, as this area has taken a disproportionate amount of such sites in the past*" (Mr Rammell, MP, para. 104); and: "*The council considers it is being asked to provide a disproportionate element of the regional and county need, and is trying to achieve a reduction in numbers*." (Councillor Collins, Leader of Epping Forest District Council, para. 107). It is difficult to imagine similar discourse being used in a planning debate on provision of accommodation for any other ethnic group, as recognised under the Race Relations Act.

Consideration of Human Rights

In addition to the debate on 'fairness' and 'numbers', the Inspector made an interesting interpretation of Article 8 of the Convention on Human Rights. He said: "*In my view Article 8 rights are not engaged as the Article only applies to an existing home, not an intended one*." (para. 226). This interpretation makes the assumption that a 'home' is only such if recognised under planning law and would have considerable ramifications for Gypsies and Travellers whose 'home' may not be given recognition by planning authorities, and which may be moved on several times a day by police authorities. In her examination of the further appeal, the Secretary of State, whilst agreeing with the overall decision, disagreed with the human rights interpretation, stating that: "*The Secretary of State disagrees with the Inspector's assessment and considers that a decision to dismiss this appeal may result in an interference with the appellants' rights under Article 8 of the European Convention on Human Rights. However, she considers that any interference to these rights would be necessary and proportionate*..." (para. 30). Across the sample of 231 cases there were varying interpretations of the relevance of Article 8, with some Inspectors applying it to the neighbouring 'settled population' to see if the granting of a site would interfere with neighbours' rights, and others applying it to the appellant to see if the refusal of permission would interfere with the individual's human rights.

Weight given to lack of alternative accommodation

In case 38, which was heard in August 2008, there was reference made to a previous case (June 2008) also in Epping Forest. In this earlier case (62) temporary 5 year permission was granted for a site, but with strict conditions included personal named permission of those who could occupy, along with a requirement to return the site to its previous condition at the end of the period. In this case a different Inspector found that 'other material considerations' (general need for Gypsy sites, accommodation needs of

occupants and alternative sites, and personal circumstances) did not outweigh the 'substantial' harm to the Green Belt sufficiently to justify permanent permission (para. 78) but in considering temporary permission said that: "*On the evidence available to me, there appears to be an immediate general need for additional gypsy caravan sites within the District. However, new sites are not likely to come forward until 2011 as part of the DPD process and the present shortage of sites to meet this unmet need should be give considerable weight in this appeal*" (para 71).

The shortage of current sites was not given the same weight in case 38, but it is possible that the outcome of case 62 had an impact on the decision in case 38 as it could be argued that more pitches had been provided in the district, albeit on a temporary basis and not directly benefitting the appellants in case 38.

The Issue of 'Prematurity'

One example can be found in the aforementioned case 62, the Secretary of State's decision letter says: "[The Secretary of State] *agrees that the harm to the Green Belt and the countryside should be weighed against the evidence of needs and personal circumstances of the occupants of the site..., the absence of alternative gypsy caravan sites within the District and a general need for more sites within the District, County and Region to provide accommodation*" (para. 11). The Secretary of State seems to agree that the absence of sites and a general need for more sites is a mitigating factor. In Epping Forest where this particular case was heard, the Secretary of State had directed the authority to submit a Development Plan Document (DPD) to follow strategic planning procedures and yet in her agreement with the decision to case 62 did not raise ad-hoc planning permissions on individual sites as necessarily running counter to that strategic process. However in case 63, in Barnsley, she agreed with the Inspector on the principle of ad-hoc permissions outside of the DPD process, but stopped short of agreeing with him that 'prematurity' should weigh against the proposed development. "*For the reasons given in IR47-48[3], the Secretary of State agrees with the Inspector that the ad hoc release of individual sites would run counter to the proper planning process and that the proposed development would be substantial... However, having had regard to the current need for gypsy sites.. and the failure of existing local planning policies to provide sufficient numbers of sites, the Secretary of State does not agree with the Inspector that prematurity is an issue which should weigh in balance against the proposed development in this case*" (paras 14-15).

Whilst the Secretary of State said the principle of 'prematurity' should not to be held against the planning case in this instance, there is some degree of variability in the use of ad hoc planning permissions outside of the DPD

[3] Inspector's Report Paras 47 & 48 examined the fact that the site – 10 pitches – would meet a substantial number of the 48 pitch requirement and that the ad-hoc release of sites would pre-determine decisions about scale and location of sites in the DPD. In case 62, the temporary site was for a substantial number of pitches and would have gone some way to meeting requirements set out in East of England Regional Spatial Strategy for Epping Forest, and similarly was ahead of publication of the DPD.

process, to meet existing accommodation need for Gypsy and Traveller sites.

Impact on the 'Green Belt'

The Green Belt/countryside is present as a consideration in almost all of the 231 cases and there are various interpretations on whether sites should be built in the Green Belt at all. For example in case 78 (para. 23) the Inspector says: "*Circular 01/2006 says that new gypsy and traveller sites in the Green Belt are normally inappropriate development. Whilst the word 'normally' would indicate that there may be exceptions, I can see no reason why this should be the case*". This statement is concerning, because the Inspector appears to making a blanket judgement on the appropriateness of development in the Green Belt, in spite of the clear wording of the Planning Circular that there may be exceptions. In case 96 (para. 7) the Inspector says "*[PPG2] indicates that the making of any material change in the use of land is inappropriate development unless openness is maintained and there is no conflict with the purposes of including land in the Green Belt. There is no indication in national and local planning policy that a more relaxed or a different approach should be taken to temporary uses of land in the Green Belt"*. In the opinion of the researcher, this is precisely the purpose of Circular 1/2006. Other Inspectors also clearly disagree with the interpretation in cases 78 and 96, as appeals are allowed where the harm to the Green Belt is outweighed by other considerations, such as personal circumstances and lack of alternative sites.

Need to live with family networks

Variability in the discourse of Planning Inspectors also arises in the sympathy afforded to wider family networks and the well being of the community. In very few cases was consideration given to this, but there were examples, such as where one Inspector (case 90) referred to a High Court judgement in 2004 (South Cambridgeshire District Council v FSS, McCarthy and O'Rourke) which examined the need to live with other site occupants who are close family members. The Inspector found in case 90 that the benefit afforded to the family in living together on site, outweighed harm to the countryside. Several other cases referred to the consideration of the benefits of mutual support of an extended family group living together.

Gypsy status

One of the most confusing areas of decision from the Inspectors is on the definition of Gypsy/Traveller status. The relevant legal reference for planning[4] is in Planning Circular 1/2006 which states clearly that "gypsies and travellers" means:

> *Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members*

[4] There are different definitions of Gypsy and Traveller for housing purposes and race and equality purposes.

of an organised group of travelling show people or circus people travelling together as such. (Pg 6)

Some Inspector reports do not even mention status but there is an implication that both the Inspector and the local authority accept the status of the appellant. In other cases, the definition is discussed in some depth. For example in case 66, in Basildon, Essex, there was recognition from the Inspector that the appellant was "brought up within a traveller family following an iterant lifestyle. She then travelled with her partner, when her main responsibilities were looking after her family. She had a nomadic habit of life" (para. 32). The appellant stated that she would not resume travelling because of the "hassle" she had received previously. The Inspector interpreted her stated intention to stay settled on the site, even when the education of her children had finished, as invalidating her status as Traveller under the legal planning definition. This seems to be a very harsh interpretation of the definition – the appellant settled on the site and her children were able to go to the local school which would bring her under the definition as a person of nomadic habit, who on the grounds of her dependants' education ceased to travel permanently. The definition does not require a person of "gypsy status" to give a commitment to resume travelling when their dependants' education has completed; and it appears that the appellant's frankness in the difficulties she faced on the road allowed the Inspector to take a harsh interpretation of the legal definition and to deny her "gypsy status".

In case 76 in West Sussex, the husband of the appellant was a 'settled' man but the wife was recognised as an ethnic Romany Gypsy. However, the Inspector surmised they did not have 'gypsy status', because the appellants had both respectively lived in houses before, there was no aversion to bricks and mortar, despite the wife travelling for fruit picking work, none of the family had travelled since settling on the site in 2006. The Inspector also referred to the lack of ownership of a towable caravan in assessing status. In case 90 (referred to earlier), despite the success of appeal and the broader consideration of family wellbeing, there was questionable discussion of "gypsy status" in the Inspector's report. He suggested that some of the older children travelled to fairs occasionally but said that this was "social rather than economic activity". This assessment is erroneous as the Circular 1/06 does not state that travelling has to be for economic purposes. A small number of cases also referred to travelling for economic purposes, this was not an isolated case, albeit it not in accordance with the Circular.

One such case (93) was for 7 pitches on the Cray's Hill site in Basildon District. This case was remarkable for the 'gypsy status' discussion, which is considered in a moment, but also for the extreme lack of sympathy and understanding in consideration of the personal circumstances of some of the appellants. The personal circumstances of the appellants was detailed in paragraphs 46 to 60 of the Inspector's report; it was stated that the parents of one of the appellants were tragically killed in a caravan fire, and that she and her sister had been in the neighbouring caravan and witnessed the

event. It was claimed that the appellant was very depressed and possibly suffering from post traumatic stress. In summing up the health considerations of the appellants (para. 145) the Inspector suggested that "*The cited illnesses are all things common to the general population and I give them little weight*". The Secretary of State in her subsequent decision making, albeit in agreement with the overall decision, said: "*The Inspector considers at IR145 that the illnesses from which some of the appellants suffer are all things common to the general population. The Secretary of State considers that it is the severity of illnesses and the particular associated medical needs that are relevant, rather than their commonness*..." (para. 17)

In discussing 'gypsy status' in paragraph 124 of the decision in case 93, the Inspector referred to a small number of the appellants and said: "*There is no evidence before me to show that any of these appellants have ever travelled for an economic purpose or that they have any intention of resuming travelling.*" The case subsequently went to the Secretary of State, who, despite agreeing with the dismissal of the appeal, was unequivocal on this point:

> *"However, the definition in paragraph 15 of Circular 01/2006 does not include any requirement to have travelled for economic purposes, and does not require those who have ceased to travel on grounds of educational needs, health needs or old age to demonstrate an intention to resume travelling".* (Para. 9)

This is a very important clarification of the intention of Circular 1/2006 and one to which Inspectors should take heed. However, there does still seem to be variance in the interpretation of circumstances of the appellants, impact of the progress of the local authorities in providing sites, understanding of the definition in the Planning Circular, such that there continues to be lack of consistency in decisions between similar cases, and there continues to be dissonance between the stated intentions of central government, and the implementation of these intentions locally and regionally.

<u>Decisions with a seemingly 'unreasonable' impact on the appellant</u>
Some cases seemed to be unfair on the appellant and afforded little sympathy to circumstances or to the spirit of the Circular. One of the more unusual reasons for giving little weight to the consideration of temporary permission due to lack of alternative sites was given in case 80, in East Sussex. The Inspector said:

> "*I have given consideration to the possibility of a temporary permission. The parties thought that a period of three years would be reasonable. The process of identifying and allocating specific plots of land is in its very early stages in East Sussex and appears to have already been delayed. Indeed, for the reasons given in paragraph 17, I am not confident that new sites would become available by*

2011. Such a condition would therefore not follow the advice in paragraph 45 of Circular 01/06".
(para 35).

In this case (80) the Inspector refers to his own paragraph 17 where he talks about the lack of progress in identifying sites, and the fact that slippage in local authority timescales has already occurred. He then refers to the Circular paragraph 45 which states that temporary permission is justified where there is an expectation that sites will be delivered at the end of the temporary period. However, the Inspector seems to be using the fact that the authorities are delayed in their plans to deliver sites as a reason for not giving temporary permission. The appellants in this case have been penalised by the lack of available accommodation in the area, and then again penalised by the Inspector because of the councils' lack of preparedness in delivering sites. This appears to be an unusual and counter-intuitive interpretation of the planning Circular, if council plans are delayed then a longer temporary period could be given, say five years, rather than dismissing the appeal altogether.

Conclusion

Different Inspectors will undoubtedly bring differing levels of experience and interpretations to each individual case and treat each application on its own merit. However, a number of thematic differences occurred across the 231 cases, where from the researcher's judgement the facts of some personal circumstances seemed broadly similar. For example, different opinions from Inspectors were voiced on the duty of Gypsies and Travellers to prove that they had searched for alternative appropriate sites (e.g. outside the Green Belt) – some suggested the onus was on Gypsies and Travellers to have completed a comprehensive search of the area, and others intimated that the local authority had some level of duty here. Where education of children was discussed – some Inspectors gave more weight to the need for a stable home life in order to access education, and others did not find this a significant factor to consider.

This report summarises the analysis undertaken so far. More analysis will be undertaken on the existing sample of planning appeal cases and the researcher will endeavour to analyse new cases as they occur.