

MAIDSTONE BOROUGH COUNCIL

LEADER OF THE COUNCIL

REPORT OF HEAD OF DEVELOPMENT MANAGEMENT

Report prepared by Rob Jarman

Date Issued: 28 June 2011

1. CONSULTATION BY DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT ON 'PLANNING FOR TRAVELLER SITES.'

1.1 Key issue for decision

1.1.1 To consider the Council's proposed response to the Consultation Document, in particular, a draft Planning Policy Statement (PPS) on 'Planning for Traveller Sites.'

1.2 RECOMMENDATION

1.2.1 That the Leader agrees the proposed response to the specific consultation questions set out in this report.

1.2.2 That the Council's response be conveyed to the Department for Communities and Local Government to meet the consultation deadline of 3 August 2011.

1.3 Reasons for recommendation

CONTEXT

1.3.1 The consultation document is concerned with the withdrawal and replacement of Circular 01/2006: 'Planning for Gypsy and Traveller Caravan Sites' and Circular 04/2007: 'Planning for Travelling Showpeople', with a new Planning Policy Statement (PPS) entitled 'Planning for Traveller Sites.' The 12 week consultation period commenced on 13 April 2011 and terminates on 3 August 2011.

1.4.2 On 29th August 2010, the Secretary of State for Communities and Local Government announced the Government's intention to withdraw the existing traveller planning circulars (see above). The replacement document is set out in Appendix One.

1.4.3 The intention is "to provide a fair deal for traveller and settled communities" because there is a perception is that there is one law for travellers and another one for the rest.

- 1.4.4 Central government intends to give local planning authorities “the freedom and responsibility” to determine adequate site provision. This follows on from ‘Open Source Planning’.

POLICY BACKGROUND

- 1.4.5 The definition of ‘gypsy and traveller’ for planning purposes is based on lifestyle and not ethnicity. However, those living on traveller sites in England are predominantly either Romany Gypsies or Irish Travellers. Most now live in ‘bricks and mortar’ houses rather than caravans. The number of unauthorised developments has been steadily increasing with 728 in 2000 to 2,395 in 2010. The Government recognises that the vast majority of gypsies do not travel on a daily basis all year round.
- 1.4.6 Gypsies are recognised as having a protected characteristic under the Equality Act 2010. Case law has also established that the Government has a duty to “facilitate the gypsy way of life” for ethnic Gypsies and Travellers under the Human Rights Act.
- 1.4.7 Travelling showpeople are members of a community that consists of self-employed business people who travel the country, often with their families, holding fairs. Some travelling showpeople do not operate funfairs but instead hold circuses. Travelling showpeople require secure, permanent bases for the storage of their equipment, maintenance of rides and for residential purposes. Circus people are likely to require an enclosed space in which to rehearse and may also require space in which to exercise animals.
- 1.4.8 A central aim of the central government is to facilitate the provision of traveller sites through the planning system. Central government sees regional strategies as providing top-down targets (although Regional Spatial Strategies are planned to be abolished). Rather than this, local planning authorities will be responsible for determining the right level of site provision in their area and in consultation with local communities. The top-down approach will be replaced with a duty on Councils to work together across boundaries in a way that reflects their genuine shared interests by way of a duty to co-operate.
- 1.4.9 Private traveller sites are a key component in meeting requirements, however, a supply of affordable sites is a key challenge and reliant on grant support. However, the grant application process takes a significant amount of time and there is a great deal of uncertainty. It is also the subject of fierce competition across England. The evaluation process can be time consuming and has to be robust enough to withstand potential Judicial Reviews.

1.4.10 Central government recognises that discrimination and existing poor social outcomes among traveller communities needs to be addressed. However, contemporaneously, the Government wants to tackle unauthorised developments. In the Localism Bill the Government is proposing measures to limit the opportunities for retrospective planning permission, however, the overwhelming majority of planning applications are retrospective and this causes much concern in the settled community. Neither existing central government policy nor former Development Plan policy have failed to stem the tide of retrospective planning applications.

MATTERS FOR DECISION

1.4.11 The new Government policy aims to:-

- Enable local planning authorities to make their own assessment of need for the purposes of planning.
- Enable local planning authorities to use their assessment of need to set their own targets.
- Encourage local planning authorities to plan for sites over a reasonable timescale.
- Protect Green Belt from development.
- Ensure that local planning authorities, working collaboratively, develop fair and effective strategies to meet need through the identification of sites.
- Promote more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites.
- Reduce the number of unauthorised sites and make enforcement more effective if local planning authorities have regard to this policy.
- Ensure that the development plan includes fair, realistic and inclusive policies.
- Increase the number of traveller sites, in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply.
- Reduce tensions between settled and traveller communities in plan making and planning decisions.
- Enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure.

CONSULTATION QUESTIONS AND SUGGESTED RESPONSES

1.4.12 "Q1: *Do you agree that the current definitions of 'gypsies and travellers' and 'travelling showpeople' should be retained in the new policy?*"

Suggested response: This Council disagrees with retaining the existing definition of gypsies and travellers because, in our experience, this definition is not accepted as being fair and is also considered to be too loose by members of the settled community. The current definition is:-

"Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such". (My underlining)

It is our experience in having one of the highest concentrations of gypsy sites in England that the settled community does not consider many gypsies in this Borough to be of a nomadic habit. This is because many are landscape gardeners/businessmen who do not regularly travel over a wide area looking for work. Rather, they have fixed contracts in the same way as many builders, engineers, supply teachers etc. have, which means they only travel for specific contracted work and it often involves a daily commute. We cannot understand why this is a nomadic habit of life and neither can many residents. It is suggested that gypsy applications are accompanied by evidence of wage bills, receipts etc. to demonstrate a nomadic habit of life rather than anecdotal accounts of a visit to a horse fair, or horse trading which are often hobbies or secondary sources of income. The Council does not understand how occasional trips to horse fairs can represent a nomadic habit of life.

It is difficult for the local Planning Authorities communicating to the public how landscape gardeners, tarmac businesses and general builders are considered to have a nomadic habit of life or deciding to take up the "nomadic habit" for the first time.

As well as being too vague, the current definition allows for too many exceptions to the 'nomadic habit of life' definition. Most gypsy families have children (that need to be educated), older gypsies who cannot travel and the health needs are often wide-ranging, all allowing gypsies to 'cease travelling' and therefore provide many categories of exception to the current definition.

The reason why parts of Maidstone Borough continue to be popular with gypsies is down to many male gypsies having their own businesses and finding the price of agricultural land to be affordable. Maidstone has a high percentage of countryside and so supply matches demand in terms of market forces.

1.4.13 *"Q2: Do you support the proposal to remove the specific reference to 'Gypsy and Traveller Accommodation Needs Assessments' in the new policy and instead refer to a "robust evidence base?"*

Suggested response: Yes, this would allow Local Planning Authorities more flexibility but such an evidence base would have to be the subject of consultation and withstand the rigours of examination. This would be in the spirit of localism.

This Council particularly welcomes paragraph 7 of the Draft Planning Policy Statement in that this Borough has granted numerous planning permissions in recent years for gypsy sites in the open countryside whereas for 'bricks and mortar' housing it has been overwhelmingly concentrated on urban 'brownfield' sites. The amount of approved pitches was actually more than that envisaged by the GTAA for the period April 2006 to April 2011 and this should "inform policy development" because other types of residential development have been refused on 'greenfield sites'.

1.4.14 *"Q3: Do you think that Local Planning Authorities should plan for "local need in the context of historical demand?"*

Suggested response: No. The reliance on 'historic demand' in setting pitch targets would result in the perpetuation of existing patterns of provision. The authorities that have met their responsibilities in the past and provided sites like this Authority must continue to do so; however, this should be based on an up-to-date assessment of the need for sites in the countryside for "persons of nomadic habit of life" rather than any historic nostalgia. Gypsies and Travellers haven't worked on farms in any great numbers for decades and now tend to have no functional relationship with the countryside often. It is often a life-style choice and one which is often affordable. 'Achieved provision' should be more relevant than historic demand. Page 63 of the impact assessment recognises that some authorities have been overburdened. This fact needs to be recognised in the PPS itself.

It would also help if this was to become 'light touch' guidance on defining local need. We have been advised by counsel that a 'local connections' policy cannot be applied to gypsy sites as is the case with 'bricks and mortar' rural exception sites which are also on 'greenfield' sites.

There should be some recognition of the local authorities that house higher levels of gypsies and travellers because of the resultant impact on the character and appearance of the countryside. As such, there should be scope to set lower levels due to the higher numbers of gypsies and travellers.

1.4.15 "Q4: Do you agree that where need has been identified Local Planning Authorities should set targets for the provision of sites in their local planning policies?"

Suggested response: Yes. This should be explicit and would introduce more transparency and certainty.

1.4.16 "Q5: Do you agree with the proposal to require Local Planning Authorities to plan for five-year supply of traveller pitches/plots?"

Suggested response: It is too premature to give an informed response. It is our strongly held view that the suggested six month implementation period is inadequate in order to achieve a five-year supply through the allocation of sites in a DPD. It is relevant that no authority has yet adopted a DPD allocating gypsy and traveller sites and that this demonstrates the complexity and resource issues involved in getting such a DPD approved. There is always opposition to whatever sites are identified and it is very difficult to engage the public positively in this process. Stakeholders are often reluctant to take part in a search for sites exercise. Suitable sites on the edge of the urban area have often been 'land banked' by volume house-builders. Hitting local planning authorities with the 'stick' of a 6 month implementation period is not considered to be constructive. The same obstacles to progression will remain.

We would suggest a minimum 18-month period for reasons of deliverability cited above and the likely 'log-jam' for the Planning Inspectorate.

Another major concern with the draft PPS is point 9(c) on page 35:- "in determining how much land is required, not include sites for which they have granted planning permission unless they can demonstrate, based upon robust evidence, that the sites are developable and are likely to contribute to delivering locally set targets at the point envisaged". (My underlining)

It is understood that the suggestion in the draft PPS is not to include planning permissions for existing gypsy sites which are occupied by gypsy families as allocations in any DPD. The logic of this is not understood. Perhaps we have misconstrued what is proposed in point 9(c)? in that this is both unfair and inconsistent with 'bricks and mortar housing' assessments.

Gypsy and traveller sites do not constitute a mature market as is the case with 'bricks and mortar' housing.

- 1.4.17 "Q6: *Do you agree that the proposed wording of Policy E (in the draft policy) should be included to ensure consistency with Planning Policy Guidance 2: Green Belts?*"

Suggested response: The removal of the word 'normally' is to be welcomed. However, the unfairness felt by the settled community which the consultation paper inter-alia majors on, (paragraph 3.16 and elsewhere) equally applies to those living in countryside locations which are not Green Belt.

It is recommended that there is some stronger reference to Areas of Outstanding Natural Beauty only being suitable for sites in demonstrable exceptional circumstances. This national designation is based on the intrinsic beauty of an area.

- 1.4.18 "Q7: *Do you agree with the general principle of aligning planning policy on traveller sites more closely with that for other forms of housing?*"

Suggested response: Yes, very much so. It should result in a fairer planning system and reduce the likelihood of 'rogue' appeal decisions.

- 1.4.19 "Q8: *Do you think the new emphasis on Local Planning Authorities consulting with both settled and the traveller communities when formulating their plans and determining individual planning applications will reduce tensions between these communities?*"

Suggested response: Potentially, yes, this would seem to be a sensible approach.

- 1.4.20 "Q9: *Do you agree with the proposal in the transitional arrangements policy (paragraph 26 of the draft policy) that asks Local Planning Authorities to "consider favourably" planning applications for the grant of temporary permission if they cannot demonstrate an up-to-date five-year supply of deliverable traveller sites to ensure consistency with Planning Policy Statement 3: Housing?*"

Suggested response: The Council fundamentally disagrees with this. In the short term there is little realistic prospect of providing a 5 year land supply. The proposal to treat planning applications 'favourably' where there is no five-year supply moves to an unacceptable presumption to grant permission, irrespective of the proper consideration of the planning impacts. This seems to be a 'knee-jerk' response and is overly punitive and is highly likely to cause deep concerns amongst the settled community. The 5 year land supply objective should be incentivized so that local authorities can plan positively.

1.4.21 "Q10: *Under the transitional arrangements, do you think that six months is the right time Local Planning Authorities should be given to put in place their five-year land supply before the consequences of not having done so come into force?*"

Suggested response: This Council is against this (see response to Q5 above), the timeframe is far too short and it is against a background of raised public expectations. It has always been difficult to allocate gypsy sites because of a lack of a 'buy-in' from external parties and we cannot see the controversy created by many gypsy proposals diminishing.

1.4.22 "Q11: *Do you have any other comments on the transitional arrangements policy?*"

Suggested response: The statement that, 'some rural areas may be acceptable for some form of traveller site', is vague and gives no clarity on the national position for this form of development in the countryside. As a form of housing, gypsy sites should be subject to the PPS7 requirement to strictly control new housing in the countryside (paragraph 9 iii).

Secondly, the draft 'top down' target for the RSS was aimed at redistributing gypsy sites across the south east in order to provide a more even and fairer distribution. Whilst we appreciate that there will be a duty for local authorities to co-operate, in practice, getting local authorities to 'buy-in' to a redistribution policy is likely to be challenging. We strongly advocate that public sites should be of a size and location as to benefit more than one local authority. By doing this, the benefits will be more evenly spread.

1.4.23 "Q12: *Are there any other ways in which the policy can be made clearer, shorter or more accessible?*"

Suggested response: See response to question 11 above but generally there is a need to be a degree less 'light touch' otherwise the new guidance will be open to the interpretation of the Planning Inspectorate.

On a more philosophical note, it would appear that the planning system has failed with regard to the supply of 'acceptable' gypsy sites. We would suggest closer working between LAs and RSLs and that an obligation is placed on RSL's to increase the supply of acceptable gypsy sites where there is a need.

1.4.24 "Q13: *Do you think that the proposals in this draft statement will have a differential impact, either positive or negative, on people because of age, disability, gender reassignment, pregnancy and*

maternity, race, religion or belief, sex and sexual orientation? If so, how in your view should we respond? We are particularly interested in any impacts on (Romany) (Gypsies and Irish) travellers and welcome the views of organisations and individuals with specific relevant expertise. (A draft Equalities Impact Assessment can be found at Annex C).

Suggested response: This Council always produces Equality Impact Assessments for any key policy changes and this would be good practice in this instance.

1.4 Alternative Action and why not Recommended

1.4.1 The Council could make no comment but would lose an opportunity to have an input into future traveller policy and guidance being considered by the government.

1.5 Impact on Corporate Objectives

1.5.1 There are no specific impacts on Corporate Objectives currently arising from this report. Any potential future impact will become clearer once the proposed planning policy statement is finalised and published.

1.6 Risk Management

1.6.1 No specific risks are involved with the recommendations or actions resulting from the proposed decision.

1.7 Other Implications

1.7.1

1.	Financial	
2.	Staffing	
3.	Legal	
4.	Equality Impact Needs Assessment	
5.	Environmental/Sustainable Development	X
6.	Community Safety	
7.	Human Rights Act	X
8.	Procurement	
9.	Asset Management	



1.7.2 The implications of any future policy guidance in respect of the Human Rights Act will be taken into account by the issuing Government department and any subsequent decisions by the Council will have regard to the Human Rights Act.

1.8 **Conclusions**

1.8.1 The proposed new planning policy statement will have important implications for this Borough and its future consideration of gypsy and traveller issues. It is important therefore that the Council makes its views clear on the policy approach being considered by the government.

1.9 **Relevant Documents**

1.9.1 Appendices

Draft Planning Policy Statement: 'Planning for Traveller Sites'

1.9.2 Background Documents

- Communities and Local Government Department: 'Planning for traveller sites': Consultation document April 2011
- Circular 1 of 2006 'Planning for Gypsy and Traveller Caravan Sites'
- Circular 04/2007 'Planning for Travelling Showpeople'

IS THIS A KEY DECISION REPORT?

Yes

No

If yes, when did it first appear in the Forward Plan?

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This is a Key Decision because:

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Wards/Parishes affected:

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How to Comment

Should you have any comments on the issue that is being considered please contact either the relevant Officer or the Member of the Executive who will be taking the decision.

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