Case Law Reports

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R. v. Wrexham County Borough Council, ex parte Wall, Berry et al. (Queen's Bench Division, Richards J., February 22, 1999)[1]

Gypsies—allocation of sites—whether a planning function—material consideration—section 24 Caravan Sites and Control of Development Act 1960—application for judicial review

Land at Croesnewydd had been used since 1985 by gypsies. For some it was their permanent residence, for others temporary or transitory. Following enforcement proceedings, in January 1994, the Secretary of State had granted conditional planning permission for the temporary continuation of the use of the site for a period of two years. That period was to allow the, then, Clwyd County Council to find suitable alternative accommodation for the gypsies in its area pursuant to its agreed strategy. The County Council made an application for the renewal of the temporary permission for a further two-year period in December 1995. Following consultation on the draft Structure Plan, it was considered by December 1995 that the proposed policy on gypsy sites should be deleted. Subsequently, the Wrexham Maelor Local Plan, formally adopted in February 1996 had allocated the Croesnewydd land for employment purposes. In the second alteration of the Structure Plan dated December 1996, the policy was formally removed. The Consultation edition of the Wrexham Unitary Development Plan dated July 1998 refers to the ultimate closure of the Croesnewydd site and the future strategy for provision of accommodation for gypsies based on existing sites in the area.

On April 1, 1996 the new Wrexham County Borough Council unitary authority took over the functions of Clwyd County Council and became the authority responsible for managing the site and the planning authority responsible for the strategic planning policy in the area. The Corporate Policy and Resources Committee on December 9, 1996 resolved to withdraw the planning application for a temporary extension to the Croesnewydd site and adopted a revised strategy to address the occupation of the land by the gypsies. By February 27, 1997 the applicant's solicitors had intimated an intention to apply for judicial review of the decision and at a further meeting of the Committee, points raised by the solicitors were considered and noted. The original resolution was confirmed subject to the implementation of a management strategy and urgent site works at the Croesnewydd site.

Leave to apply for judicial review was granted in February 1998. In the interim, planning permission was granted for the extension of an existing gypsy site at Ruthin Road and in November 1997. Letters were sent to the longstanding occupiers of the Croesnewydd site informing them that the Council wished to bring the occupation of the land to an end. In May 1998 the Council wrote offering the longstanding occupiers, including the applicants, pitches on the Ruthin Road site. On August 28, 1998 notices to quit the Croesnewydd site were issued and on October 29, 1998 summary possession proceedings were instituted but adjourned pending the outcome of the judicial review application.

The central submission made by the applicants was that the decisions under challenge formed part of an unlawful strategy on the part of the Council with regard to the provision of gypsy sites in the borough.

[1] *N. Blake* Q.C. and *S. Cottle* (Hadens, Solicitors, Wednesbury WS10 8EA); *T. Straker* Q.C. and *R. Green* (Wrexham Borough Council, Legal Department).

[2000] J.P.L., JANUARY © SWEET & MAXWELL AND CONTRIBUTORS

Although the specific duty to provide gypsy sites under the Caravan Sites Act 1968 had been repealed, the council remained under a duty as local planning authority to develop an overall strategy as to the use of land for gypsies. The strategy as developed was legally flawed through failure to have proper regard to the advice given in circulars and to give adequate consideration to the needs of gypsies. The applicants submitted therefore that the council had impermissibly sought to compartmentalise its functions as a local authority and that the material considerations to which it was obliged to have regard were determined not by the identity of the committee but by the nature of the decision-making process itself.

The Council maintained that its decision to withdraw the application for planning permission was not an exercise of the council's planning functions qua local planning authority. Rather, it formed part of the overall strategy for the provision and management of gypsy caravan sites formulated with regard to the council's obligations to all inhabitants of the area. The decision was not a planning decision but a decision about the use of the council's own land and the applicants' submission that the whole process is fed by planning considerations was wrong. Planning control was the creature of statute and the relevant statutory provisions contained a comprehensive code. The power under section 24 of the Caravan Sites and Control of Development Act 1960 for a local authority to provide caravan sites was not part of that code. The council was concerned not with a planning decision but with its responsibilities as a landowner. In addition, section 12 of the Town and Country Planning Act 1990 related to the development plan process and could not be relied upon for imposing requirements in respect of a decision falling outside that process. If the decision under challenge was so closely connected to the urban development plan, the challenge should have been to the plan in accordance with the relevant procedures under the 1990 Act. If it were not so closely connected, then it was a matter for the council untrammelled by section 12(6). Requirements relevant to one context should not be transposed to another.

Held, dismissing the application,

1. The Council's submissions were well founded. In order to determine what considerations must, as a matter of law, be taken into account in the exercise of statutory powers, it was necessary first to examine the nature of those powers and their statutory context. The impugned decision, related to the management of the Council's own land and the relevant power was contained in section 24 of the 1960 Act. Section 24 was not part of the planning code.
2. The decision of December 9, 1996 was not a decision as to the policies to be included in the unitary development plan. The formulation of the development plan was a separate process and responsibility and the requirements of section 12(6) of the 1990 Act applied only to the formulation of the development plan, not to decisions which did not form part of that process. If this were truly a decision about the development plan, the 1990 Act would have precluded the present form of challenge to it.
3. The committee structure of the council reflected a real separation of legal functions. Given that the impugned decision was not a planning decision and did not involve the exercise of powers or duties conferred or imposed by the Planning Acts, the incidents of a planning decision could properly attach to it. Specifically, one could not carry across to such a decision the range of material considerations that were required to be taken into account in the discharge of planning functions.

The following judgment was given.

Richards J.: There are before the court two linked applications for judicial review. They relate to land at Croesnewydd, near Wrexham, which is owned by the Wrexham County Borough Council and is used as a gypsy caravan site. The first application challenges a decision taken by a committee of the council on December 9, 1996 to withdraw a planning application for a temporary extension of the use of the land as a gypsy caravan site, a decision which was allowed to stand following reconsideration of the matter by the same committee on April 14, 1997. The second application challenges summary proceedings that were subsequently commenced for possession of parts of the land. It is contended on behalf of the applicants that the decision to withdraw the application for planning permission and the

commencement of possession proceedings form part of an unlawful strategy on the part of the council with regard to the provision of gypsy sites within the council's area.

The factual background

The land at Croesnewydd was conveyed to Clwyd County Council, the predecessor of Wrexham County Borough Council, in 1984. In 1985 the council took possession proceedings against a number of gypsies occupying part of the land to the north of the present site. As a result the gypsies were moved to the present site. Since then some gypsies, including some of the present applicants, have used the site as their permanent residence. Others have made temporary use of it from time to time. Itinerant gypsies have also used it as a transit camp.

In the following years Clwyd County Council gave consideration to the need for gypsy sites within the county. By 1986 a permanent site, with 10 pitches, had been provided at Ruthin Road, about a mile away from the Croesnewydd site. In February 1992 the council's Planning Sub-Committee resolved that the Secretary of State be asked to agree provision for gypsy caravan sites in the county, to include a transit site for up to 20 caravans and a second residential site for up to 20 caravans in Wrexham Maelor Borough, in addition to the existing residential site at Ruthin Road. The resolution was adopted in the light of an officer's report which indicated an urgent need for a transit site in Wrexham Maelor in an attempt to solve current problems at the temporary Croesnewydd site. It was said to be vital to seek the active co-operation of the National Gypsy Council in the identification of sites.

This process, which must be seen against the background of the council's then duty under section 6 of the Caravan Sites Act 1968 to provide sites for gypsies, also led to the formulation of Policy HSG 11 in the draft Clwyd Structure Plan of December 1994. Under that policy provision was to be made for one residential site and one transit site at Wrexham Maelor, this provision being additional to the existing residential site (*i.e.* at Ruthin Road). Paragraph (i) of the notes referred to the statutory duty under the 1968 Act to make provision for gypsy sites. Paragraph (ii) read:

> "Although the Caravan Sites Act 1968 has now been repealed (in relation to the duty of Local Authorities to provide and manage Gypsy sites), the Government has stated in Welsh Office Circular 2/94 that Local Plannign Authorities should continue to indicate the regard they have had to meeting gypsies' accommodation needs. The Circular states that Structure Plans should continue to set out broad strategic policies, and provide a general framework for site provision."

Paragraphs (iii) and (iv) indicated that the policy set out the level of provision which the council considered to be required in Clwyd, and that this level of provision had met with general acceptance in discussions with the Welsh Office and the National Gypsy Council. The level and type of site provision required in Clwyd was said to be based mainly on an assessment of past and present concentrations and movements of gypsies. Residential sites were defined as sites with full facilities serving settled families on a long-term basis, transit sites as sites with basic facilities to serve gypsies passing through or staying in an area for short periods only. The point was made that residential sites should be kept separate from transit sites to avoid possible conflict between settled families and itinerant families.

Before examining the subsequent evolution of policy, it is necessary to step back in time in order to look further at the history of the Croesnewydd site itself. In 1992, Wrexham Maelor Borough Council issued an enforcement notice in respect of the site. Clwyd County Council appealed against that notice. In January 1994 the Secretary of State upheld the appeal, quashing the enforcement notice and granting conditional planning permission for the temporary continuation of the use of the site. In so doing, the Secretary of State agreed with the conclusions of his Inspector. The Inspector had held that the

permanent use of the site for gypsy caravans would be ruled out because it would jeopardise the planning intentions for the area. He went on, however, to consider the continuing use of the site for another year or two. He said that under the then current legislation there was an obvious need for additional gypsy sites to be provided in the area. He concluded that the obligation to provide adequate accommodation for gypsies reasonably outweighed such harm to amenities as the present site created, and justified the grant of temporary planning permission for the period of two years sought by the County Council. That would present the opportunity in the meantime of devising suitable accommodation for gypsies using the area. In accepting those conclusions the Secretary of State indicated that he had considered whether the continuation of the use of the site should be facilitated by extending the period for compliance rather than granting a temporary planning permission, but took the view that a grant of planning permission, with the imposition of conditions which would regulate the use of the site, was the more appropriate course of action.

Thus the position by the end of 1994 was a policy as set out in HPG 11 and the continuing use of Croesnewydd as a temporary site with an extension of planning permission until January 1996.

In January 1995, the Planning Sub-Committee considered and approved a report which suggested a three-fold strategy for gypsy site provision in Clwyd. The relevant part of the strategy was—

> "that the council should continue to seek to identify a site or sites in the Wrexham Maelor Borough area to replace the present site at Croesnewydd".

In October, the same committee adopted the identification by a working part of land at Bryn-y-Cabanau near Wrexham as a permanent residential gypsy caravan site. In December the committee resolved not to seek the closure of the Croesnewydd site after the expiry of the temporary planning permission in January 1996 and to authorise officers to submit an application for a further grant of temporary planning permission. The purpose was to enable additional time for an alternative site to be found. An application for renewal of the temporary permission for a further period of two years was made on December 15.

Although the council was still looking for an alternative site and continued to regard the use of Croesnewydd as a temporary measure, it no longer proposed to adhere to Policy HSG 11. Following consultation on the draft Structure Plan in the course of 1995, it was considered by December 1995 that the policy should be deleted. Further, in the Wrexham Maelor Local Plan, which was formally adopted in February 1996, the land on which the Croesnewydd site was located was allocated to employment purposes.

That was the position as it stood at April 1, 1996, when Clwyd County Council ceased to exist and, for relevant purposes, the new Wrexham County Borough Council unitary authority took over its functions. The County Borough Council became the owner of the land at Croesnewydd, the authority responsible for managing the site on that land and the planning authority responsible for strategic planning policy in the area and for matters of enforcement, individual planning decisions and so forth.

Before continuing the relevant history it is helpful to explain the allocation of responsibilities within the County Borough Council. A Corporate Policy and Resources Committee had a broad range of delegated functions, powers and duties, including overall responsibility for the arrangements of the council, its staff, property and finances, and responsibility for the preparation of corporate policies and strategies and allocating and controlling financial resources of the council. A Planning Committee had delegated powers and functions which included the council's functions as local planning authority under the provisions of the Town and Country Planning Act 1990 and, without prejudice to the generality of that, responsibility for discharging the council's duties and the exercise of the council's

powers under the 1990 Act together with related legislation and subordinate legislation. The distinction between the council's planning functions and its wider functions, including those relating to the management of its own property, is a matter to which it will be necessary to return.

On May 13, 1996 the Corporate Policy and Resources Committee considered a report by the Director of Development Services concerning the occupation of the Croesnewydd site. That report set out the background history. It then had a paragraph on the "Legal Position", as follows:

> "In 1994, the duty previously placed on County Councils to provide Gypsy sites under the Caravan Sites Act 1968 was repealed. Local authorities still have a power to provide caravan sites under section 24 of the Caravan Sites and Control of Development Act 1960."

The report went on to identify a number of issues:

> "On the presumption that the Council wishes to see the cessation of the occupation of the land at Croesnewydd, a number of key issues have to be addressed as follows:
>
> (i) Does the Council wish to actively seek an alternative site?
> (ii) If so, what process should be followed to find an alternative?
> (iii) What position will the Council take regarding the planning applications for the Croesnewydd and Bryn-y-Cabanau sites when the Secretary of State reaches his conclusions in the matter?
> (iv) What should presently be done about managing the Croesnewydd site?"

It was stated that in the view of the officers, the provision of an alternative site was likely to be one of the key factors in achieving the removal of the Croesnewydd site and hence it was necessary for the Council actively to seek such an alternative site. The report went on:

> "It is also considered that a clear separation should exist between the process of seeking, promotion and development of such a site including application for planning permission, and the process of granting planning permission and hence it would not be appropriate for both responsibilities to lie with the Planning Committee. As this matter has wide-ranging corporate implications it is suggested that this Committee takes responsibility for seeking, promoting and developing an alternative site with the details of the task being remitted to the Land and Property Sub-Committee. The role of the Planning Committee would be confined to determining any planning application."

After consideration of the report the council resolved that (1) it confirmed its wish to bring the occupation of the land at Croesnewydd to an end, (2) it confirmed an intention to seek an alternative permanent site for travellers/gypsies and place responsibility for seeking, promotion and development of the site with the Corporate Policy and Resources Committee (with the detail of the task being remitted to Land and Property Sub-Committee), (3) that the Local Member and Chief Housing Officer be invited to attend meetings of the sub-committee when consideration was given to the Croesnewydd site issues, and (4) that the management of the Croesnewydd site should be the responsibility of the Housing Committee.

On June 17, the Land and Property Sub-Committee resolved that appropriate consultations be carried out with interested parties prior to a decision being taken on what should be done about the application made by the former Clwyd County Council for a temporary extension of planning permission at Croesnewydd, and that the Planning Committee take no action to determine the application for the time being pending the outcome of the consultation. It further resolved that the Planning Committee take no action to determine the application at Bryn-y-Cabanau for the time being, pending the

investigation of other sites, and that further reports on the outcome of the consultations and investigations be brought to the sub-committee for consideration as soon as possible. (Having regard to the division of responsibilities between the various committees, it seems to me that the references to the Planning Committee taking no action must be read as resolutions to request the Planning Committee to take no further action for the time being.)

Pursuant to that resolution a letter was sent on June 24, 1996 to occupiers of the Croesnewydd site, referring to the history of the site and concluding:

> "The duty on local authorities to provide accommodation for gypsies has of course been repealed and the Council has confirmed its wish to bring the occupation of the land at Croesnewydd to an end. At the same time, however, the Council has also confirmed an intention to seek an alternative permanent site for travellers/gypsies.
>
> Set against this background therefore my purpose in writing to you now is to give you an opportunity to let the Council have any views which you may have on the issue so that they may be considered by the Sub-Committee. If you do have any views please let me have them within twenty one days from the date of this letter.
>
> If you do have Solicitors or other advisers who represent you then I would suggest that you consult them on the contents of this letter."

A reply was received by letter dated July 2, 1996 from solicitors acting on behalf of occupants of the Croesnewydd site. It stated:

> "Our clients seek a lawful site fit for habitation in the locality which it would be reasonable for them to occupy. You are aware that a few of our clients would consider housing accommodation (as opposed to caravan accommodation).
>
> Given your Council's social welfare, educational and planning obligations to our clients, and the obligation of basic humanity, it would be unreasonable for your Council to bring to an end our clients' present occupation on the site without first making suitable alternative provision for them."

On September 16, 1996, the Land and Property Sub-Committee considered the response to the consultation on the Croesnewydd site and the way forward in terms of seeking an alternative site. The committee resolved that the planning application for the temporary extension of the use of the land at Croesnewydd as a gypsy caravan site be withdrawn. It also resolved to proceed with further development of the option of extending the Ruthin Road site to provide additional pitches, and that the planning application for the development of a 10-pitch gypsy site at Bryn-y-Cabanau be withdrawn. The community councils affected by the proposed development of the Ruthin Road site were then consulted.

On December 9, 1996 the Corporate Policy and Resources Committee considered a report from the Director of Development Services on the various consultations to date and the proposals set out in that report as to possible ways forward. In relation to the Croesnewydd site, the report stated that it was still the view of the officers that the most appropriate action in the light of all the circumstances was to withdraw the application for renewal of the temporary planning permission provided that a meaningful overall strategy for bringing the occupation of the land to an end was adopted. In relation to the Bryn-y-Cabanau site it was estimated that the site development costs would be in excess of £600,000 and that it would take a minimum of two and a half years for any development to be completed. The proposed extension of the Ruthin Road site was estimated to cost in the region of £300,000 and would

require planning permission and, subject to the grant of planning permission, it was estimated that its development would take a minimum of around 12 months to complete. Under the heading "Future Strategy" the report stated:

> "Officers have also been considering further measures to address the occupation of the Croesnewydd site.
>
> It is understood that a number of occupants of both Croesnewydd and Ruthin Road sites have expressed a wish to move into housing accommodation and may well qualify for such provision because of their particular family circumstances. Further consultation needs to be undertaken before officers can establish the extent of the potential for creating vacancies at Ruthin Road as well as reducing the number of permanent residents at Croesnewydd by moving them to housing accommodation.
>
> A number of families also own, or might be prepared to buy, land upon which their own family caravans could be sited if appropriate planning permission was forthcoming . . .
>
> It is the view of those with most knowledge of the occupants of Croesnewydd and Ruthin Road that the provision of nine additional pitches at Ruthin Road in combination with the additional measures outlined above would substantially address the occupation of the Croesnewydd site and achieve relocation of the long-standing occupiers. This should then allow the removal from the site of other less long-standing or more transient travellers to be addressed by site management and other means.
>
> Such reasoning could also apply if a site for ten pitches at Bryn-y-Cabanau was developed but the process would be much more prolonged (say two and a half to three years rather than 12–18 months) and the cost much greater. If neither site option is considered appropriate then obviously the timescale would almost certainly be further extended.
>
> The above background and reasoning suggested a four pronged strategy to address the Croesnewydd situation, which was endorsed and recommended by the Land and Property Sub-Committee . . ."

It is not necessary to set out that strategy because it is embodied in the resolution of the Corporate Policy and Resources Committee quoted below. The report went on to consider a number of issues concerning the management of the Croesnewydd site, in respect of which it was said that decisions were required at an early date and needed to be taken within a coherent framework which would be provided by the existence of a clear strategy for addressing the present occupation of the site. Reference was made to threatened legal action with regard to the conditions on the site. The view was expressed that in order to address at least some of the concerns that had been raised on behalf of the occupants and to ensure that the Council was not in breach of public health legislation it would be beneficial to institute a suitably staffed management regime on the site. That would also facilitate a managed shrinkage of the site if alternative provisions for the occupants were made. The extent of capital and revenue expenditure required would be significantly influenced by the length of time for which it was anticipated that the occupation of the site would continue. The longer the site continued to be occupied, the greater the financial burden on the Council.

In a section on the options available for the way forward, the report stated that the advice given was based on an assessment by officers of the current situation at Croesnewydd "and the Council's duties and powers" (*i.e.* not elaborating on the reference in a previous report to the power under section 24 of the 1960 Act and the repeal of the duty under section 6 of the 1968 Act).

There followed a number of recommendations which were substantially adopted in the resolution of the Committee. That resolution, which is the decision challenged in the first application for judicial review, was in these terms:

> "(i) That the planning application . . . submitted for a temporary extension of the use of the land at Croesnewydd as a Gypsy Caravan Site be withdrawn.
>
> (ii) That the overall strategy to address the occupation of the land at Croesnewydd as recommended by the Land and Property Sub-Committee be confirmed as follows:
>
> (a) Subject to planning approval, provide an additional nine permanent pitches by increasing the capacity of the Ruthin Road site.
> (b) Pursue the provision of housing accommodation in appropriate circumstances.
> (c) Pursue the development by the travellers themselves of appropriate sites for individual families subject to planning approval.
> (d) Determine and implement a management strategy for the Croesnewydd site taking due account of the Council's statutory duties and the powers available to the Council to deal with transitory incursions by travellers.
>
> (iii) That the planning application . . . submitted for development of a 10-pitch gypsy site at Bryn-y-Cabanau Farm . . . be withdrawn."

The decision was communicated to the applicants' solicitors in late December 1996. By letter dated February 27, 1997 the solicitors intimated an intention to apply for judicial review of the decision, submitting that it was flawed for a number of reasons. Twenty-seven separate points were listed in the letter. At a further meeting of the Corporate Policy and Resources Committee on April 14, 1997 the committee considered a report from the Director of Development Services which informed the members of the submissions made and attached a copy of the letter. The report stated in terms:

> "Members should now consider whether in the light of the points made by [the applicants' solicitors] they wish to review the resolutions passed at the Meeting on 9 December 1996.
>
> To set the submissions made in context it must be remembered that although the Committee as long ago as 13 May 1996 confirmed a wish to bring the occupation of the land at Croesnewydd to an end, confirmation was at the same time given of an intention to seek an alternative permanent site for travellers/gypsies and no decision has been taken by the Council up to now to seek to recover possession of the land at Croesnewydd by the institution of legal proceedings. In the view of Officers the approach and strategy adopted by the Committee is reasonable and offers a realistic prospect of ultimately being able to bring the occupation of the land at Croesnewydd to an end. Having obtained the advice of Counsel he confirms this view.
>
> Members are advised nevertheless to consider the points made by [the solicitors] on behalf of the occupiers and in the light thereof as to whether the decision made on 9 December 1996 by the Committee should be reviewed. If the Committee decides that the decision be reviewed then what follows in this report may not have applicability. If, however, the Committee believes that, having taken into account the submissions made by [the solicitors], that nevertheless the decision is one which should not be changed, then that part of the decision set out in (ii)(d) about determining and implementing a management strategy for the Croesnewydd Site should in the view of Officers now be considered and the following part of the report deals with that issue."

The report went on to recommend a management strategy and site works for the Croesnewydd site, including extension of the access road, the provision of communal paving, and the supply of portable toilets with related foul drainage for 20 pitches, at a total cost of £65,000.

At the meeting on April 14, 1997 the committee effectively accepted the contents of the report. The committee resolved:

> "That the submissions made by [the applicants' solicitors] be noted as it is considered that the approach and strategy previously adopted by the Committee is reasonable."

The committee also approved the report's recommendations with regard to management strategy and site works at the Croesnewydd site.

The applicants then sought leave to apply for judicial review of the decision of December 9, 1996, reconsidered on April 14, 1997, to withdraw the application for planning permission for a temporary extension of the use of the land at Croesnewydd as a gypsy site. Leave was eventually granted in February 1998, after an initial refusal on consideration of the documents alone.

Meanwhile, in July 1997, planning permission was granted for the extension of the Ruthin Road site. In November 1997, letters were sent to the occupiers of the Croesnewydd site, informing them that the council wished to bring the occupation of the land to an end, explaining the Council's strategy and the steps being taken to provide additional permanent accommodation at the Ruthin Road site, and sending questionnaires for completion by the occupiers in order to help the Council decide how it could best help them. On May 27, 1998 the council wrote to the long-standing occupiers of the Croesnewydd site, including the present applicants, to offer them pitches which were by then available at the Ruthin Road site. On July 2, letters were sent to the same occupiers to warn them that the Council might take possession proceedings against them if the plots allocated at Ruthin Road were not taken up within 14 days. On August 28, notices to quit the Croesnewydd site were issued. On October 29, summary possession proceedings were issued.

The matters taken into account in instituting possession proceedings were subsequently set out in a letter from the Council's Chief Legal and Administration Officer dated November 13. He stated that he had taken into account Welsh Office Circulars 2/94 and 76/94, whether or not strictly required to do so; relevant reports to committees and the Council's stated policy towards the Croesnewydd site; the planning history of the site and the Local Plan, which allocated the site for employment purposes; information that had been obtained in respect of the individual circumstances of the occupants from the Council's Gypsy Liaison Officer and Travellers Education Co-ordinator as well as from completed questionnaires and the applicants' solicitors; the offers of accommodation at the adequate, well-managed site at Ruthin Road; what would happen to the occupants bearing in mind the known circumstances and the Council's powers and duties in respect of housing, education and children; and whether it was expedient to take proceedings for the protection or promotion of the interests of the inhabitants of the county borough.

The possession proceedings were adjourned in November pending the outcome of the applicants' application for judicial review of the decision to issue such proceedings. That application is the second of the linked applications before the court.

To complete the factual background, further reference should be made to the development plan. As already indicated, Clwyd County Council had decided prior to its dissolution to delete Policy HSG 11 from the draft Structure Plan. After taking over the relevant responsibilities Wrexham County Borough Council deleted the policy from the second alteration of the Structure Plan, dated December

1996. The most recent statement of policy is contained in the consultation edition of the Wrexham Unitary Development Plan, dated July 1998, which contains a Policy H9 in these terms:

> "In exceptional circumstances, where sites for caravans for individual gypsy families cannot be accommodated within settlement limits, consideration will be given to other proposals, subject to compliance with Policy GDP1."

The accompanying text states:

> "The County Borough has developed a strategy for gypsies which involves the provision of additional pitches at Ruthin Road, Wrexham; the ultimate closure of the Croesnewydd Site, Wrexham; the provision of housing for gypsies in existing accommodation; and the development by the gypsies themselves of appropriate sites for individual families . . ."

The statutory framework

The Caravan Sites and Control of Development Act 1960 is described in its original long title as—

> "An Act to make further provision for the licensing and control of caravan sites, to authorise local authorities to provide and operate caravan sites, to amend the law relating to enforcement notices and certain other notices issued under Part III of the Town and Country Planning Act 1947, to amend sections twenty-six and one hundred and three of that Act and to explain other provisions in the said Part III; and for connected purposes."

The first 12 sections of Part I are concerned with the licensing of caravan sites. By paragraph 11 of Schedule 1, sites occupied by local authorities are exempt from the licensing regime. Section 24, also in Part I, contains the power of local authorities to provide sites for caravans. It is the power pursuant to which Clwyd County Council and then Wrexham County Borough Council have provided the Croesnewydd site. Section 24(1) reads:

> "A local authority shall have power within their area to provide sites where caravans may be brought, whether for holidays or other temporary purposes or for use as permanent residences, and to manage the sites or lease them to some other person."

The following subsections confer a wide range of ancillary powers concerning the provision and management of such sites and make clear that sites may be provided for gypsies, which "means persons of nomadic habit of life, whatever their race or origin, but does not include members of an organised group of travelling showmen, or persons engaged in travelling circuses, travelling together as such" (section 24(8), as amended). In its original form the 1960 Act also contained, in sections 21 and 22, amendments of planning law in relation to caravan sites and, in Part II, provisions concerning the general control of development (enforcement notices and the like).

The Caravan Sites Act 1968 imposed a duty on local authorities to provide sites for gypsies. Section 6(1) provided:

> "Subject to the provisions of this and the next following section, it shall be the duty of every local authority being the council of a county, county borough or London borough to exercise their powers under section 24 of the Caravan Sites and Control of Development Act 1960 (provision of caravan sites) so far as may be necessary to provide adequate accommodation for gypsies residing in or resorting to their area."

Section 6 was repealed with effect from November 3, 1994 by the Criminal Justice and Public Order Act 1994. From that date, as already mentioned, local authorities ceased to be under a duty with regard

to the provision of gypsy sites. The 1994 Act also contained provisions enabling local authorities to give directions, enforceable through the magistrates' courts, to require unauthorised campers to leave land.

Welsh Office Circular 76/94, of November 23, 1994, offers guidance on the provisions introduced by the 1994 Act and on the future management of local authority gypsy sites. The circular states in paragraph 21 that the Secretary of State considers it important that local authorities should maintain their existing sites or make suitable arrangements for their maintenance by leasing them to other persons, and in paragraph 22 that the Secretary of State expects authorities to continue to consider whether it is appropriate to provide permanent sites for gypsies in their areas. Paragraph 23 reminds authorities of the advice given in Circular 2/94 (see below) about the planning aspects of sites for gypsy caravans.

The applicants, in this case, place considerable reliance on the planning legislation and related guidance. It is more convenient to refer to most of the specific statutory provisions in the context of the parties' submissions. Mention can, however, usefully be made here of section 12 of the Town and Country Planning Act 1990, as amended, which concerns the preparation of unitary development plans and provides, in section 12(6), that authorities are to have regard to guidance issued by the Secretary of State and to current national policies in formulating the general policies in Part I of a unitary development plan. A circular entitled "Planning Guidance (Wales): Planning Policy", issued in May 1996, contains general guidance across a broad range of issues, including development plans and other material considerations. Among the paragraphs on which reliance is placed are these:

> "47. Development plans and development control decisions should take account of social considerations which are relevant to land use issues, such as the relationship of policies and proposals to social need and problems, including their likely impact on groups such as 'gypsies'.
>
> 88. Local authorities should indicate the regard they have to meeting gypsies' accommodation needs. It is important that local planning authorities make adequate gypsy site provision in their development plans and consider having a criteria based policy for consideration of gypsy site proposals on other land."

Welsh Office Circular 2/94, dated January 5, 1994, provides guidance on gypsy sites and planning. Its scope is apparent from paragraph 1:

> "This Circular revises guidance on the planning aspects of sites for caravans which provide accommodation for gypsies. It applies equally to local authorities' own sites and to applications for planning permission from gypsies themselves or from others wishing to develop land for use as a gypsy caravan site. The Circular comes into effect immediately. Its main intentions are—
>
> —to provide that the planning system recognises the need for accommodation consistent with gypsies' nomadic lifestyle;
> —to reflect the importance of the plan-led nature of the planning system in relation to gypsy site provision."

Under the sub-heading "Development plans" the circular makes clear that, at an early stage in the preparation of structure plans, local plans and unitary development plans, it is important for local planning authorities to be ready to discuss gypsies' accommodation needs with the gypsies themselves, their representative bodies and local support groups (paragraph 7); that after the repeal of the duty imposed by the 1968 Act, local planning authorities should continue to indicate the regard they have had to meeting gypsies' accommodation needs, and that repeal of the statutory duty will make it all the more important that local planning authorities make adequate gypsy site provision in their

development plans (paragraph 9). Under the sub-heading "Provision and location of sites", the circular states that in deciding what level of provision is necessary it is essential for authorities to have up-to-date information, and that in preparing their development plans they should take into consideration the periodic counts published by the Welsh Office (paragraph 11); and that local plans and Part II of unitary development plans should wherever possible identify locations suitable for gypsy sites, and should identify existing sites which have planning permission and should make a quantitative assessment of the amount of accommodation required (paragraph 12). There is a further section on "Site characteristics and services", which identifies the three main types of site as (1) sites for settled occupation, (2) temporary stopping places and (3) transit sites (paragraph 17). Guidance is given about planning applications and enforcement and about cases not requiring a planning application or falling within the scope of a general permission. Finally, there is a reminder that a caravan site is likely to need a licence under the 1960 Act.

The allegedly unlawful strategy

The central thrust of the submissions made by Mr Blake Q.C. on behalf of the applicants is that the decisions under challenge form part of an unlawful strategy on the part of Wrexham County Borough Council with regard to the provision of gypsy sites in the borough. Although the specific duty to provide gypsy sites under the 1968 Act has been repealed, the council remains under a duty as local planning authority to develop an overall strategy as to land use for gypsies. The strategy in fact developed by the authority is legally flawed through failure to have proper regard to the advice given in the circulars and to give adequate consideration to the needs of gypsies (including itinerants), obtain information about such needs and consult widely with the gypsy community as a whole. The importance of a proper consideration of need is obvious not only from the circulars themselves but also from authorities such as *Hedges v. Secretary of State for the Environment* (1997) 73 P. & C.R. 534 and *Ayres v. Secretary of State for the Environment* (1997) 74 P. & C.R. 246. The Council has taken a fundamentally different approach towards need and site provision from that taken by its predecessor, Clwyd County Council, yet there is nothing to show that the needs of gypsies in the borough have changed fundamentally or that they have been properly considered.

The obligation to have regard to guidance in the circulars is said to derive from section 12(6) of the Town and Country Planning Act 1990, quoted above. The strategy on which the decision of December 9, 1996 is based is said to have lain behind, or to have been closely linked to, the adoption of the draft Wrexham Unitary Development Plan in which, by contrast with the former Policy HSG 11 of the draft Structure Plan, no adequate provision is made by gypsies. So too, section 70(2) of the 1990 Act provides that in dealing with an application for planning permission an authority "shall have regard to the provisions of the development plan, so far as material to the application, and to any other material consideration". Even if sections 12(6) and 70(2) do not apply directly, the same considerations as are material for the purposes of those provisions must be material for the adoption of the strategy, especially given that the strategy was akin to expounding a new development plan and came to be embodied in the provisions of the 1998 consultation draft of the Unitary Development Plan. In addition, the 1960 Act itself was designed to control development of caravan sites and the exercise of powers under that Act must therefore take into account planning considerations. Accordingly, there was a requirement to take into account the matters set out in the circulars when adopting the strategy.

As to the failure to take such matters into account, it is pointed out that the reports of the officers, on the basis of which the relevant decisions were taken, did not refer to the circulars or to the matters set out in them. In terms of the legal position they referred only to the existence of a power under section 24 of the 1960 Act and the repeal of the former duty under section 8 of the 1968 Act. There was no

quantitative assessment of the needs of gypsies in the areas, such as the circulars require. In those circumstances the Council was not able to reach a properly considered decision about the provision of alternative sites, the length of time for which Croesnewydd would be occupied or the risk of gypsies setting up illegal camps and causing nuisance to other inhabitants. In any event, there was no evidence that the needs of gypsies had changed since the very different policy formulated by Clwyd County Council and there was nothing to show that the strategy now adopted would meet the needs of the existing users of the Croesnewydd site.

In an affidavit filed on behalf of the Council in the second application for judicial review, it is stated:

> "The Council's decision to withdraw the application for planning permission was not an exercise of the Council's planning functions qua local planning authority. Rather, it formed part of the Council's overall strategy for the provision and management of gypsy caravan sites, formulated with regard to the Council's obligations to all the inhabitants of the area."

The applicants submit that that is the crux of the case, and that the Council has impermissibly sought to compartmentalise its functions as a local authority. The material considerations to which it was obliged to have regard and failed to have regard were determined not by the identity of the sub-committee to which the council delegated the development of the strategy, but by the nature of the decision-making process itself.

Mr Straker Q.C. for the Council submits that the affidavit evidence, that the relevant decision was not an exercise of the council's planning functions qua local planning authority is entirely correct. The decision was taken by the Corporate Policy and Resources Committee, rather than the Planning Committee, for the simple reason that it fell within the functions delegated to the Corporate Policy and Resources Committee rather than those delegated to the Planning Committee. The decision was not a planning decision but a decision about the use of the authority's own land. The applicants' submission that the whole process is fed by planning considerations is wrong. Planning control is the creature of statute and the relevant statutory provisions contain a comprehensive code (see *Pioneer Aggregates Ltd v. Secretary of State for the Environment* [1985] 1 A.C. 132 at 140H–141C, *per* Lord Scarman). The power under section 24 of the Caravan Sites and Control of Development Act 1960 for a local authority to provide caravan sites is not part of that code. The 1960 Act is not included within the definition of "the planning Acts" in section 336(1) of the Town and Country Planning Act 1990. Moreover, that same subsection draws a distinction between "local authority" and "local planning authority". In the present case, Wrexham County Borough Council is the local planning authority for the purposes of the 1990 Act (see section 1(1B)(b) of that Act); but it is also the housing authority, the local education authority, the library authority and so forth. It is a local authority with the usual range of functions. The functions it discharges as local planning authority are distinct from its other functions and have their own incidents. The Council was concerned here not with a planning decision but with its responsibilities as landowner.

Section 12 of the 1990 Act relates to the development plan process and cannot be relied upon as imposing requirements in respect of a decision falling outside that process. Specifically, section 12(6) requires a local planning authority to have regard to the stated matters for a particular purpose, namely the formulation of policies to be included in the development plan. If the decision here in issue was so closely connected with the urban development plan, the challenge should be to the plan (though it is to be noted that section 284 provides that the plan may be challenged only in accordance with the procedures laid down in the 1990 Act. If it was not so closely connected, then it was a matter for the Council untrammelled by section 12(6). It cannot be right that all the incidents attaching to a planning decision also attach to a decision which is not a planning decision and which, in particular, does not

form part of the development plan process. One should be very cautious about transposing the requirements from one context to another.

Mr Straker submits that section 70(2) is plainly of no assistance to the applicants since it concerns the functions of the local planning authority, as is clear from section 70(1). Thus, when dealing with a planning application the local planning authority is to have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations. No requirement is imposed on a local authority to have regard to such matters otherwise than when dealing with a planning application in the performance of its functions as a local planning authority. In particular, the provision is not intended in any way to govern the conduct of a local authority when making an application of its own for planning permission in its capacity as a landowner.

Thus, according to Mr Straker, one comes back to the simple point that the Council was exercising, in this case, its powers under section 24 of the 1960 Act. That Act does not lay down any obligations of the kind relied on by the applicants. Nor should the court import obligations where none exist in the statute. That is all the more obvious in a case where Parliament at one point imposed a specific duty upon Councils, by section 6 of the 1968 Act, and then removed that duty, thus leaving the former position intact.

As to Circular 2/94, that consists of guidance only on planning matters. The language is that of planning, with references to development plans and enforcement. The reference to licensing which is tacked on at the very end of the document is not sufficient to render the guidance applicable to matters falling outside the scope of planning decisions. Circular 76/94 provides guidance on the provisions on the Criminal Justice and Public Order Act 1994 and again is not applicable to the decision in issue. It is worthy of note, however, that the provisions of the 1994 Act do themselves envisage people in hard circumstances being moved on when camped unlawfully on land. The evidence shows that both of these circulars were taken into account at a later stage, when the decision was taken to issue possession proceedings. Whether or not it was legally necessary to take them into account at that stage does not matter. It was not necessary to take them into account at any earlier stage.

In connection with the circulars, Mr Straker relies on the decision of Carnwath J. in *Hillingdon London Borough Council, ex parte McDonagh, The Times*, November 9, 1998, a case which concerned the decision of a local authority to seek a possession order against a number of occupants of one of its gypsy sites. The judge described the central issue before him as being to what extent the authority had a duty to investigate the circumstances of the applicants, in the context of their duties under various Acts, before instituting or continuing possession proceedings. A particular issue concerned the Department of the Environment Circular 18/94, which is the same as Welsh Office Circular 76/94. That circular contains advice as to how authorities should exercise their powers under the Criminal Justice and Public Order Act 1994. Carnwath J. referred to a decision of Tucker J. in *R. v. Brighton and Hove Council, ex parte Marmont* [1998] J.P.L. 670, where a local authority sought possession proceedings under RSC, Ord. 113. The judge had concluded that there was no good authority for the proposition that a local authority was obliged to take into account the guidance contained in the circular before seeking to recover possession of its own land under Order 113. Such proceedings were of an entirely difference character from those under the 1994 Act in respect of which the circular was intended to give guidance. Reference was also made to a number of other cases including *West Glamorgan County Council v. Rafferty* [1987] 1 W.L.R. 457, a case about gypsies decided at a time when the duty under section 6 of the 1968 Act was in force and where the existence of that duty was effectively determinative of the result of the case. Carnwath J. went on to refer to his own citation, in another judgment, of an observation of Lord Scarman in *Re Findlay* [1985] A.C. 318 at 333, concerning those matters that a

decision-maker is required as a matter of legal obligation to take into account when reaching a decision. In the context of the Planning Acts, Carnwath J. observed that it was well established that government policy guidance should be treated as a material consideration. He went on:

> "In this case one does not have such an underpinning of the circular. The Secretary of State does not have any formal responsibility, either under the Criminal Justice Act 1994 or even less in relation to the authority's management of its own land. One can contrast this with the Homeless Persons Legislation where, under s.71 of the 1985 Housing Act, the housing authority has a specific duty to have regard to the Secretary of State's guidance.
>
> It has to be asked, therefore, where as a matter of law the obligation, if there is one, to have regard to the circular is to found . . .
>
> . . .
>
> When one turns to the powers in the present case, Tucker J. accepted that the authority should have regard to considerations of 'common humanity', particularly when one is dealing with something as fundamental as the need for a house. The legal basis of even that proposition is not immediately obvious, but there is no doubt that in recent years the courts have been willing to develop principles of general application, sometimes by analogy with human rights law . . . One such general principle I would readily accept, is that of 'common humanity' which one hopes will apply to the dealing of any public authority. To that extent it may be that the discretion of the local authority in cases such as this is not as open-ended as might be suggested by what Lord Hoffman said in the Tesco case. However, the content of the obligation depends very much on the contents and circumstances of the case. It is one thing to say that an authority exercising eviction powers should be aware of the traumas and upset that it likely would cause, and of the implications for their own responsibilities under the various statutes to which I have referred. It is another thing to say there is a binding obligation in law on them to carry out all of the investigations under those statutes before initiating proceedings.
>
> In my view there is no legal basis for such a proposition. It was rejected in relation to the Homeless Persons legislation in [*R. v. London Borough of Barnet, ex parte Grumbridge* (1992) 24 H.L.R. 433]. Section 66(4) of the Housing Act makes it clear that their duties do not impede the authority's power to obtain possession. That is not a ground for distinguishing that case. Rather, I would see that provision as a legislative recognition of the primacy of the principle that generally the authority should not be inhibited in the exercise of their ordinary powers as landowner to secure possession of their own land.
>
> At this stage I should comment on the discussion before me as to whether circular 18/94 'applies to' the exercise of the eviction powers . . .
>
> However that may be, the question for me is not what the Secretary of State intended, but what is the legal effect of the circular. While it may well be an indication of good practice, it cannot, for the reasons I have given, be treated as creating any legally binding obligation on local authorities in the exercise of their powers to evict trespassers from their own land.
>
> I return to the facts of this case. The authority held its land under the Caravan Sites Act 1960. Section 24 of that Act gives them the power to provide sites and the power to manage them. One of the functions of managing a site is to remove trespassers from it. In this, the purpose of the council in seeking to remove trespassers was to improve the site for the purposes of s.24. That was a proper use of their powers.

I accept the council could not carry out that power in blinkers. They were bound to recognise that their action had consequences for those involved, and also in respect of their own statutory duties. However, there is no legal basis for holding that they had to carry out investigations under those Acts before they were entitled to institute evictions proceedings . . ."

Mr Straker submits that the reasoning in that case applies equally to the exercise of powers to apply for, or to withdraw an application for, planning permission in respect of land owned by the local authority and used by the authority for the provision of a gypsy site pursuant to section 24 of the 1960 Act. There is simply no legal basis for the proposition that the authority was required to observe obligations imposed under other statutes, specifically the obligation to take into account as material considerations the contents of government circulars relating to the discharge of planning functions.

As regards the alleged change from the former policy of Clwyd County Council, Mr Straker submits that there was in fact no change, or any change has been exaggerated by the applicants. The policy formulated in January 1995 by Clwyd County Council was to continue to seek to identify "a site or sites . . . to replace the present site at Croesnewydd". That is the policy which has been pursued throughout. Clwyd County Council had decided by December 1995 to delete Policy HSG11 from the draft Structure Plan. The Local Plan, allocating the Croesnewydd site to employment purposes, had been adopted in February 1996 and still prevails. When Wrexham County Borough Council took over the relevant responsibilities, the Corporate Policy and Resources Committee in May 1996 confirmed its wish to bring the occupation of the land at Croesnewydd to an end and confirmed an intention to seek an alternative permanent site. Detailed consideration of that issue was properly left to a sub-committee distinct from the Planning Committee which would have to make any relevant planning decisions. The sub-committee, having carried out consultations, favoured the option of extending the Ruthin Road site rather than proceeding with the development of Bryn-y-Cabanau, together with the withdrawal of the application for the temporary extension of use of the Croesnewydd site. That policy was endorsed by the Corporate Policy and Resources Committee itself in the impugned decision of December 9, 1996. The decision was taken after consideration of the results of the consultation process and in the light of local information and a detailed report from officers. It was a properly based and entirely reasonable decision.

A final point made on this subject by Mr Straker, picking up on an observation of Sullivan J. when he initially refused the first application for leave, is that the decision by the Council to withdraw the application for planning permission did not prevent the applicants or others from seeking planning permission themselves for the continued use of the site. It cannot be alleged, it is said, that any of the occupiers of the Croesnewydd site were prejudiced by the withdrawal of the planning application in circumstances where it has always been within their power to make an identical application themselves.

I have reached the conclusion that Mr Straker's submissions are generally well founded. Re-expressing some of the points he made, I would summarise my own reasons as follows.

In order to determine what considerations must, as a matter of law, be taken into account in the exercise of statutory powers, it is necessary first to examine the nature of those powers and their statutory context. The impugned decision related to the management of the Council's own land. To the extent that any specific power was engaged, beyond the general powers of a local authority with regard to the ownership and management of assets, the relevant power was section 24 of the 1960 Act. The gypsy site at Croesnewydd was provided in the exercise of the power conferred by section 24 and the Council's decision as to the maintenance or withdrawal of the application for a temporary extension of planning permission related directly to the continued provision of the site.

Section 24 of the 1960 Act is not part of the planning code. As its long title and individual provisions make clear, the 1960 Act was not simply a planning statute. In its original form it dealt with a range of topics, including the licensing of sites and the power of local authorities to provide sites, as well as certain planning matters (which have now been subsumed under the Planning Acts). The power of local authorities to provide sites was not a planning matter and is not now part of "The Planning Acts" as defined in the 1990 Act.

The decision of December 9, 1996 was not a decision as to the policies to be included in the unitary development plan, even if those policies were closely linked with the decision and its subject-matter. The formulation of the development plan is a separate process and a separate responsibility. The requirements in section 12(6) of the 1990 Act apply only to the formulation of the development plan, not to decisions which do not form part of that process. If this were truly a decision about the development plan, the 1990 Act would preclude the present form of challenge to it.

Equally, section 70(2) of the 1990 Act has no application to the impugned decision. It is plain that that provision applies only to the local planning authority when "dealing with" an application for planning permission made to it as local planning authority. It does not apply to decisions by a landowner, even where that landowner is the local authority, as to whether or not to make or maintain an application for planning permission.

The committee structure of the Wrexham County Borough Council reflects a real separation of legal functions. The matters here in issue were handled by the Corporate Policy and Resources Committee rather than the Planning Committee because they did not involve the discharge of planning functions.

Given that the impugned decision was not a planning decision and did not involve the exercise of powers or duties conferred or imposed by the Planning Acts, I do not think that the incidents of a planning decision can properly be attached to it. Specifically, I do not accept that one can carry across to such a decision the range of material considerations that are required to be taken into account in the discharge of planning functions.

As to the circulars, Circular 2/94 relates in my view to the discharge of planning functions and Circular 76/94 to the exercise of powers under the Criminal Justice and Public Order Act 1994. There was no obligation, in reaching the decision of December 9, 1996, to take into account the guidance given in either circular, since the decision was neither a planning decision nor a decision about the exercise of powers under the 1994 Act. In so far as Circular 76/94 makes more general observations about the approach of local authorities to gypsy sites following the removal of the duty under section 6 of the 1968 Act, there is still no legal basis upon which authorities can be said to be under a duty to take that guidance into account. I accept that for all material purposes the reasoning in *R. v. Hillingdon London Borough Council, ex parte McDonagh* applies to a decision of the present kind as it does to a decision to institute possession proceedings. Mr Blake's valiant attempt to distinguish it on the ground that the possession proceedings in that case constituted the implementation of what was otherwise a lawful strategy, whereas in the present case it is the lawfulness of the strategy itself that is in issue, does not seem to me meet the essential point that the decision impugned in each case is a decision under section 24 of the 1960 Act and the exercise of powers under section 24 is not constrained by any legal duty to have regard to the circulars relied on.

So far as concerns the factual aspects of the challenge, I do not accept that there was a fundamental departure from the strategy adopted by Clwyd County Council. That Council had already decided on the deletion of Policy HSG 11. Its strategy was to identify an alternative site or sites to replace Croesnewydd. The fact that Wrexham County Borough Council decided to focus on a single

alternative site and opted for an extension of Ruthin Road rather than the development of Bryn-y-Cabanau did not entail a fundamental difference in strategy. Moreover, the decision was reached in the light of a careful consideration of the issues. As the report considered on December 9, 1996 indicates, the intention was to secure the relocation of the long-standing occupiers of Croesnewydd at Ruthin Road, leaving less long-standing or itinerant travellers to be addressed by site management and other means. Thus there was to be no immediate closure of the Croesnewydd site, which would remain open for the time being for those not accommodated at Ruthin Road. I do not think that that approach was based on an inadequate investigation of the needs of the gypsies concerned or was in any way unreasonable (and in expressing that conclusion I have also taken into account matters considered below in the context of the challenge to the decision to institute possession proceedings).

Finally, the fact that the applicants could themselves have applied for planning permission for the Croesnewydd site is not wholly without significance. It helps to put in perspective the actual decision impugned in this case which, for all Mr Blake's efforts to elevate the case into the grand area of strategy, was ultimately a decision about whether a particular application for planning permission should be maintained. If the applicants had wanted simply to seek a temporary extension of planning permission, it was open to them to seek it; yet they did not do so.

For all those reasons the first and major ground of challenge to the decision of December 9, 1996 fails.

Alleged failure to consult

The second main ground of challenge to the decision is that there was a failure to carry out adequate consultation of those likely to be affected. Once the Council had decided that consultation was necessary, it had to be meaningful consultation enabling the consultees to address matters within the mind of the consultor at a time when the proposals were at a formative stage: for this and related requirements, see *R. v. Secretary of State for Social Services, ex parte AMA* [1986] 1 All E.R. 164 and *R. v. Devon County Council, ex parte Baker* [1995] 1 All E.R. 73 at 91g–j. It is contended that the consultation conducted in June 1996 was inadequate to achieve that purpose.

The previous policy of Clwyd County Council was to build an additional permanent site and a transit site in addition to Ruthin Road. If it was proposed to alter that policy radically by making no provision for transit travellers and extending Ruthin Road, the gypsies needed to be aware of that in order to respond effectively. An effective consultation would have enabled the applicants to address in their representations a number of problems about any move to the Ruthin Road site, namely the history of tension and hostility between occupants of the two sites, the inadequacy of the Ruthin Road site from the point of view of scale and of the additional large numbers of children who would be living there, whether alternatives existed for gypsies who would not be transferred to Ruthin Road, and what were the needs of itinerant travellers. The problems subsequently identified, and examined below in the context of the challenge to the institution of possession proceedings, illustrate what should have been apparent if there had been adequate consultation at the right time. As it was, the consultation letter of June 24, 1996 gave no intimation that the policy was changing or might be changed to one whereby the only alternative site would be an extended Ruthin Road. By contrast, local community councils were informed of that proposal and consulted on it between September and November 1996. Thus there was a failure adequately to consult the applicants. The later exercise of sending them questionnaires in November 1997 could not cure the failure because it was about the implementation rather than the adoption of the decision.

The competing submissions of Mr Straker take as their starting point the absence of any statutory duty

to consult. Section 24 of the 1960 Act does contain in subsection (2A) a limited obligation to consult the fire authority in certain circumstances. It contains no other obligation of consultation. In those circumstances, it is submitted, it was for the Council to determine how it wished to be informed as to what should be done, *i.e.* to determine what inquiries should be made. A decision was made to consult the occupiers of the Croesnewydd site. The consultation was in broad terms, enabling them to put forward full representations on the issue of an alternative site. Having decided on an extension to the Ruthin Road site in the light of that consultation, the sub-committee consulted further with the local community councils affected by that extension to Ruthin Road. The final decision was taken in the light of the full process of consultation. The Council acted in a procedurally proper manner and, even looking at the decision of December 9, 1999 by itself, there was no legitimate basis for challenge on procedural grounds.

In any event, if the decision of December 9, 1996 was taken on the basis of inadequate consultation, that deficiency was cured by the later consideration of the issue. The applicants were given a full opportunity to put further representations forward. They did so by their solicitor's letter of February 27, 1997, with the 27 separate points listed in it. That letter was considered by the members of the Corporate Policy and Resources Committee on April 14, 1997. The report of the Director of Development Services focused the attention of members on the representations made and advised them to consider whether the decision of December 9, 1996 should be reviewed in the light of those points. It is plain that the possibility of reopening the decision was approached with an open mind. The various complaints now made, in the context of the possession proceedings, about the unsuitability of the Ruthin Road site for the existing occupiers of the Croesnewydd site could have been made at the same time as the other points put forward by the applicants' solicitors in February 1997. They had an opportunity to do so and the fact that they failed to avail themselves of that opportunity does not provide them with a ground of challenge now.

In my judgment, there was no duty to consult before taking the decision of December 9, 1996. The 1960 Act imposed no such duty and the circumstances were not such as to have made it procedurally unfair to reach a decision without consultation. Having decided to consult, however, the Council had to give consultees a fair opportunity to make representations on the issues raised and had to consider those representations with an open mind. The Council did just that. Its consultation letter was expressed in broad terms, making it clear that the Council wished to bring the occupation of Croesnewydd to an end and intended to seek an alternative permanent site. Views on that broad issue were invited. There was every opportunity to express views both on the stated wish to bring the occupation of Croesnewydd to an end and on what the appropriate alternative arrangements should be. It is striking that the applicants, through their solicitors, did not object to the closure of Croesnewydd, subject to the making of suitable alternative arrangements, and did not express any specific views about what those alternative arrangements should be. The decision then taken by the sub-committee, as later confirmed by the committee on December 9, took full account of the representations made, such as they were. There is nothing in the point that, having decided on an extension to Ruthin Road in preference to the development of Bryn-y-Cabanau, the sub-committee was wrong to consult the local community councils affected by the extension to Ruthin Road without also consulting the occupiers of the Croesnewydd site. This was not a matter upon which there was any need to consult the occupiers of Croesnewydd.

If I am wrong on that, I accept Mr Straker's submissions that any deficiency in the initial consultation was cured by the reconsideration of the matter on April 14, 1997 in the light of the 27-point letter. In practice, the applicants had an opportunity to put forward at that stage, and to have considered by the

Council, any further representations they wished to make. The need to consider the representations in fact put forward on their behalf was made clear to the members of the committee by the Director's report.

Accordingly this ground of challenge also fails.

The implications of further works at Croesnewydd

The third main ground of challenge to the decision of December 9, 1996 is that to withdraw the application for a temporary extension of the planning permission would necessarily involve the authority in a breach of planning controls. At the time of the decision it was contemplated that the Croesnewydd site would remain in use until 1998 and that additional works would be required at the site, in the meantime, in order to address complaints about conditions there. Those additional works, which were approved on April 14, 1997 and subsequently carried out, themselves arguably constituted "development" within section 55 of the Town and Country Planning Act 1990, requiring planning permission pursuant to section 57 of that Act. Yet the council was prepared that all this should be done without any planning permission.

The submission for the applicants is that a local planning authority should set an example and act in the public interest, rather than put itself deliberately in breach of planning controls and risk bringing the law into disrepute. The Council seems to have given no thought to this aspect of the matter. Indeed, it gave no consideration to whether planning permission was required for the additional works. In acting as it did, therefore, the Council misdirected itself, failed to take into account a relevant consideration or acted perversely. It cannot now rely on the existence of a discretion, as local planning authority, not to take enforcement action as a means of justifying its initial failure to consider the matter properly in the first place.

On this issue, Mr Straker submits first that at least some of the additional works are permitted without the need for any separate planning permission, by the Town and Country Planning (General Permitted Development) Order 1995. In any event, it is said, this entire issue is irrelevant since the decision to carry out further works post-dates the decision under challenge and there is no reason why the carrying-out of works to improve conditions during the occupiers' remaining time at this site should affect the legality of the earlier decision. Further, section 172 of the Town and Country Planning Act 1990 gives a discretionary power to take enforcement proceedings where it appears to the local planning authority to be expedient to do so. Situations often arise where it is not expedient to take such proceedings. In the present case, no one has in fact suggested that enforcement proceedings ought to be taken in respect of the continued use of the site for its remaining life. That a local authority may lawfully choose to tolerate an unauthorised development is also clear from the advice given in Circular 76/94 with regard to the exercise of powers under the Criminal Justice and Public Order Act 1994 to deal with unauthorised gypsy encampments and other such problems. The principle for which the applicants contend, effectively precluding the council from allowing a breach of planning controls to occur on its land, has no legal support.

I can deal with this issue very briefly. Although it was contemplated that further works at Croesnewydd might be necessary, that was not part of the decision taken on December 9, 1996. In any event, it is not a valid ground for challenging that decision. To operate the site without planning permission for the remaining period of its use was an option properly open to the Council, whether the site remained unimproved of works were carried out to improve it for reasons of public health and safety (and whether or not those works themselves required specific planning permission). In the original decision of the Secretary of State to approve an extension of planning permission for the Croesnewydd site for

two years from 1994–96, it was stated that this was preferable to an extension of the period of compliance because it enabled conditions to be imposed so as to regulate the use of the site. It was not suggested that the continuation of use of the site without planning permission but with an extended period before enforcement action was taken would be inherently wrong or unacceptable. Circular 76/94 also contemplates the toleration of sites that are in breach of planning controls. This follows anyway from the discretionary language of section 172 of the 1990 Act. Even though the committee, in making the decision of December 9, was not itself concerned with a planning judgment about enforcement action, it was entitled to contemplate and permit a state of affairs in which its land was used in breach of planning controls. I do not accept that, in deciding whether to allow its land to be used without planning permission, with or without the possibility of further works, the Council was constrained by a principle along the lines of that for which Mr Blake contends. The third ground of challenge therefore fails and the first application for judicial review fails with it.

The possession proceedings

The decision to institute possession proceedings is challenged on the basis that those proceedings constitute the implementation of a strategy which, for reasons already advanced in the context of the decision of December 9, 1996, was legally flawed. This is not a case where the challenge relates to an individualised exercise of discretion to seek to remove people for alleged misconduct or matters of that kind. One is concerned here with the very strategy that is at the heart of the first application. The Council was plainly engaged in the implementation of that strategy. There was no separate factor or urgency requiring the institution of such proceedings.

The flaws in the strategy itself are also said to be highlighted by factual problems that are evident in the context of the second application for judicial review, by reference to the offers that have been made to the applicants with regard to alternative accommodation at the Ruthin Road site. A report for the applicants by Mr Ian Higgins, an environmental health and housing consultant, criticises a number of features of the proposed move. According to Mr Higgins, the intended density of occupation exceeds that laid down by model standards relating to permanent mobile home sites under section 5 of the 1990 Act, which are said to be relevant though, it is accepted on behalf of the applicants, not directly applicable. Certain plots at Ruthin Road are said to be inadequate for the needs of the families to whom they have been offered. These and other matters are relied on by the applicants as showing that the alternative site at Ruthin Road will not meet all the needs of the permanent occupants of the Croesnewydd site, let alone temporary occupants and transit travellers. The shortfall between what is required and what is available should have been apparent at the beginning if there had been a proper investigation of needs. It shows that the Croesnewydd site serves a number of purposes which have not been taken into account in the Council's strategy. The move to Ruthin Road will not solve the problems and will create problems of its own. Further, there will still be a need for the Croesnewydd site even if the applicants are moved. Had there been a proper consideration of strategy, the Council might well have decided that Croesnewydd remained the more appropriate option until a suitable transit camp had been identified, and that the maintenance of the application for a temporary extension of the planning permission was therefore the correct course to adopt.

The Council's submissions on the second application are first that possession could have been sought even if planning permission had been obtained. The grant of planning permission does not affect the Council's right to recover possession of the site or parts of the site. Accordingly, the claimed link between the possession proceedings and the decision of December 9, 1996 which is impugned in the

first application does not exist. So far as concerns the actual decision to take possession proceedings, it has been held that a local authority is not required to carry out exhaustive investigations under its other statutory functions (see *ex parte McDonagh*, cited above). The council carried out such investigations as it considered appropriate in order to inform itself about the matters relevant to the offer of alternative pitches at Ruthin Road and the recovery of possession of pitches at Croesnewydd. The Council was entitled to make a judgment on the basis of the information obtained. No significant discrepancies have been shown as between the information available to the Council and that obtained on behalf of the applicants, in particular by their consultant Mr Higgins, but in any event it was open to the Council to proceed on the basis of the judgment it had formed. Moreover, the council's affidavit evidence made clear that even if a quantitative assessment were to show a deficiency in the amount of land available for the stationing of gypsy caravans at Ruthin Road, that would not render the Croesnewydd site any more suitable as a gypsy caravan site, nor would it alter the Council's intention to obtain possession of the Croesnewydd site. The Council's decision to proceed took into account all relevant considerations and could not be the subject of successful challenge.

Given the way in which the applicants put their challenge to the possession proceedings, it seems to me that that challenge must fail together with the challenge to the first application. To the extent that it is pursued separately on the basis of allegedly inadequate investigation or consideration of factors relevant to the discretionary decision, I accept Mr Straker's submissions. I should make clear that although various additional grounds of challenge are to be found in the notice of application, I did not understand them to be pursued before me. In any event they do not appear to me to be of any substance. I should also make clear (and this is relevant also to my conclusions in relation to the first application) that I do not accept that any practical or factual problems relating to the proposed move of the applicants from Croesnewydd to pitches at Ruthin Road provide a legitimate basis for criticism of the council. In my view, the matter was the subject of adequate investigation and it was reasonably open to the Council to form the judgment it did on the information available to it, to the effect that the offers made to the applicants of alternative pitches at Ruthin Road were appropriate and reasonable offers.

The challenge to the institution of possession proceedings therefore also fails.

Decision

For the reasons given in this judgment, both applications for judicial review are dismissed.

Comment. This decision of Richards J. has implications beyond the law as it relates to gypsies as it establishes what can be termed a principle of "compartmentalism" for administrative law. In this particular case, the public body had to decide whether to exercise its power to provide a gypsy site under section 24 of the Caravan Sites and Control of Development Act 1960. Richards J. held that in exercising this discretion, the authority was not exercising a planning power and so was not bound to consider statutory provisions and policies that only applied to the exercise of planning powers. This is a logical approach but the courts should be careful not to apply it too rigidly. While it makes sense to confine planning policies to the exercise of planning powers, in many cases there will be an overlap between planning matters and those relating to caravan sites; see *Esdell Caravan Parks v. Hemel Hempstead RDC* [1966] 1 Q.B. 895. Thus in the *Marmont* case, it was accepted by Tucker J. that Circular 18/94 (setting out guidance as to how the powers of eviction under Criminal Justice and Public Order Act 1999 should be exercised) was not relevant when a local authority was taking action to evict trespassers from its own land. He nevertheless held that some of the considerations set out in circular 18/94, such as the need to consider the welfare needs of those being evicted, should be considered by the Council when deciding whether to evict persons from their own land. While the function of the local authority in deciding whether to provide a gypsy site is distinct from the function of a local planning authority in determining the planning policies as to such gypsy sites, in practice it would seem sensible for the planning policies to be regarded when making decisions on gypsy sites to be provided by the local authority.