

REPORT TO GYPSY/TRAVELLER SUB-COMMITTEE ON 15TH FEBRUARY 2005

BRIEFING NOTE FOR DISCUSSION

Planning for Gypsy & Traveller Sites ODPM Consultation Paper - December 2004

1. The Consultation Paper comprises a review of the guidance contained in DoE Circular 1/94 "Gypsy Sites and Planning".
2. The main changes proposed for a new Circular are:
 - a new definition of "Gypsy";
 - a requirement that Local Authorities identify suitable site for Gypsies and Travellers in Development Plan documents;
 - improved guidance on the criteria against which proposals for non-allocated sites will be considered;
 - clarification of the role of local housing assessments;
 - information about the Race Relations Act;
 - advice on engaging Gypsies and Travellers; and
 - advice on how Gypsies and Travellers should engage with the Planning system.
3. The period for consultation runs until 18th March 2005. A report is being prepared for consideration at Environmental Services Committee on 3rd March 2005.
4. A copy of the main parts of the draft Circular is attached to this report as Appendix 1.

Definition of "Gypsy"

5. The key change proposed in the draft Circular is to clarify that Gypsies and Travellers can still be classified as such, even though they may have given up their nomadic habit. As recently as January 2005, a neighbouring Council has been arguing in an Appeal Hearing that it does not seem to make any sense that Gypsies should be able to give up their nomadic lifestyle and settle permanently on a Green Belt site, and this definition flies in the face of that argument.
6. There is little doubt that a settled existence can bring about improvements in terms of access to health and education, etc. However, the fact that this may be the case should not be used as part of an argument to justify overriding national and local policies on the use of land. The government accepts this perspective, but in practise it may be very difficult to take such a clear view of the situation.

Local Housing Assessments

7. It is considered there is insufficient understanding of the needs of Gypsies and Travellers. The Essex Planning Officers Association has commissioned Salford University to undertake some work in Essex on Gypsy and Traveller

accommodation needs. The results of this work are not expected until July 2005, and will be reported to Members thereafter.

8. The University of Salford's study effectively anticipates the advice the government is proposing to include in the new Circular. The draft advises that Local Authorities will be required to produce a local housing assessment that takes into account the needs of Gypsies and Travellers, including the need for legal sites to station their caravans.
9. The draft Circular identifies a key role for the Regional Spatial Strategy (RSS) and Regional Housing Strategy (RHS) in ensuring that robust assessments of need are carried out. So, whatever the mechanism, it is very clear that assessments of need must be carried out and, as discussed below, Local Authorities must act on these in preparing their Development Plan Documents (DPDs).

Development Plan Documents

10. It is absolutely clear from the draft Circular that where a need is recognised, DPDs must identify suitable locations for Gypsy and Traveller sites. Therefore, where a need is identified and a Local Authority does not allocate a site or sites, there is every likelihood that decisions on sites may be made, either by a DPD Inquiry Inspector, or via a Planning Appeal.
11. Interestingly though, the advice is that sites should only be allocated if they are controlled by the Local Authority, or there is a realistic likelihood they will be made available. It is quite likely that many local authorities will not control land that might be used for this purpose and therefore the examination of sites that might be developed could become a resource intensive process.
12. If a need is not identified, Local Authorities should still include a criteria based policy against which site proposals can be considered. The Adopted Local Plan and Replacement Local Plan do include such a policy, and it is considered there will not be a need for this to be substantially altered. The policy will be scrutinised through the local plan inquiry process in February/March 2005.
13. In respect of private applications, Local Authorities are advised these must not be refused on the grounds that provision is adequate, because alternative accommodation is available or because the applicant has no local connection. The key to a decision must be a proper assessment of the material planning issues.

Human Rights

14. This section of the new Circular reiterates that Local Authorities should consider the consequences of refusing or granting planning permission or taking enforcement action on the rights of the individuals concerned and whether it is necessary and proportionate in the circumstances.

Resource Implications

15. It is clear from recent and on-going events in neighbouring authorities that significant resources can be required to deal with Gypsy and Traveller issues.

However, the problem for now is that it is unauthorised sites that suck in resources and it may be that a measured site allocation policy firmly based on identified need would reduce the resource input required. Members might like to give some consideration to this issue.

Conclusions

16. This briefing note is intended to act as a focus for discussion of the issues raised in the draft Circular. As indicated, a report is being prepared for Environmental Services Committee and any matters raised by this Sub-Committee will be reported on for decision on the 3rd March 2005.

17. It is considered that the key areas for discussion centre on:

- Definitions
- Assessment of need
- Development Plan Policies and proposals
- Human Rights issues
- Resource implications

Extract from Draft Circular – Planning for Gypsy and Traveller Sites

Introduction

1. The Government is committed to ensuring that members of the Gypsy and Traveller communities should have the same access to decent and appropriate accommodation as every other citizen and that there are sufficient sites available to meet their needs. This Circular replaces Circular 1/94 “Gypsy Sites and Planning” and provides updated guidance on the planning aspects of finding sites for Gypsies and Travellers and how local authorities and Gypsies and Travellers can work together to achieve that aim.
2. A new Circular is necessary because evidence shows that the advice set out in Circular 1/94 has failed to deliver adequate sites for Gypsies and Travellers in many areas of England over the last 10 years. Since the issue of Circular 1/94, and the repeal of local authorities' duty to provide Gypsy and Traveller sites there have been more applications for private Gypsy and Traveller sites. However, local planning authorities has refused the majority of these.
3. A new direction is necessary to ensure that the accommodation needs of Gypsies and Travellers are addressed with the same consideration as is given to the accommodation needs of other sections of the community. This will also help to promote good community relations at the local level, and avoid the conflict and controversy associated with unauthorised developments and encampments.
4. Major changes to the planning system have been introduced by the Planning and Compulsory Purchase Act 2004 (the 2004 Act). The planning tools which the Act makes available and the associated move to more positive planning will help deliver communities that are sustainable and work better for people.
5. Regional spatial strategies (RSS) strengthen planning at the regional level. Local development frameworks (LDF) offer more flexibility to planners at the local level. Requirements for early community involvement will help to ensure plans better reflect community aspirations and can be implemented more effectively.
6. Priority setting in local plans is the responsibility of local authorities within the framework provided by national policy and the RSS. Communities will determine through their local planning authorities what the priorities are for local development. Site-based decisions and allocations are made at this local level. The local housing strategy (LHS) will show how the accommodation needs identified by the local housing assessment will be met, including those of Gypsies and Travellers. The development plan documents (DPDs) will identify the location of sites.

7. The new planning system as set out in the 2004 Act places emphasis on early consultation between local authorities and the communities they serve. The aim is to ensure that plans properly reflect the needs and aspirations of all sectors of the community. In the case of Gypsies and Travellers, such early engagement should help in the identification of suitably located sites and a reduction in unauthorised encampments and developments.
8. The Housing Act 2004 requires local housing authorities to include Gypsies and Travellers in their local housing needs assessments and to take a strategic approach, including drawing up a strategy demonstrating how the accommodation needs of Gypsies and Travellers will be met, as part of their wider housing strategies.
9. This Circular applies equally to the development of public sites by local authorities or registered social landlords (RSLs) and to applications for planning permission from Gypsies and Travellers themselves or from others wishing to develop land for use as a Gypsy and Traveller caravan site, whether for residential or transit use, and for whatever the expected life of the site itself.
10. The Circular comes into effect immediately. Its main intentions are:
 - to increase significantly the number of Gypsy and traveller sites with planning permission in order to address under-provision;
 - to recognise, protect and facilitate the traditional lifestyle of Gypsies and Travellers;
 - to identify and make provision for the resultant land and accommodation requirements;
 - to help or avoid Gypsies and Travellers becoming unintentionally homeless;
 - to reflect the status of Gypsy and Traveller accommodation as a part of wider housing provision;
 - to create and support sustainable, integrated communities where Gypsies and Travellers have equality of access to suitable accommodation, education, health and welfare provision, and where there is mutual respect between all communities for the rights and responsibilities of each community and individual;
 - to promote more private Gypsy and Traveller site provision in appropriate locations through the planning system, while recognising that there will always be those who cannot provide their own sites;
 - to underline the importance of assessing needs at regional and sub-regional level and for local authorities to develop strategies to ensure that needs are dealt with fairly and effectively;

- to ensure that DPDs include fair, realistic and inclusive policies to ensure identified need is dealt with fairly and effectively; and
- to reduce the number of unauthorised encampments and developments and the conflict and controversy they cause and to make enforcement more effective where local authorities have complied with the guidance in this circular.

Gypsies and Travellers - a context

11. The government recognises that many Gypsies and Travellers wish to find and buy their own sites to develop and manage. An increase in the number of approved private sites may also release pitches on local authority sites for Gypsies and Travellers most in need of public provision. However, there will remain a requirement for public site provision above the current levels. Such sites are needed for Gypsies and Travellers who are unable to buy and develop their own sites, or prefer to rent, and to provide transit sites and emergency stopping places where Gypsies and Travellers may legally stop in the course of travelling.

Definition

12. For the purposes of this Circular "Gypsies and Travellers" means
a person or persons who have a traditional cultural preference for living in caravans and who either pursue a nomadic habit of life or have pursued such a habit but have ceased travelling, whether permanently or temporarily, because of the education needs of their dependant children, or ill-health, old age, or caring responsibilities (whether of themselves, their dependants living with them, or the widows and widowers of such dependants), but does not include members of an organised group of travelling show people or circus people, travelling together as such
13. Planning advice relating to travelling show people is given in DoE Circular 22/91.
14. Gypsies and Travellers are estimated to make up less than 1% of the population of England, but only a proportion of Gypsies live in caravans. Recent Caravan Count figures show that there are around 15,000 Gypsy caravans, with around three quarters of these on authorised sites. The overall need for Gypsy and Traveller sites is therefore very small. However, this need has often proved difficult to meet.
15. Some Gypsies and Travellers have an actively itinerant lifestyle and are generally self-employed people, sometimes occupied in scrap and scrap-metal dealing, laying tarmac, seasonal agricultural work, casual labouring, and other employment. These traditional patterns of work are, however, changing and the community has generally become more settled with women, children and older people remaining in the same place to ensure more stable access to healthcare and education.

16. The Gypsy and Traveller community also includes groups of long-distance travellers, who earn their living mainly from trades such as furniture dealing, carpet selling, waste collection, and other related occupations. A reduction of seasonal agricultural and related work has led to more travellers working in trades which require much less mobility. A more settled existence can prove beneficial to some Gypsies and Travellers in terms of access to health and education services, and employment and can contribute to greater integration and social inclusion within local communities, although the ability to travel remains an important part of Gypsy and Traveller culture. Some communities of Gypsies and Travellers live in extended family groups and often travel as such, and this is a key feature of their traditional way of life that has an impact on planning for their accommodation needs.
17. There is a need to provide sites, including transit sites, in locations that meet the current working patterns of Gypsies and Travellers. In view of the changes in their work patterns these may not be the same areas they have located in or frequented in the past.

Local Housing Assessments

18. The local housing assessment process will be the key source of information enabling local authorities to assess the level of provision that is required, particularly when preparing their local development documents. Local authorities when preparing a local housing needs assessment (LHA), must consult with key stakeholders and local communities involving both their planning and housing functions. Under provisions introduced by the Housing Act 2004 when local housing authorities produce a local housing assessment they will have to take into account the needs of Gypsies and Travellers, including the need for legal sites to station their caravans, (new guidance will be available in early in 2005). One of the tests of soundness of a Development Plan Document (DPD) will be whether it is founded on robust and credible evidence. Data from these assessments are an important part of the evidence base for Regional Housing and Spatial Strategies. Regional Housing Boards will need to work with local authorities and other stakeholders to ensure that assessments are carried out in a robust and consistent way across their region.
19. Local authorities will also need to have regard to their statutory duties, including those in respect of homelessness under Part VI of the Housing Act 1996 and to their obligations under the Race Relations Amendment Act 2000.
20. Local planning authorities should allocate sufficient sites in DPDs to ensure that the pitch requirements identified in the RSS can be met. These policies should be reviewed regularly to avoid any potential for disagreements with the settled population that might otherwise arise because of inappropriate location, in land-use planning terms, or inadequate explanation of proposed development. With such policies in place in local development frameworks there will be more certainty for all concerned when planning applications are determined by local planning authorities or appeals are considered by the Secretary of State.

Regional and local strategies - assessing need

21. It is expected that at an early stage in the preparation of RSSs and DPDs planning authorities will discuss Gypsies and Travellers' accommodation needs with Gypsies and Travellers themselves, their representative bodies and local support groups. A list of some relevant contacts is given in Annex A. Gypsies and Travellers should also be proactive in ensuring that they engage with local planning authorities to ensure that their views are taken into account.
22. Under the 2004 Act local planning authorities are required to prepare a Statement of Community Involvement, in which they will set out their policy on involving their community in preparing local development documents and on consulting on planning applications. Local planning authorities should put in place arrangements so that communication with Gypsies and Travellers is direct and accessible, and conflict and tensions are minimised. Identifying and understanding the needs of groups who find it difficult, for a number of reasons, to engage with bureaucratic processes is essential. Providing there is mutual respect and positive engagement on both sides, each party can understand the position of others without necessarily agreeing with all aspects of it. SCIs will be scrutinised by Planning Inspectors to ensure that such consultation and involvement will take place.
23. Regional Planning Bodies (RPBs) should maintain an up-to-date understanding of the likely housing requirements of their areas which should inform the preparation and review of RSS. RPBs will work with their constituent local authorities and housing providers, and in concert with regional housing boards (RHBs) in their development of RHS. It is important that there is a common evidence base, prepared in partnership with stakeholders, in particular with housing providers, to inform the RHS, RSS, LDFs and other relevant regional and local strategies. RPBs should be prepared to justify their views fully in public at examinations of revisions to RSSs.

Transitional arrangements - before the completion of local housing needs assessments

24. In advance of the consideration of new local housing needs assessments at a regional level by the Regional Housing Board and subsequent incorporation into local development documents (LDDs) other means of assessment of need will be necessary.
25. The early data available from the local housing needs assessment will be one element of a range of information sources that local authorities should consider when assessing the required level of provision. Other sources of information could include a continuous assessment of incidents of unauthorised encampments, both short and longer-term, the numbers and outcomes of planning applications and appeals, levels of occupancy, plot turnover and waiting lists for public authorised sites, the status of existing authorised private sites, including those which are unoccupied and those subject to temporary or personal planning permissions, as well as the twice-

yearly Caravan Count undertaken on behalf of ODPM. Local planning authorities will be expected to demonstrate that they have considered this information, where relevant, before any decision to refuse a planning application and to provide it as part of any appeal documentation.

Development Plan Documents - location of sites

26. Where there is an assessment of unmet need for Gypsy and Traveller accommodation in the area, DPDs should identify suitable locations for Gypsy and Traveller sites. In addition, to supplement the specific locations they should set out fair, reasonable, realistic and effective criteria for suitable locations in site provision policies. Specific locations must appear in the relevant DPD, so that the LPA can demonstrate how it is currently addressing identified need as well as how that need will be met through time by virtue of its policies, to ensure that it implements the RSS.
27. A local planning authority which, exceptionally, is unable to meet all assessed future needs through specific site locations should give in the DPD a reasoned explanation why that has not been possible and why the use of criteria is necessary to ensure adequate provision and state the detailed measures it will take to ensure that adequate provision is made during the plan period.
28. Criteria based policies will be required in the relevant DPD, whether or not there is any current need identified in the area for unallocated sites, in order to meet future or unexpected demand. Criteria based policies must be fair, reasonable, realistic and effective in delivering sites. The adequacy of any criteria will be subject to greater scrutiny under changes to the new planning system introduced by the 2004 Act. Planning policies that rule out or place undue constraints on the development of Gypsy and Traveller sites should not be included in RSSs or LDDs. The Government has the power to intervene in the plan-making process where it considers that the constraints being proposed by local authorities are too great or have been inadequately justified.
29. Local planning authorities should only allocate specific sites in DPDs if they control or own them or there is a realistic likelihood that they will be made available for that purpose. While it is accepted that identifying and allocating specific plots of land may be more difficult than using the criteria based approach, it ensures some certainty for local people and Gypsies and Travellers. There are a number of ways in which local authorities can identify specific sites and make land available.
30. Local authorities are reminded of their discretion to dispose of land for less than best consideration where it will help to secure the promotion or improvement of the economic, social or environmental well being of the area, as set out in ODPM Circular 06/03.
31. Authorities should also consider making full use of the registers of unused and underused land owned by public bodies as an aid to identifying suitable locations. Vacant land or surplus local authority land may be appropriate.

Sites in Rural Areas and the Countryside

32. Gypsies and Travellers in rural areas usually face difficulties in securing an adequate supply of affordable land for their needs. Local planning authorities in rural areas should therefore consider including a 'rural exception policy' in the relevant LDD. This will only be appropriate where there is a lack of affordable land to meet local Gypsy and Traveller needs (as demonstrated by an up-to-date local housing assessment) which cannot be dealt with by means of provision in the LDF. Therefore, all references to "housing" in Annex B of PPG3 should be interpreted as including "caravan sites for Gypsies and Travellers".
33. National planning policy on Green Belts is set out in PPG2. There is a general presumption against inappropriate development within Green Belts. In this context, new Gypsy and Traveller sites in the Green Belt are likely to be inappropriate development. However, criteria-based policies in LDDs for the location of Gypsy and Travellers sites should not impose a total, blanket-ban on the establishment of such sites in the Green Belt. It may still be appropriate to grant planning permission if the applicant is able to demonstrate that very special circumstances exist that clearly outweigh the harm caused by reason of the proposed site being inappropriate development in the Green Belt, and any other harm. Each case should be considered on its merits in accordance with the statutory development plan and any other material considerations. But "very special circumstances" means just that. The decision maker must be able to point to circumstances which, viewed objectively, are reasonably capable of being described as "very special". Out of the ordinary educational or health needs could contribute to very special circumstances, but each case must be treated on its own merits.
34. The presence of Green Belt is likely to constrain and limit opportunities for identifying Gypsy and Traveller sites in some areas. The general extent of the Green Belt, and any proposals to alter its boundaries, should be addressed through the Regional Spatial Strategy in the first instance. PPG2 makes clear that once the general extent of Green Belt has been approved, and once detailed Green Belt boundaries have been established in adopted development plans, they should only be altered exceptionally.
35. In certain circumstances, in particular, where a local authority's area contains a high proportion of Green Belt land and no other suitable sites outside the Green Belt exist, an authority may, exceptionally, wish to consider a limited alteration to the defined Green Belt boundary (which might be to accommodate a site inset with the Green Belt), to meet a specific, identified need for a Gypsy and Traveller site. Such a proposal should be brought forward through the plan-making process. Where a piece of land is removed from the Green Belt in this way, it should be specifically allocated in a DPD as a Gypsy and Traveller site only.
36. In areas with nationally recognised designations (Sites of Special Scientific Interest, National Nature Reserves, National Parks, Areas of Outstanding Natural Beauty, Heritage Coasts, Scheduled Monuments, Conservation Areas, Registered Historic Battlefields and Registered Parks and Gardens),

as with any other form of development, planning permission for Gypsy and Traveller sites should only be granted where it can be demonstrated that the objectives of the designation will not be compromised by the development.

37. Local landscape and local nature conservation designations should not be used in themselves to refuse planning permission for Gypsy and Traveller sites. Planning applications for site development in such areas should be assessed against criteria based policies set out in LDDs.
38. Sites on the outskirts of built-up areas may be appropriate. Sites may also be found in rural or semi-rural settings. Rural settings, where not subject to special planning constraints, are acceptable in principle and local authorities should be realistic about the availability, or likely availability, of alternatives to the car in accessing local services. Sites should respect the scale of and not dominate the nearest settled community serving them. They should also avoid placing an undue burden on the local infrastructure.
39. In some cases, perhaps involving previously developed (brownfield), untidy or derelict land, wherever situated, the establishment of a well-planned or soft-landscaped Gypsy and Traveller site can be seen as positively enhancing the environment and increasing openness.

Mixed planning use

40. Some Gypsies and Travellers run their businesses from the site on which their caravans are stationed. Local planning authorities should, wherever possible, identify in their DPDs Gypsy and Traveller sites suitable for mixed residential and business uses, having regard to the safety and amenity of the occupants and their children, and neighbouring residents. If mixed sites are not practicable, authorities should consider the scope for identifying separate sites for residential and for business purposes in close proximity to one another. Some parts of sites unsuitable for residence might be suitable for parking vehicles or storing materials, provided the overall site is suitable for residential use. Mixed uses are not permitted on rural exception sites where development is only permitted for affordable housing in perpetuity.

Applications

41. In order to encourage private site provision, local planning authorities should offer advice and practical help with planning procedures to Gypsies and Travellers who wish to acquire their own land for development. Gypsies and Travellers should consult local planning authorities on planning matters before buying land on which they intend to establish any caravan site, for which planning permission will almost always be required. (More guidance on both of these aspects is contained in Annexes E and F.)
42. Pre-application discussions are particularly important to avoid misunderstanding and subsequent problems over planning permission. Constructive and positive engagement on all sides will promote trust and may help to avoid breaches of planning control. The aim should be as far as possible to help Gypsies and Travellers to provide for themselves, to allow

them to secure the kind of sites they need, but in locations that are appropriate in planning policy terms. This will help to avoid breaches of planning control, and enable firm enforcement against such breaches. In particular, questions of road access, the availability of services, potential conflict with statutory undertakers or agricultural interests, and any significant environmental impacts should be resolved at the earliest opportunity.

43. Local planning authorities should recognise that they may receive applications from Gypsies and Travellers without local connections that could not reasonably have been foreseen in their local needs assessment and should therefore also have criteria-based policies in their LDF against which to consider such applications.
44. Local planning authorities should not refuse private applications on the grounds that they consider public provision in the area to be adequate, or because alternative accommodation is available elsewhere on the authorities' own sites or because the applicant has no local connection. But they are entitled to refuse private applications in locations that do not comply with planning policies, especially where the authority has complied with this guidance and proceeded properly to ensure needs identified by local housing assessments are being met.

Sustainability

45. Issues of sustainability are important and should be considered in the round not just in terms of transport mode and distances from services. Such consideration should include the promotion of peaceful and integrated co-existence between the site and the local community, the wider benefits of easier access to GP and other health services and children attending school on a regular basis, and the provision of a settled base that reduces the need for long-distance travelling and possible environmental damage caused by unauthorised encampment.
46. In deciding where to provide for Gypsy and Traveller sites, local planning authorities should first consider locations in or near existing settlements with access to local services eg shops, doctors and schools.
47. Sites, whether public or private, should be identified having regard to highways considerations. In setting their policies, local planning authorities should have regard to the potential for noise and other disturbance from the movement of vehicles to and from the site, the stationing of vehicles on the site, and on-site business activities. However, projected vehicle movements for Gypsy and Traveller sites should be assessed on an individual basis for each site. Proposals should not be rejected if they would only give rise to only modest additional daily vehicle movements and the impact on minor roads would not be significant.

Planning conditions and contributions

48. The appropriate use of planning conditions or obligations can enable some development proposals to proceed where it might otherwise be necessary to refuse permission. Further advice is contained in Annex G.

Enforcement

49. The Government's aim is to ensure that planning policies and controls are respected by all sections of the community and that where breaches occur effective enforcement action is taken.
50. It is essential for local planning authorities to act quickly in responding to breaches of planning control where appropriate. Caravan sites can be established outside normal working hours, overnight, or at weekends. Effective planning enforcement should include arrangements to provide the same out of hours emergency cover as other environmental and public health protection services so they can respond in a timely manner.
51. In considering enforcement action local authorities should be guided by the advice in PPG 18 ("Enforcing Planning Control"). Further advice on the enforcement powers available to local planning authorities and their use can be found in DoE Circular 10/97 (Enforcing Planning Control: Legislative Provisions and Procedural Requirements); DoE Circular 18/94 (Gypsy Sites Policy and Unauthorised Camping); the Good Practice Guide for Local Planning Authorities on Enforcing Planning Control published by the Department of the Environment in 1997; and in the Guidance on Managing Unauthorised Camping published jointly by ODPM and the Home Office in February 2004. Advice on the new temporary stop notice provisions introduced in the 2004 Act is currently subject to consultation.

Appeals

52. There will be occasions when LPAs refuse planning permission for Gypsy and Traveller sites. A Planning Inspector considering any subsequent appeal will take into account all material considerations, which should already have been addressed at the application stage. These will include the existing and planned provision of and need for sites in the area, the accuracy of the data used to assess need, the methodology employed in the assessment and how up-to-date it is, information on pitch availability on public and private sites; personal circumstances and alternative accommodation options.
53. Local planning authorities should have regard to whether the absence of existing provision may prejudice enforcement action, or give rise to grounds for appeal against refusal of an application for a new site.

Human Rights

54. The provisions of the European Convention on Human Rights should be considered as an integral part of local authorities' decision-making - including its approach to the question of what are material considerations. Local

planning authorities should consider the consequences of refusing or granting planning permission, or taking enforcement action, on the rights of the individuals concerned, both Gypsies and Travellers and local residents, and whether it is necessary and proportionate in the circumstances. Before considering the question of proportionality, authorities are reminded that it is also necessary to establish that the chosen remedy is the one which causes least interference with the rights in question, in order to serve an overriding public interest. Any facts that may be relevant should be established and considered before determining planning applications. Gypsies and Travellers should co-operate by responding to requests for relevant information. If there is any doubt about the application of provisions of the Convention in particular cases, legal advice should be sought.

Race relations

55. Section 19A of the Race Relations Act 1976 (RRA 1976) prohibits racial discrimination by planning authorities in carrying out their planning functions. In addition, the majority of public authorities, including local authorities, have a general duty under the RRA 1976 as amended by the Race Relations (amendment) Act 2000 to actively seek to eliminate unlawful discrimination and to promote equality of opportunity and good race relations in all they do. In line with their race equality scheme (legally required under the Race Relations Act 1976 (Statutory Duties) Order 2001) local authorities should assess which of their functions and are relevant to race equality and monitor these functions and policies to see how they impact on different racial groups. When policies are changed or new ones introduced, authorities should assess and consult on their likely impact, and where an adverse impact is identified which cannot be justified, changes should be made. It is particularly important that authorities consider all the racial groups served by the authority in order to see any particular impact that their policies may be having. Romany Gypsies and Irish Travellers have been recognised by the courts as being distinct ethnic groups, protected by the RRA 1976. It is also important that authorities actively seek to promote good race relations between all racial groups in the context of Gypsy site planning.

Monitoring

56. Local planning authorities should monitor and critically analyse the success rate of applications for sites for Gypsies and Travellers against those of applications for other types of residential development, including all types of housing and other types of caravan site, and assess the results of such analysis to inform policy development. In order to ensure that they can identify any adverse impact on race equality, LPAs should monitor applications from Gypsies and Irish Travellers. The Commission for Racial Equality recommends that authorities use the Census 2001 categories for ethnic monitoring but that where particular groups have been identified in the area covered by the authority, additional sub-categories should be added. Gypsies and Irish Travellers could be added as a sub-category of 'White Other'.

Financial and manpower implications

57. This Circular clarifies and expands on the existing legislative framework and explains the impact of the new planning system introduced by the 2004 Act. Its contents are not expected to have significant manpower or resource implications for local planning authorities other than those already signalled by the introduction of changes from the new Act.

ANNEX C

Good Practice – Criteria

1. The government believes that plan policies and criteria for the establishment of Gypsy and Traveller caravan sites should be fair, reasonable, realistic and effective, and written in a positive manner that offer some certainty that where the criteria (not necessarily all of them) are met planning permission will be granted.
2. Research has shown that the majority of plan policies state that permission 'may be granted' or that the authority 'will take account of ' factors. Ambiguous statements of this nature should be avoided as they do not offer certainty. More positive wording might include 'planning permission will be granted.'
3. The list of criteria adopted by a local planning authority should not be over-long as the more criteria there are, and the more restrictive they are, the more opportunities there are for authorities to refuse planning permission. The government wishes to see a more positive approach being taken to making adequate provision for Gypsies and Travellers – particularly by those local planning authorities whose present policies have failed to meet current needs. The process by which criteria are adopted in LDDs will therefore be subject to close scrutiny by Planning Inspectors. The Court of Appeal decision in the Clearwater case (Chichester DC vs FSS and Others (2004) EWCA Civ 1284) demonstrates the significance of not complying with Circular guidance.
4. For all kinds of site, consideration must be given to vehicular access from the public highway, as well as provision for parking, turning and servicing on site, and road safety for occupants and visitors. Landscaping and planting with appropriate trees and shrubs will help sites blend into their surroundings, give structure and privacy, and maintain visual amenity. Enclosing a site with too much hard landscaping, high walls or fences that can give the impression of deliberately isolating the site and its occupants from the rest of the community, and should be avoided.
5. There follows a selection of criteria that are considered fair and reasonable and those which are considered to be unacceptable.

Fair and reasonable criteria

6. In general Gypsy and Traveller sites should not be located on significantly contaminated land, but this does not necessarily rule out all locations near or adjoining motorways, power lines, landfill sites or railways, any more than it does conventional housing. The site needs to have safe and convenient access to the road network.
7. The government does not consider it appropriate to set a national maximum size for a site, but would suggest that cases should be considered on their merits in context and in relation to the local infrastructure and population size and density.

8. The following list gives examples of criteria that may be seen as positive, fair and reasonable.
- 'Private sector provision of sites will be encouraged'
 - 'Where the application would represent a way of meeting the established need (as identified in the local housing assessment)'
 - 'They would not be located distant from existing services and community facilities' or 'they should be located within reasonable distance of services and community facilities'
 - 'Residents would have access on the same basis as other local residents to shops, social, educational and health facilities'
 - 'Within or close to a settlement'
 - 'Avoids demonstrable harm to the archaeological and historic environment, including wildlife sites and any trees and woodland in the area'
 - 'Is not at significant risk from flooding, and avoids any material increase in the risk of flooding other properties'
 - 'Does not have an access point where vehicle movements would cause a significant hazard to other users, eg, onto a bridleway or footpath'
 - 'The size of the site should be sufficient to allow for the planned number of caravans, separate space for commercial vehicles, play area for children, access roads and space for the safe circulation of vehicles and construction of amenity blocks'
 - 'Be of a size to allow integration into the local community'
 - 'There is potential for future improvements in accordance with the needs of Gypsies and Travellers'
 - 'The proposal provides an acceptable living environment'
 - 'Has provision for parking, turning, service and emergency vehicles and servicing of vehicles'
 - 'Site is capable of accommodating the number of caravans/mobile homes proposed together with any equipment for business activities, and that residential and business uses are separated'

Criteria which are unacceptable

9. It is not uncommon currently for criteria to be so restrictive and extensive that in practice it is impossible or virtually impossible for an application to comply with them all. The following criteria have been taken from local authority plans and represent the sorts of criteria that are considered generally unacceptable.

'Each unit of accommodation on the site shall have been brought onto the site by the occupier(s) for the time being who shall remove the accommodation from the site when ceasing to use it for residential purposes'

This criterion does not accommodate the nomadic and traditional lifestyle whereby many Gypsies and Travellers have one caravan to live in, and one that is more mobile that they use when travelling
A requirement that the accommodation is brought onto site by the occupier does not allow provision to be made for other family members who may not themselves, perhaps for reasons of ill-health, physically move their own accommodation onto the site

'There shall be no more than [x] caravans'

Setting a maximum number as a blanket policy is arbitrary
Any maximum should be reached through planning conditions but
should be related to circumstances of the specific size and location of
the site and the surrounding population size and density

'The site, either on its own or in conjunction with other sites in the area does
not result in over-concentration'

Again this is arbitrary and is not set by reference to local circumstances
'Applications from Gypsies and Travellers with no local connection will not
normally be allowed'

Gypsies and Travellers are by their very nature nomadic and so will not
always have local connections. Planning authorities have to determine
applications for development from anyone who submits them.

This criterion also conflicts with paragraphs 17 and 44/45 of this
Circular. As the businesses which Gypsies and Travellers have
traditionally engaged decline, the new trades and businesses they take
up often necessitate new locations

'The site does not impact on any area with natural/wildlife interest'

All development by its very nature will have some impact on wildlife.

The criteria should be more tightly, but reasonably, defined

'The site shall not encroach into the countryside'

This is unrealistic. Such policies have been used to thwart site
provision.

ANNEX D

Overview of the new regional/local planning process with regards to Gypsy and Traveller provision

10. The new planning process will begin by local authorities assessing the need for Gypsy and Traveller residential pitches as part of the local housing assessment process. Guidance on local housing assessments will set out a baseline of factors which should be considered when assessing the accommodation needs of the Gypsy and Traveller community (mostly they are likely to be the same questions as everyone else is asked), as well as a recommended methodology for carrying out the assessment. Consistency between housing assessments and the adequacy of such assessments will be aided by Regional Housing Boards working with local authorities and other stakeholders to ensure that assessments are carried out in a robust and consistent way across the region.
11. The information from LHAs will, as with other housing needs, be a key component in the overall assessment of housing needs which underpins the Regional Housing Strategy (RHS) and informs the housing policies in the RSS. The RHS should set out the overall need reflected in these assessments, in terms of numbers of pitches in each sub-region, the strategy to be adopted for and costs of necessary public site provision and the priority attached to this relative to other housing needs. The associated funding recommendations made to Ministers by Regional Housing Boards should set out the proposed spend on Gypsies and Travellers and a sub-regional split. The pattern of need and funding priorities will need to be reflected in the RSS.
12. The Regional Housing Board will take a regional/sub-regional view when determining pitch requirements which will reflect local circumstances (i.e. the need determined in a particular area through the local housing assessment will not necessarily have to match its own assessed need in that area, but the overall totals for the larger region/sub-region will, in much the same way general housing allocations are agreed).
13. This common evidence base and the Regional Housing Board's regional view will inform the preparation of policies in a draft revision to an RSS concerning the number of pitches required by local planning authority or sub-regional housing market where a joint DPD is to be produced.
14. DPDs will need to explain how the land required will be made available on which an applicant for a Gypsy and Traveller site could reasonably expect to be successful and DPDs should provide for the necessary sites, and over what timescales. Local planning authorities can make provision for the number of pitches required in two ways
 - identification of allocated site locations in their DPDs
 - a combination of allocated site locations by reference to fair, reasonable, realistic and effective criteria for the granting of planning permission, if the

allocated site approach is not capable of delivering the requirements on its own

15. The identification of where sites should be in each authority's area, or how 'windfall' sites will be determined, will be the responsibility of the local planning authorities in preparing their DPDs. Under the 2004 Act, it is a requirement that DPDs are in general conformity with the Regional Spatial Strategy.
16. Where a local planning authority prepares a DPD which should have provided for the necessary sites, or a fair, reasonable, realistic and effective means to provide them, but has failed to do so, that could well be a significant departure from the RSS. Under the 2004 Act, both the Regional Planning Body (RPB) and the Secretary of State would need to be satisfied that the DPD was in general conformity with the RSS.
17. The inspector examining the submitted DPD might determine that the document should be modified to provide for the required sites or even not proceed to adoption where these sites could not be identified by the inspector. In the latter event the authority would have to come back later with a revised DPD which did so. Under the new Act the inspector's report is binding.
18. If the revised DPD was still judged not to provide the means to provide the necessary sites the Secretary of State, under section 21(1) of the Act, has the power to direct a local planning authority to modify the relevant draft DPD. If they failed to do so then he could, under section 21(4), direct that the relevant part of the document be submitted to him for his approval.
19. Where a local planning authority was not preparing the necessary DPD in the first place then, under section 26(2) of the Act, the Secretary of State could direct them to prepare the necessary document. If they failed to do so then ultimately the Secretary of State could exercise his default power under section 27, identify the necessary sites, proceed to an examination, and then approve the document.
20. There are also requirements for annual monitoring by both the RPB and the LPA. The Act makes clear that one of the main purposes of the annual monitoring reports is to consider whether implementation of the RSS or LDD is being achieved in line with the purposes of the RSS or LDD. If it is not, then regulations require the RPB or LPA to set out the reasons why it thinks the policy is not being implemented and what it intends to do about it.
21. The RPB should provide the Secretary of State with details of the proposed monitoring arrangements where they are not set out in the draft revision to the RSS. The Secretary of State will need to be satisfied that the RPB has established a monitoring and review mechanism, with member local authorities and other bodies as appropriate, that can respond sufficiently quickly to any adverse impact of the strategy. It is essential that there are clear arrangements to ensure close linkages between the production of the regional and local annual monitoring reports.

22. The soundness of Gypsy and Traveller policies in Local Development Frameworks will be examined by Inspectors against these criteria.

ANNEX E

Guidance to Local Authorities in dealing with planning applications from Gypsies and Travellers

23. In dealing with applications and enquiries from Gypsies and Travellers planning officers and planning department staff should act in a professional manner and not discriminate on the grounds of race. They should treat enquiries from Gypsies and Travellers sympathetically and even-handedly.
24. It is particularly important if unauthorised development is to be avoided for local planning authorities to establish a level of trust and co-operation with the local Gypsy and Traveller community. Entrenched positions on both sides are likely to lead to tensions, conflict and delay.
25. Local authorities may wish to consider designating one person in each authority to deal with all such enquiries/applications or have a named person with whom the applicants can maintain contact, and consider what specific training may be required for staff dealing with Gypsy and Traveller applications and the associated issues.
26. Local authorities need to provide early, clear pre-application advice and may wish to consider producing leaflets explaining the planning system, and consider using other media – such as video and audio communication – where this would better meet the needs of the Gypsy and Traveller community. At any pre-application meeting local authorities should give an assessment of whether there seems a reasonable chance of getting permission, discuss site problems such as roads, footpaths, drainage etc and explain the planning process.
27. Local authorities need to make Gypsies and Travellers aware of standards they can expect from the authority and standards expected from them and their rights to complain, including to the authority's monitoring officer and the Local Government Ombudsmen.
28. Planning departments may need to consult other departments and agencies with an interest, particularly housing, social services and education departments, health and highways authorities. Other important sources of advice are Gypsy Liaison Officers (or their equivalents) usually, but not always, based in County Councils.

ANNEX F

Guidance to Gypsies and Travellers for preparing planning applications

Introduction

29. Unless land has already been granted planning permission for a Gypsy and Traveller caravan site, or such use has been established over a period of time without valid enforcement action having been taken for 4 years for operational development (development that requires building or other similar physical works) or 10 years for a caravan site or other non-operational development (a change in use of the site without any physical development occurring), planning permission is required for any changes of use of land to a Gypsy and Traveller caravan site.

Pre-application procedure

30. When looking for a site Gypsies and Travellers should consider whether
- there are any existing sites in the locality (with planning permission) available to rent or buy
 - the local authorities know of your land requirement and, if so, have they identified any sites that may be available
31. If the answer to the above questions is “No”, you should
- identify your area of search. Is your locational requirement related to family circumstances, work or other requirements?
 - Are there suitable previously developed (i.e. brownfield) sites available?
 - Consider the site criteria and have regard to
 - means of access
 - proximity to main road network
 - ground conditions and levels of land
 - accessibility of schools and other facilities
 - existence of landscaping
 - capability of being further screened
 - respect for neighbouring uses
 - Once you have identified a possible site, find out which local authority area it is in and contact the LPA. Then consider the local plan policies relevant to Gypsy and Traveller site use – you can get help from the

local authority who should explain their policies and handle your enquiries fairly and professionally.

- You should establish whether the site you are interested in is in the Green Belt or other area of special protection. Development in such areas is subject to stricter control and the likelihood of getting planning permission is much lower than if the site were on 'ordinary' land. You should consider undertaking a local search to establish whether there are any covenants or other restrictions (such as injunctions) restricting the use of the land.
- If there is no policy you should consider whether the sites meets some or all of the criteria set out in the local plan.

Making the planning application

32. You should make your planning application and wait for planning consent *before* you go on the site. When making your application you should provide as much background information (which may include the efforts you have made to find a site and why you have selected the particular site, details of all the people who plan to live on the site) with the application as you can and all the information required on the forms. There is often a guide to help you fill out the forms. If you need help completing the form the Planning Department should help you.
33. Normally Gypsy and Traveller site development requires a full application. As much detail as possible on the site layout, landscaping, access, visibility splays, number of caravans etc, should be provided at the outset.

What happens next?

34. Local planning authorities will normally decide applications within eight weeks of them being submitted. If you are refused permission you may decide to appeal to the Secretary of State, you must submit an appeal within three months of the initial application being refused. Details on how to submit an appeal and how the appeal process works is available on the Planning Inspectorate website at www.planning-inspectorate.gov.uk or from their customer support unit.

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Room 3/15 Eagle Wing
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ANNEX G

Planning Conditions and Contributions

35. Conditions should be imposed only where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. General advice on the use of conditions is given in DoE Circular 11/95
36. Advice on planning contributions made under s46 of the Planning and Compulsory Purchase Act 2004 is given in ODPM Circular 6/2004. This guidance sets out the tests for planning contributions, namely that they must be necessary, relevant to planning, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development and reasonable in all other respects.
37. A number of measures may be introduced to overcome planning objections to particular proposals using planning conditions or contributions. These might include ensuring adequate landscaping and play areas for children, and limiting which parts of a site may be used for business operations, in order to minimise the visual impact and limit the effect of noise, the number of days the site can be occupied by more than the allowed number of caravans, to permit visitors and allow attendance at family/community events. In certain circumstances, conditions might also be appropriate to specify the maximum number of days for which Gypsy and Traveller caravans might be permitted to stay on a transit site.
38. In some cases, for example where the applicants themselves propose to use a site for only a limited time, or where land is to be redeveloped on some occasion in the future, it may be appropriate to impose a condition allowing use for only a specified period. However, unless these circumstances prevail, permission should generally be given for an indefinite period. Authorities should not use time-limit conditions, or any other conditions, in an attempt to assuage the concerns of local residents. Once the principle of development has been established there are likely to be very limited circumstances in which a time-limit condition would be upheld.

1 Figures from ODPM's Caravan Count.