Human Rights and Equality

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Introduction

1. This chapter relates principally to appeal[1], application, notice and order casework, but is also applicable to development plan examinations. It is intended to provide practical advice on Human Rights and equality issues when making decisions or holding an event. The Planning Inspectorate's ITM chapter (available on iShare) provides a more in-depth review.

2. You may come across evidence concerning traditions or cultures that you are not familiar with. Seek advice or further evidence if in doubt.

Legal duties

3. Inspectors must act in accordance with both the Human Rights Act 1998 (HRA98)[2] and Equality Act 2010 (EA10) in relation to both procedures and decision-making. In decisions, these issues must be dealt with **separately** and as an **integral part of the decision**. It must be clear that any right has been weighed against all other material considerations before a decision is made.

4. **The Human Rights Act 1998** includes several 'Articles' which each deal with a different human right and are taken from the **European Convention on Human Rights (ECHR)**. It is unlawful for a public authority to act in a way which is incompatible with a Convention right. Rights are either absolute (i.e. must never be violated), limited, or qualified.

5. **The Equality Act 2010** (EA10) imposes a 'public sector equality duty' (PSED) on public authorities, which applies to Inspectors and other decision-makers. S149 sets out 'three aims' and requires you to have due regard to the need to:

   - eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
   - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it[3]; and
   - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

6. The **UN Convention on the Rights of Persons with Disabilities** (UNCRPD) came into force on 3 May 2008 and the UK agreed to follow it in 2009. Thus, where disability is raised, you will need to be mindful not only of the rights of disabled people under the HRA98 and EA10, but also to those referred to in Article 19 of the UNCRDP, which include that people with disabilities should have the opportunity to choose their place of residence, and where and with whom they live on an equal basis; and have access to services that enable them to live in the community on an inclusive basis.

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[1] There is no scope to consider human rights or equality implications in a Lawful Development Certificate appeal, an enforcement 'legal' ground of appeal or Definitive Map Modification Order.
[2] The Bill of Rights Bill has been introduced to Parliament and is intended to replace the HRA98. Like the HRA98, the Bill refers to Articles in the European Convention on Human Rights, to which the UK is expected to remain party to.
[3] Section 149(3) of the EA2010 specifies what is expected of public authorities to achieve this.

7. The **Public Order Act 1986** (POA86) defines 'racial hatred', 'religious hatred' and 'hatred on the grounds of sexual orientation'. It specifies what constitutes a public order offence in relation to these, including threatening, abusive or insulting behaviour or publication/distribution of written material. Whilst the HRA98 provides a right to freedom of expression, this is a 'qualified right' and does not trump the protection afforded under the POA86. Although Inspectors have no remit in considering whether a party commits a public order offence, you should never accept written representations or permit behaviour which is threatening, abusive or insulting, nor record details of these in decisions.

8. The **Data Protection Act 2018** provides protection in relation to 'special categories of personal data' which reveal 'the racial or ethnic origin…religious or philosophical beliefs, or…data concerning health or a natural person's sex life or sexual orientation'. Thus, some personal information is more sensitive by its nature, and if released could potentially have greater adverse impacts on persons with protected characteristics. An Inspector should do so only if and where they have identified a substantial public interest.

9. Inspectors must also take action if they identify a potential **'safeguarding'** issue affecting any person (including, but not limited to, children, people with disabilities, or older people). In such a situation, the Inspector should inform the Police via their line manager and recuse themselves from the case.

Human Rights in casework

10. In casework you are most likely to come across **qualified rights** where interference may be permissible if done to secure an aim set out in the relevant Article. Dealing with qualified rights will involve balancing the fundamental rights of the individual against the legitimate interests of other individuals and the wider public interest.

11. Whilst there may be local or national planning policies that are relevant to human rights and/or equality considerations, whether the development would comply with policy should not be conflated with the separate question as to whether the decision would be in accordance with the law.

12. In casework you should generally refer to the HRA98 using a phrase such as "… would not breach the requirements of Article 1 of the First Protocol to the Convention, as incorporated by the Human Rights Act 1998" or similar.

Article 8

13. **Article 8(1)** provides that **everyone has the right to respect for their private and family life, their home and their correspondence**.

14. Rights under Article 8 occur most frequently in planning casework and are typically engaged where a decision:

- Would result in the imminent or short-term loss of someone's home, or part of their home (e.g. an extension which is already built and occupied),

- Could realistically lead to the future loss of someone's home, part of their home or future intended home (e.g. where enforcement action would follow a dismissal or a s78 appeal), or
- Could adversely affect living standards or living conditions – ie, the health, wellbeing or quality of life - of persons within their home (this could include accommodation regarded as (e.g.) essential for the health of individuals, or more general effects on living conditions, pollution or flooding).

15. The reference to **'family life'** in Article 8(1) is to matters which are **essential for a person to enjoy a relationship with their family**. Family life is not confined to nuclear families and depends on the nature and cultural context of the relationship, not their legal status. You may need to investigate what constitutes family life in the particular case and consider impacts on both the family unit and on individuals within it[4]. As enforced separation from other family members and any support/assistance they may provide, particularly to children, will be an interference with this right, you must address evidence that family members need to live close to one another, whether in accordance with cultural traditions and/or for practical support.

16. The reference to **'home**' in Article 8(1) means anywhere that can reasonably be regarded as the person's home (not necessarily a 'dwellinghouse' in *Gravesham* terms[5]). A person may have more than one home and need not be occupying the property or living on the land for it to be their home[6]. People whose home may be affected may include tenants on the site, residents who may not be party to the case, or persons living in an unauthorised development which could be subject to enforcement action.

17. Article 8 is a qualified right. **Article 8(2)** defines that there shall be no interference by a public authority with the exercise of [the] right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

18. In the UK this is taken to extend to the proper exercise of the planning system. However, the concept of **proportionality** is critical in determining whether 'interference with' or 'infringement of' a qualified right is permissible. A disproportionate interference would be unjustified and would amount to a 'violation' whereby a person's right would be breached or compromised.

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[4] Stevens v Secretary of State for Communities and Local Government and another [2013] EWHC 792 (Admin), ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4, AZ v Secretary of State for Communities and Local Government [2012] EWHC 3660 (Admin), and Collins v Secretary of State for Communities and Local Government and Fylde Borough Council [2013] EWCA Civ 1193

[5] It was accepted in Gravesham Borough Council v Secretary of State for the Environment [1982] 47 P & CR 142, [1983] JPL 307 that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence.

[6] Rafferty and another v Secretary of State for Communities and Local Government and another [2009] EWCA Civ 809

19. Thus, where relevant in decisions you must be clear whether there would be any interference with the right afforded under Article 8(1), and if so, whether that interference would be justified in accordance with Article 8(2). The first question involves consideration against the '**Bingham checklist**'. The second question may require a '**proportionality assessment**' (see later sections).

Best interests of the child(ren)

20. In *ZH (Tanzania) v SSHD* [2011], the Supreme Court held that 'in making the proportionality assessment under Article 8…the best interests of the child must be a primary consideration'. This refers to Article 3(1) of the United Nations Convention on the Rights of the Child, which provides that the best interests of the child shall be **a primary consideration** in all actions by public authorities concerning children. *ZH* has since been applied in a planning context in other judgments including *Stevens v SSCLG & another* [2013] EWHC 792.

21. Where the evidence indicates that a decision could have an adverse impact on a child or children, rights under Article 8 will be engaged and the best interests of the child(ren) should be **a primary consideration**. This means that **no other material consideration can be intrinsically of more importance** than the best interests of the child. That said, the importance or weight you attach to the child's best interests may alter on analysis of the specific circumstances of the case, and may also be outweighed by other case-specific factors.

22. You are not expected to produce social welfare reports on children whose interests may be adversely affected, but an appropriate and sensitive factual enquiry into their personal circumstances, educational, health and/or welfare needs may be required to establish their best interests. This could extend to, for example, the suitability of accommodation, access to healthcare or education, or the potential effects of air pollution.

23. Unless circumstances indicate otherwise, you may assume that the best interests of the children will be aligned with those of their primary carers who can provide evidence of potential adverse impacts on their interests.

24. Your decision must demonstrate that the best interests of the child(ren) are **at the forefront of your mind**. This means taking them into account when examining all material considerations and assessing whether any adverse impact of the decision on the child's interests is justified and proportionate.

Other Articles of the HRA98

25. **Article 6** provides that everyone is entitled to a **fair and public hearing** within a reasonable time by an independent and impartial tribunal established by law. Guidance on exercising independent judgment, avoiding improper influence, ensuring fairness to all parties during appeal proceedings, and determining appeals in a timely manner, are set out in the 'Role of the Inspector', 'Site Visits', 'Hearings and Inquiries' and 'Gypsy and Traveller' chapters.

26. **Article 1 of the First Protocol** provides that everyone is entitled to the peaceful enjoyment of their possessions…No one shall be deprived of his

possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. This is a qualified right which should be approached on a similar basis to Article 8. Note that 'possessions' can extend beyond land. A person's rights under Article 1 of the First Protocol may be engaged if the person does not own the site, or the use of the possession is unlawful.

27. **Article 2 of the First Protocol** (the right to education) and **Article 14** (prohibition of discrimination) may also sometimes be referred to, usually in relation to community facilities such as places of worship or faith schools, or in connection with Gypsy and Traveller casework.

Addressing Article 8 rights in your decision

Gathering the evidence

28. Where there is likely to be an interference with an individual's human rights, this must be specifically addressed as an integral part of your reasoning[7] **even if the parties have not referred expressly to human rights**. You may need to refer back to the parties, or raise the relevant Article at the event, if your consideration of human rights would otherwise come as a surprise.

29. In written representations cases it will normally be clear from the evidence how individuals' rights may be affected, and for the Inspector to identify the main issues and make a demonstrably 'proportionate' decision. Unless there is evidence to the contrary, you may take assertion or anecdote as evidence; e.g. that an extension is required to create an extra children's bedroom. However, sketchy or unsubstantiated evidence can carry less weight.

30. You must, however, ensure that you have enough information to undertake a proper proportionality assessment. If Article 8 rights are engaged and the evidence is poor or unclear, request further information and/or consider whether an inquiry or hearing is necessary to probe the evidence, ascertain the full effect on family life, and to inform a thorough proportionality assessment whereby appropriate weight is attached to the need for a development (see *Waverley BC v Gray & Others* [2023] EWHC 2161 (KB), which found that a Council should have investigated matters including medical needs, and the lack of alternative sites when these issues came to light, and to reassess the balance of factors, including the proportionality of the decision).

Framing the issue(s)

31. **If human rights have been raised by a party to an appeal, it is likely to constitute a 'main issue'** and you should refer specifically to the Act and relevant Article(s). Concerns raised by interested parties and/or benefits argued by an appellant should also be elevated to main issues if those issues are significant and potentially determinative.

[7] Lough and another v First Secretary of State and another [2004] EWCA Civ 905 (paragraph 48)

32. Frame the main issue in terms of the real-world effects on the individuals, e.g.:

- In householder cases: “the effect of the extension on the living conditions of neighbours” or “the appellant’s need for the extension with regard to their personal circumstances”.
- In Gypsy and Traveller cases: “the general need for and supply of Traveller sites; whether there are suitable, affordable, available and acceptable alternative sites; the personal need of the occupier(s) for a Traveller site; and/or other personal circumstances, including the needs of the children to access health services and/or schooling”.

33. Sometimes the evidence of an effect of the development on private and family life and home is so slender that the issue must be dealt with under ‘Other Matters’. Even then, however, the Inspector can note the claimed effect and deal with it sensitively, so that the parties understand why the issue does not take more space or carry more weight.

34. In casework concerning residential development that has taken place and is being lived in, the Courts have held that unlawfulness **must not weigh either for or against occupiers**[8] when considering the merits of a development (or the reasonableness of the period for compliance with any enforcement notice). However, you should address the likelihood of a refusal of permission resulting in the occupiers being made homeless. Note that children cannot be held to blame for any breach of planning control made by their parents or carers.

Determining whether there would be interference (the Bingham Checklist)

35. *AZ v SSCLG & Gloucestershire DC* [2012] EWHC 3660 (Admin) sets out a five-step test to determine whether a proportionality assessment is required. It is applicable to all cases where Article 8 rights are engaged.

Bingham test	**Application in decisions**
a) Will the proposed refusal of permission be interference by a public authority with the exercise of the appellant’s right to respect for his private or (as the case may be) family life or home?	Your decision must be clear about the potential for it to interfere with a person’s human rights, and thus whether Article 8 is engaged. If the interference would be minor, or there would be no interference, this can be covered concisely.
b) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?	
c) If so, is such interference in accordance with the law?	This is likely to be the case if the planning decision is in accordance with the law – i.e. if the reasoning is adequate and not ‘Wednesbury unreasonable’.

[8] Chapman v United Kingdom [2001]

d)	If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others?	As the planning (etc) system exists to protect economic well-being, health and the rights and freedoms of others, there should be no issue in finding compliance with (d). However, you still need to show that interference is necessary, e.g. in order to meet specific policy aims.
e)	If so, is such interference proportionate to the legitimate public end sought to be achieved?	If the person whose Article 8 right is engaged is the losing party, the interference will be proportionate if it is the minimum necessary to protect economic well-being, health and the rights and freedoms of others (see next section).

Establishing whether the interference would be justified (The 'proportionality assessment')

36. The proportionality assessment is a structured weighing/balancing exercise. *AZ* explains what is necessary. It involves:

- Identifying all relevant considerations relating to the individual and their family's respective rights of enjoyment of family life and a home,
- Identifying the best interests of any children,
- Identifying the particular public or community interest that has to be balanced against the individual and their family's interest, and
- A structured weighing/balancing exercise which must involve the best interests of any children and should strike a fair balance between the rights of the individuals concerned and the interests of the community.

37. The assessment need not be formulaic but may require a two-stage approach:

1) Can the relevant planning policy objective be achieved by means which interfere less with the individual's rights?
2) If the proposed action is the minimum necessary, does it constitute an excessive or disproportionate effect on the interests of the affected person?

38. As part of this assessment, you may need to balance competing Article 8 rights of different parties.

39. The Courts have held that whilst Article 8 may arise regularly in casework, a full proportionality assessment will not usually be needed. For example, where a neighbour alleges that their rights would be directly interfered with by a proposed development, a simple balancing exercise may be sufficient; whereas, if the decision could cause someone to lose their home, a full proportionality assessment would be required where you would need to consider whether policy objectives could be met by less intrusive means.

40. In casework where the loss of a home is an issue, you will usually need to consider the availability and suitability of alternative accommodation, as this could affect the degree of any interference with Article 8 rights and should be taken into account as part of the proportionality assessment. In Gypsy and Traveller cases, you must make a finding about the likelihood of the occupants being forced to live a roadside existence; it is not enough to suggest that a roadside existence is a possibility.

41. Where a proposal would be inappropriate development in a Green Belt or Wedge, a finding that an interference with the right to respect for private and family life is disproportionate will almost inevitably be one that also amounts to a finding that the circumstances are very exceptional.

42. It is crucial that your reasoning demonstrates that you have considered whether conditions could be imposed to reduce or overcome any identified harm, including the imposition of a personal or temporary condition which could obviate, or at least reduce, any interference with Article 8 rights.

Conclusions

43. If you conclude that dismissing the appeal would **violate an appellant's human rights**, (for example, because it would represent an **unjustified interference** with their private or family life), this would, in most cases, logically indicate that the appeal should be allowed. This is because you must have already decided that the personal circumstances of the appellant outweigh any planning harm, or that the proposal would not result in any significant harm.

44. If the **interference would be minor or limited**, you could simply conclude that the decision "is proportionate in the circumstances"; e.g. if dismissing an appeal for the extension of a dwelling which the appellant asserts is needed to provide accommodation for a growing family – but for which no substantive evidence has been provided to demonstrate a need, or to show that the alleged need cannot be met other means. A similarly succinct approach may also be appropriate if you find that a proposal would not cause **unacceptable** harm to a neighbour's living conditions (as opposed to **no** harm – which would equate to **no** interference). You will, however, need to reach a more detailed conclusion if a party has specifically referred to human rights issues.

45. If your decision, based on the planning merits, is wholly in favour of the sole party raising a human rights issue, there would be **no interference** and so it will not usually be necessary to undertake a balancing exercise and reach a conclusion on human rights issues. However, if a party has made a case in relation to human rights, you should briefly explain that this is your approach.

46. Example conclusions are included in Annex B.

The PSED in casework

Basics

47. The PSED set out in S149 of the EA10 applies to you as an individual acting in your capacity as an Inspector and cannot be delegated. In practice, it means that you must:

    - ensure that any decision giving rise to any negative impacts in relation to the 'three aims' of S149 is informed and made with regard to any less harmful alternative outcome, and
    - achieve a positive outcome in respect of the three aims where possible.

48. S149(7) sets out the **protected characteristics** for the purposes of the PSED. These are **age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation**[9].

49. The choice of procedure and how you handle a hearing or inquiry may affect individuals or groups with protected characteristics. If so, you must have due regard to the 'three aims' and take action accordingly (see 'Hearings and Inquiries' for more guidance).

50. In appeal decisions and other casework, you should be alert to any evidence that the local community includes groups of people with protected characteristics (e.g. race, religion or age) who may be affected by your decision or recommendations. A community may not be geographical but united by their protected characteristic(s), such as users of a place of worship.

The protected characteristics

51. **Age** refers to a person of a particular 'age group' (s5 of the EA10). This may be narrow or wide; e.g. 'people under 50', 'young people' or 'older people'. Age discrimination is permissible where proportionate to achieving a legitimate aim; e.g. providing housing for older people only.

52. **Disability**: S6(1) provides that a person has a disability if (a) they have a physical or mental impairment and (b) the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. Note that 'impairment' may be fluctuating, recurring or progressive; either caused by illness or not; and may not be either strictly physical or mental, or even readily identifiable at all.

53. In casework, a clinical diagnosis may provide evidence of the cause of an impairment, but it is not essential information; take people at their word. You should focus on what the effects of the impairment are on normal day-to-day activities, and whether those effects are substantial and/or long-term. To determine whether an effect is substantial, consider factors such as the time taken to carry out the activities and the way that they need to be carried out. In

[9] The protected characteristics for the EA10 also include marriage and civil partnership; but the three aims of the PSED do not apply to that protected characteristic.

doing so, you should put aside the effect of any treatment for the impairment. The effect of an impairment will be long-term if lasting, or likely to last, for at least 12 months or for the remainder of the person's life (Schedule 1).

54. **Gender reassignment:** A person has this protected characteristic if they are proposing to undergo, are undergoing or have undergone (part of) a process for the purpose of reassigning their sex by changing physiological or other attributes of their sex. S7(2) describes people with this protected characteristic as 'transexual', but unless quoting from the EA10 you should use the more respectful term 'transgender' or 'trans' in your decision.

55. **Pregnancy and maternity** are not specifically defined in the EA10 but are subject to various specific provisions.

56. **Race:** S9(1) provides that race includes (a) colour, (b) nationality, (c) ethnic or national origin. S9(2) provides that a person with this protected characteristic is a person of a particular 'racial group'. A person may also belong to more than one racial group.

57. **Religion or belief:** S10(1) and (2) clarify that this extends to any religion, or religious or philosophical belief. This includes a lack of religion/belief, e.g. atheism or agnosticism. It also extends to particular denominations or religions, such as Catholicism or Sunni Islam. However, to be protected a belief must be genuinely held, serious and substantial; see *Nicholson v Grainger plc and others [2009] UKEAT/0219/09*.

58. **Sex:** Under s11(a), a reference to a person with this protected characteristic is a reference to a man or woman. In For Women Scotland Ltd v The Scottish Ministers [2025] UKSC 16 the Supreme Court held that 'sex', 'man' and 'woman' are biological terms and not certificated sex. The Supreme Court took a person's biology as simply their sex [recorded] at birth; the judgment left open the question of how to read s11 of the EA10 in a way which is compatible with the Convention rights, so far as possible, as required under section 3 of the HRA98.

59. **Sexual orientation:** S12 provides that sexual orientation means a person's sexual orientation towards persons of the same, opposite or either sex.

'Due regard'

60. Having 'due regard' means consciously thinking about the 'three aims' as part of the process of decision-making. In *R (oao Sheakh) v Lambeth LBC* [2022] EWCA Civ 457, it was held that s149 "…does not require a substantive result [or] prescribe a particular procedure…[but] implies a duty of reasonable enquiry…[and] requires a decision-maker to understand the obvious equality impacts of a decision". The duty must therefore be exercised in substance, with rigour and an open mind. Moreover, the 'duty of reasonable enquiry' referred to in *Sheakh* also implies that the decision-maker must ask themselves the right questions and take reasonable steps to acquaint themselves with the relevant information to enable them to answer the question correctly.

61. The courts have confirmed that they will not engage in an unduly legalistic investigation of the way in which the impact of a decision on equality needs has been assessed; and that in some circumstances a relatively broad brush approach to enquiry may be adequate. However, whilst you do not have to mention the duty in your decision to have fulfilled it, it is good practice to refer to the provision when s149 is in play. The greater the relevance and potential impact for any group (e.g. in terms of the extent of inequality), the greater the regard required by the duty.

62. It is not possible to fully discharge the duty if the relevant information is not available. The Courts have made it clear that an Inspector is obliged to proactively obtain the necessary information, proportionate to the circumstances, to understand the potential equality impacts of a decision.

63. Where negative impacts are identified, potential ways to mitigate these should be considered. The principle of proportionality applies: the more serious the negative impact, the greater the requirement to grapple with the effects, justify your decision and consider mitigation.

64. Ultimately, it is for you to decide what weight to give to the equality implications of the decision, although any decision that has a negative impact on a protected group must be rationally justified and proportionate.

Cases where the PSED may be engaged

65. The PSED will be engaged where a decision or recommendation will directly or indirectly have an impact on development that is solely or mainly for use by persons or groups of people with a protected characteristic. Hypothetical examples include the use of land as a Traveller site; the construction or change of use of a religious building, community centre or somewhere used as a place to meet by certain groups of people; the erection of a house extension for an elderly or disabled relative; the loss of car parking of value to people with disabilities; the demolition and replacement of a block of flats; or the construction of flats which could threaten the viability of a nearby bar or club of importance to the gay community.

66. Potential direct or indirect impacts may not be immediately evident from the case file but is something that you should be alert to. If you consider that your decision could specifically affect a person or people with a protected characteristic, you will need to reference the three aims, either expressly or implicitly. In *LDRA Ltd and others v SSCLG [2016] EWHC 950,* even though the PSED had not been referred to by the Council and was not a 'main issue', the Inspector was found to have erred by not grappling with the effect of removing disabled parking spaces. The judge ruled that if the Inspector was not 'fully appraised on the relevant information, they were obliged to seek it out'.

67. Consequently, you may need to seek further evidence or inquire further at the event. If there is a prospect of a serious harm to persons with protected characteristics, or their needs being a decisive factor, you may opt to change a

written representation case to a hearing or inquiry, to properly test the evidence and fully air the implications of the PSED.

68. The PSED may be engaged in casework involving children, since they have the protected characteristic of age. However, in practice, children's human rights and best interests are most likely to be engaged and to provide a useful lens for the Inspector than the PSED.

Addressing the PSED in your decision

69. Your approach should be similar to Article 8 matters – but where both are raised, address them separately. The PSED matter must be an integral part of the reasoning that leads to the decision, whether or not the parties have referred to it. You should frame issues not in terms of the duty, but on specific real-world impacts. Ascribe weight to effects and have 'due regard' to the three aims before making the decision or recommendation. If referring to the PSED, use the phrase "the Public Sector Equality Duty contained in the Equality Act 2010". Ensure that you do not refer in detail to any personal sensitive information, even if crucial to the outcome.

Main issues and reasoning

70. To comply with the PSED, when assessing the evidence, you should consider whether there would be potential equalities implications for any parties to a case or other individuals/groups. If the evidence suggests that an issue related to protected characteristics is significant for those people and/or potentially decisive, it will normally be a main issue in the decision. In cases where there is a clear negative impact on a protected group you should always directly reference the PSED or section 149 in your decision.

71. Examples of main issues where the PSED is engaged may include:

- "The need of the local Islamic community for the appeal proposal" (e.g. a mosque or madrasa (Islamic school)), or
- "The appellant's need for a house extension, given their personal circumstances and Haredi Jewish faith".

72. As with private and family life and home, sometimes the evidence of an effect of the development on persons with protected characteristics is so limited that the issue must be dealt with under 'Other Matters'. Even then, however, the Inspector can deal sensitively as well as succinctly with the matter, so the persons in question feel heard and understand why the decision has been decided as it has.

73. In recent cases concerning the PSED, even where a breach of s149 has been identified, the Courts have sided with decision-making authorities where they have been able to demonstrate that they understood the substantive issues when they took the decision. This makes focussing on the real-world effects on

people with protected characteristics key to demonstrating substantive compliance with the PSED; e.g.:

- If a decision would result in someone having to move elsewhere, directly addressing impacts such as the effect of separation from family/support networks on physical/mental health, financial well-being, and schooling,
- If a decision would result in the loss of a community facility disproportionately affecting a group of people with protected characteristics, directly addressing any issues raised by objectors and considering whether alternative facilities would mitigate PSED effects.

74. It may also be necessary in the main issues and reasoning to have regard to any 'less harmful alternative outcome'; for example, whether there are suitable alternative sites, or whether conditions could mitigate any harm. Imposing a temporary or personal condition may reduce adverse impacts on persons with protected characteristic to the minimum necessary.

75. For major developments and at examinations, an Equality Impact Assessment (EqiA) may have been submitted. It is not for you to judge whether the EqIA is robust or the party who prepared it discharged the PSED; instead, you should consider it alongside the other evidence to inform your own decision. You may choose to ascribe significant weight to an EqIA whilst not being bound by all its findings, especially if you consider it to underestimate specific impacts.

Conclusions

76. Where the PSED is engaged, the decision must be shown to be proportionate and should include the following:

- The findings on the main issues, including the weight ascribed to those findings and with regard, where appropriate, to conditions.
- The balance, and what decision that points to.
- The implications of that decision for persons with protected characteristics in terms of the three aims of the PSED.
    - If the decision will be consistent with the PSED, whether meeting the aims to 'advance equality of opportunity' or 'foster good relations' add weight to the conclusion.
    - If the decision is not consistent with the three aims of the PSED, why it is nonetheless proportionate. This means that your conclusion should recognise the effect on protected groups but provide reasons as to why that is outweighed by other considerations in the final balancing exercise.

77. Example wording for conclusions is set out in Annex B.

Annex A: Names, Titles, Pronouns and Terminology

1. When writing names in a decision letter or report, or asking for the name of a party or participant, Inspectors should bear in mind that:

    - ‘Personal’ names do not always come first.
    - Not everyone has a ‘family’ or hereditary name.
    - Not everyone in a family has the same family name.
    - A person may have a ‘religious’ name that they should not be addressed by alone.

2. At events, ensure that events are inclusive by greeting ‘everyone’ (rather than ‘ladies and gentlemen’) and asking individuals for their preferred title and pronouns. It may reduce risk of data breach as well as offence to refer to individuals by the gender-neutral ‘they’ in decision letters and reports.

3. It will also assist participants if Inspectors announce at events how they wish to be addressed, e.g. whether as ‘Inspector’, ‘Sir’, or ‘Ma’am’.

4. Civil servants are advised not to use the acronym ‘BAME’ – standing for ‘black, Asian and minority ethnic’ – as an umbrella term. This is because the term emphasises some ethnic groups over others, and serves to homogenise distinct groups. The Cabinet Office Race Disparity Unit (RDU) has issued guidance on writing about ethnicity. If it is absolutely necessary to use an umbrella term, reference should be made to ‘ethnic minorities’ or ‘people from different ethnic minority backgrounds’. Where possible, however, racial groups should be described in the same terms – with the same capitalisation – as the Census.

5. The same approach should be taken to religion and so, for example, the decision letter might need to record, for example, that ‘the appellant is Asian British and a member of the Sikh faith’.

6. Notwithstanding the terminology in S7(2) of the EA10, the terms ‘transgender’ or ‘trans’ should be used as shorthand for people with the protected characteristic of ‘gender reassignment’.

7. Parties may use different words or phrases to describe protected characteristics and doing so will not necessarily be wrong or inappropriate. However, it is essential that language is always respectful and clear. It may be necessary to agree consistent wording with the parties in hearings or inquiries, and the starting point should be the terminology used by those with the relevant protected characteristics.

Annex B: Example wording in conclusions

Human Rights: no interference

Representations were made to the effect that the appellant's human rights under Article 1 of the First Protocol, as set out in the Human Rights Act 1998, would be violated if the appeal is dismissed. Since I have decided to allow the appeal and grant full planning permission for the proposed development, there will be no interference with the appellant's right to peaceful enjoyment of their possessions.

Human Rights: limited interference

Representations were made to the effect that the rights of the adjoining occupier, Ms X, under Article 8 as set out in the Human Rights Act 1998 would be violated if the appeal were allowed. However, I have found that the proposed development would not result in the neighbouring property being overlooked so that Ms X would suffer unacceptable harm to her living conditions. The development would not conflict with Local Development Plan Policy Y or guidance in the SPG. I am therefore satisfied that a grant of planning permission would not unacceptably interfere with Ms X's right to a private and family life and home. It is proportionate in the circumstances to allow the appeal.

Human Rights: significant but still proportionate interference

I have found that the appeal garden building is inappropriate development in the Green Belt and harmful to the Green Belt by definition. I attach substantial weight to the harm caused to the Green Belt by reason of inappropriateness.

In favour of the appeal, I have found that the building is being used as a dwelling by the appellant's son, who has reached adulthood but is unable to afford market housing elsewhere and is ineligible for social housing. I am sympathetic and attach significant weight to the family's situation.

However, their circumstances can be expected to change, whereas the building would remain on the site and continue to harm the Green Belt in posterity. The appellant also accepted at the hearing that his son could return to the main house and they could explore options such as a loft conversion.

Dismissing the appeal would interfere with the appellant's and his family's rights to peaceful enjoyment of their possessions, and to a private and family life and home, under Article 1 of the First Protocol and Article 8 as set out under the Human Rights Act 1998. However, those are qualified rights; interference with them in this instance would be in accordance with the law and in pursuance of a well-established and legitimate aim: the protection of the Green Belt.

Since the appellant's son will not be made homeless, it is proportionate and necessary to refuse to grant planning permission. There will be no violation of the appellant's or his family's human rights. The protection of the public interest cannot be achieved by means that are less interfering with their rights.

PSED: the losing party has protected characteristics

I have found that the proposed community centre would be served by a substandard access to the main road and conditions could not be imposed to remedy the design defects. A grant of permission for the development would give rise to an unacceptable loss of highway safety. I attach substantial weight to this finding against the appeal.

My finding that the development would cause no unacceptable harm to the character and appearance of the area does not count for or against the appeal. However, it is a positive consideration that the community centre would provide vital support services for disabled and older people in the area. Given the lack of alternative facilities, I attach significant weight to the benefits the development would afford to those persons.

However, that disabled and older people would be the main users of the community centre also reinforces my concerns that the site could not be reached in reasonable safety. The risks to human health which would be caused by this development must be the decisive consideration.

I have had due regard to the Public Sector Equality Duty (PSED) set out under s149 of the Equality Act 2010, but the risks caused by the proposed community centre outweigh its benefits in terms of eliminating discrimination against persons with the protected characteristics of age and/or disability, advancing equality of opportunity for those persons and fostering good relations between them and others. I conclude that it is proportionate and necessary to dismiss the appeal.

Human Rights and the PSED: limited interference but compliance with the three aims (personal permission)

I have found that the caravan site causes serious and unacceptable harm to the character and appearance of the surrounding area, in conflict with Local Development Policy X. Imposing a condition to require a landscaping scheme would mitigate but not overcome that harm which carries significant weight against a grant of planning permission.

In favour of the appeal, I have found that the Council has an immediate shortage of Traveller sites; there are no suitable and available alternative sites; and the appellant's family have a pressing personal need for a settled base from which the children could regularly attend school. I also attach significant weight to these considerations.

On balance, I am satisfied that the harm which would be caused by the development outweighs the other considerations to the extent that permanent planning permission should not be granted. However, it is also necessary to consider whether a time-limited permission could be granted. There is a pressing case to do so in order that the children have a secure and stable upbringing and education. Granting a time-limited permission would also give the Council a period in which to increase its supply of land for Traveller sites and mean that the harm caused by the use to the appearance of the countryside comes to an end in the foreseeable future.

I have had regard to the rights of the appellants under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998. Article 8 affords the right to respect for private and family life and home, including the traditions and culture associated with the Romany Gypsy way of life and the best interests of the children. It is a qualified right, and interference may be justified where that is lawful and in the public interest. The concept of proportionality is crucial.

Dismissing the appeal or granting a time-limited permission would interfere with the appellants' rights under Article 8, since the consequence might be that the family is rendered homeless at some point. However, the interference would be in accordance with the law and in pursuance of a well-established and legitimate aim: the protection of the character and appearance of the countryside.
Given the circumstances overall, I find that a grant of personal permission would be proportionate and necessary. It would protect the appearance of this rural area in posterity and the best interests of the children now. It would avoid a violation of the appellants' rights to a private and family life and home. The protection of the public interest cannot be achieved by means that are less interfering with their rights under Article 8.

Since the appellants are Romany Gypsies, they share the protected characteristic of race for the purposes of the Public Sector Equality Duty (PSED) under s149 of the Equality Act 2010. Given the foregoing, it is necessary and proportionate to permit the development on a personal basis in order to eliminate discrimination against and advance equality of opportunity for the appellants, and to foster good relations between them and the settled community.

For these reasons, I conclude that the appeal should be allowed and planning permission should be granted subject to a personal and other conditions discussed further below.

Overall Conclusion – 'Other Matters', PSED, losing party has protected characteristics (Green Belt)

Other Considerations
…In relation to the hardstanding…customer has written to inform me that his disabled son can only [use the wider development] because there is accessible parking close to the lake. I must take it that a refusal of permission for the hardstanding would reduce equality of access to a recreational use…none of those points…explain why the hardstanding covers…the ground that it does.

….Since the appellants have not shown that the hardstanding is no larger than necessary or properly designed for its purpose, I can only attach moderate weight to the appellants' need for accessible parking as a consideration in favour of a grant of permission.

Conclusion
…the hardstanding [and other structures] are all inappropriate development in the Green Belt. In accordance with PPW, I attach substantial weight to the harm caused to the Green Belt. I also find that the harm caused by the structures to the

character and appearance of the site and surrounding area is serious and conflicts with……...[policy]

…The appellants' and their customers' needs for accessible car parking [and other considerations] only carry moderate weight…[and] do not clearly outweigh the harm…Very special circumstances…do not exist to justify the development.

I have had due regard to the Public Sector Equality Duty set out under the Equality Act 2010. The harm caused by the appeal development outweighs its benefits in terms of eliminating discrimination against persons with the protected characteristics of disability, advancing equality of opportunity for those persons and fostering good relations between them and others.