

**COMMENTARY ON CONSULTATION PAPER RELATING TO PLANNING  
FOR GYPSY AND TRAVELLER SITES  
PUBLISHED BY THE OFFICE OF THE DEPUTY PRIME MINISTER –  
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## **INTRODUCTION**

This document is currently undergoing a period of public consultation expiring on 18 March 2005. It is intended to be a review of the guidance contained within DOE Circular 1/94. The ODPM has outlined the key changes to the Circular compared with Circular 1/94 as follows:-

- Change to the definition of 'gypsy'.
- A requirement on Local Authorities to identify suitable sites in development plan documents.
- Improve guidance on drafting the criteria in development plans against which applications for sites not allocated will be judged.
- Advice on local housing assessments.
- Local Authorities responsibilities under the Race Relations Act.
- Advice on how Local Authorities engage with gypsies and travellers and build trust.
- The inclusion of advice to gypsies and travellers on how they should engage with the planning system.

This commentary highlights the issues which it is considered require further consideration before publication of any new guidance by the ODPM. By implication therefore, this Paper concentrates on areas where there may be shortcomings or further clarification is required to enable robust and practical planning guidance to be produced.

Clearly the Government's proposal to introduce new guidance at this stage is most welcome as the guidance in Circular 1/94 is now well out-of-date. Moreover, issues concerning gypsies and travellers are now high profile. For the planning system to operate in a fair and reasonable manner the guidance provided by the ODPM to Planning Authorities on this topic should provide a meaningful addition to the current legislative framework and enable decisions taken by Planning Authorities, whether in plan preparation or development control to be seen as fair and reasonable by all sections of the community.

## **GENERAL COMMENTS**

### **Introduction**

#### **Paragraphs 1 – 10**

The assertion in Paragraph 3 that accommodation needs of gypsies and travellers should be addressed with the same consideration as is given to the accommodation needs of other sections of the community is to be welcomed.

Whether or not this helps promote good community relations and reduces conflict and controversy in respect of unauthorised developments remains to be seen however.

## **Gypsies and Travellers – a context**

### **Paragraph 11**

The assumption made that additional private sites may release pitches on Local Authority sites is not proven. Experience shows that there are distinct groupings of gypsies and travellers with different accommodation preferences.

If there is an assumption that the requirement for public site provision should be above current levels then this will need to be proven through housing needs assessments.

### **Definition**

#### **Paragraphs 12 – 17**

It is interesting that a decision has been taken to introduce a new definition for gypsy and travellers. The original definition for the purposes of Circular 1/94 was short and succinct. Moreover, it is understood that the new Housing Act maintains the definition contained in the Caravan Sites and Control of Development Act 1960 but acknowledges that this may change over time. Introducing a term related to “traditional cultural preference” within a definition should be supported by further guidance for Planning Authorities. For instance, does this include new age travellers or not, and how can Local Authorities interpret ‘cultural preferences’ when considering whether or not gypsies all fall within the definition. Moreover, the intention to define or list circumstances where the nomadic habit of life may have ceased but individuals may be still regarded as gypsies is very specific. Again this may lead to practical problems in development control terms regarding interpretation.

While it is quite right that there is no reference to ethnicity within the definition, guidance on how Planning Authorities should interpret this definition may be welcome. For instance, Paragraph 55 of the document highlights that Romany gypsies and Irish travellers have been recognised by the Courts as being distinct ethnic groups protected by the RRA 1976. It would help the public’s understanding what gypsy status means if the proposed Circular made it clear who can reasonably fall within the definition.

It is noted that in Paragraph 15 the descriptions of the occupations of gypsies is lifted from Circular 1/94 except to the reference with regard to “other employment” which in 1/94 related to other “employment associated with their itinerant lifestyle”. This subtle difference will need clarifying. Moreover, Paragraph 16 further details occupations and is also lifted from Circular 1/94.

Clearly, recognition that traditional patterns of work have changed should be reflected in these paragraphs.

It is agreed that the traditional patterns of work are changing and that in many cases settled lifestyles have been adopted by the gypsy communities which does enable better healthcare and educational provision. Is there any evidence to show that the predominant types of occupation currently being adopted by gypsies and travellers reflects those produced in the new draft Circular?

The importance of the issue regarding definition and working lifestyles becomes particularly important with regard to Local Planning Authorities' consideration of 'local need'. If local needs assessments are to be carried out as is promoted within the Circular, then the fullest understanding of the itinerant or other lifestyles of gypsies needs to be clarified and not simply reproduced from Circular 1/94.

In reality, large sections of the gypsy community, like the wider community, now adopt a commuting lifestyle with a settled base. For gypsies and travellers to maintain the special place they enjoy within the planning system, the differences between the working and living patterns of traditional settled population and the gypsy and traveller population need to be clear.

### **Local Housing Assessments Paragraphs 18 – 20**

Clarity needs to be brought to the issue of preparing local housing assessments. In particular, whether the preparation of local housing assessments is a bottom up, or top down process at regional level needs to be clarified both in terms of the role and function of the Regional Housing Board and the Regional Planning Board.

There is an assumption that Regional Housing Boards will need to work closely with Local Authorities and other stakeholders to ensure that assessments are carried out in a robust and consistent way across their region. If the Government believes that there is no longer the ability to look at local connections as part of the planning process (which is implicit in the draft Circular), then it is not only intra-regional issues that need to be considered but inter-regional and trans-national migrational issues. This will be very difficult in practical terms. What is required is a national basis for determining need. Clearly, if each Local Authority unilaterally attempts to address gypsy and traveller needs, then this not only could lead to inconsistency but also creates the possibility of great duplication of assessing the needs of what will in effect be a intra-regional, inter-regional and trans-national travelling community. Therefore, methodologies for assessing need both on a housing and planning basis need to be developed very carefully and in consultation with Local Authorities.

At a sub-regional level, the Regional Housing Strategy and the Regional Spatial Strategy may be geographically different both in terms of administration and area covered. This will lead to practical difficulties in terms of assessing conformity, etc.

Paragraph 20 has stated that Planning Authorities should allocate sufficient sites in DPD's to ensure that pitch requirements identified in the RSS can be met. What is unclear is how the pitch requirements of an RSS can be ascertained. Is the intention to follow the same process as would be adopted for other forms of housing?

### **Regional and local strategies – assessing need Paragraphs 21 – 23**

It is agreed that the Statement of Community Involvement will provide the most appropriate tool for Planning Authorities to set out an approach for consultation. Any SCI would, by implication, deal with the needs of 'hard to reach' groups. It is difficult to see what this Paragraph adds in terms of advice in respect of advice to Planning Authorities on consultation with gypsy communities.

How do the national bodies listed in Appendix A help to achieve direct communication with local gypsies and travellers? Are there any local support groups?

### **Transitional arrangements – before the completion of local housing needs assessments Paragraphs 24 – 25**

In practical terms, the incorporation of an assessment of need either in regional plans or local development is some way off. Transitional arrangements based on the criteria laid out in Paragraph 25 are considered inadequate and do not provide any reasonable assessment of need.

The fact that there may be unauthorised encampments in a particular geographical area is not, in itself an indicator of need within that area. Our recent experiences demonstrate that they have originated from other parts of the country, e.g. south-west and therefore this is not an indication of regional or sub regional need. Moreover, the twice-yearly caravan count undertaken on behalf of the ODPM is not consistent or reliable. To use the count results for a purpose for which they were not designed i.e. planning applications or appeals, is inappropriate. Moreover, waiting lists are also included as indications of need and these are not considered to be a truly accurate reflection of need. Waiting lists will only show a broad indication of need for public sites which exist already within a particular geographical area. In areas where there are currently no sites then clearly experience shows that those seeking accommodation will not place their names on the list. This causes a distortion in terms of an indicator of need.

Paragraph 25 indicates that the series of sources of information listed should be considered before any decision is taken to refuse a planning application. However, presumably the opposite is true as well in terms of any decision to approve a planning application.

## **Development Plan Documents – location of sites Paragraphs 26 – 31**

The draft Circular is somewhat confusing in respect of the Government's wish to require the planning process to deliver new gypsy sites through allocation and through the provision of criteria-based policies.

Criteria-based policies have been the subject of much criticism in the past and this section of the draft Circular effectively proposes a two pronged approach for policy development, i.e. through site allocation and through criteria-based policies. To address allocation, the Planning Authority would have to identify an unmet need. Again the identification of need will require a thorough methodology which avoids inconsistency and duplication and will require decision making either at Sub-Regional and Regional level to ensure consistency in the development plan document preparation process.

Criteria-based policies, as has been stated above, have been the subject of some criticism. The Circular paves the way for a plethora of new criteria-based policies to be developed by Planning Authorities. Annex C does try to provide advice on fair and reasonable criteria and on this basis a more coherent approach would be to ensure that common criteria are applied, whilst respecting the importance of local circumstances.

In Paragraphs 29 – 31 the Circular introduces some realism in terms of the difficulty of allocating sites. However, restricting allocations in DPD's to only land that the Local Authority controls or owns, or land where there's realistic likelihood that it will be made available, is somewhat different to the properly considered approach for allocation of housing. Moreover, many Local Authorities do not retain land within their property portfolio and many Authorities do not have surplus land.

## **Sites in Rural Areas and the Countryside Paragraphs 32 – 39**

Paragraph 32 introduces the potential concept of Local Authorities introducing rural exception policies in an LDD for gypsy and travellers. Clearly, there are many development plans already with rural exception policies and undoubtedly new development plan documents will also include such policies where appropriate. This is highly sensitive issue even before one would consider use of rural exception site for a gypsy or traveller site and there would need to be some mechanism to make local communities fully aware that any exception policy adopted by a Local Authority could not only be used for traditional housing but also as a rural gypsy site. In reality, this could lead to significant difficulties with the development of rural exception policies.

Paragraph 33 appears to dilute the advice in Circular 1/94 with regard to the development of gypsy sites within Green Belts. Again, this does not seem to add anything significant in planning terms to the usual considerations adopted by Planning Authorities for development within the Green Belt.

How can very special circumstances in terms of health or educational needs be justified in the Green Belt which by definition is divorced from such facilities?

Again Paragraph 36 appears to dilute the provisions of the advice within Circular 1/94 with regard to other designations. Paragraph 37 implies that local designations should not, in themselves, be used to refuse planning permission for gypsy and traveller sites. A consistent approach needs to be adopted and if such policies would not allow traditional housing then the same principles should apply in broad terms.

Paragraph 38, inter alia, repeats the advice in Circular 1/94 that sites on the outskirts of built-up areas may be appropriate. It also states that sites may be found in rural or semi-rural settings. What it does not refer to is the provision of sites within urban areas. In respect of rural settings, the implication that where there is no special constraint, sites are “acceptable in principle” is an inappropriate statement in terms of the principles of the planning system and the countryside protection policies which apply to all other forms of development. Initially of course, there must be a presumption against development in non-allocated sites within the open countryside unless the specific material circumstances indicate otherwise.

Paragraph 38 also deals very briefly with the issue of “scale”. In general, the issue of scale of new developments is not addressed in any depth within the draft Circular and it is often the issue of scale and impact that is one of the most important considerations both in terms of earning the trust of the local population and the integration of such developments not only within the landscape, but the community as a whole. Nationally, there have been many circumstances in recent past where the scale of unauthorised development has exacerbated the sensitivity of the breach of planning control and practise shows that the scale and propensity for larger developments is a significant planning issue at present. Whilst the Circular states in respect of scale that sites should avoid placing an undue burden on the ‘local infrastructure’, this should be clarified.

In Paragraph 39, and repeated elsewhere in the Annexes, there is effectively an informal reference to the imposition of a sequential approach to site selection by gypsies. This is dealt with later in this report.

### **Mixed planning use**

#### **Paragraph 40**

Not only are Local Authorities expected to make residential allocations within development plan documents for gypsies and traveller sites but the implication of this Paragraph is that Authorities should wherever possible identify sites suitable for mixed residential and business uses for gypsies and travellers. The changed pattern of lifestyles since 1994 makes such allocations for business purposes very difficult to justify to deliver through the planning system.

It is stated that mixed uses are not permitted on rural exceptions where development is only permitted for affordable housing in perpetuity.

Clarification needs to be given to Planning Authorities and the gypsy community alike that if the Government expects rural exception sites to be applicable for gypsy sites then there has to be an expectation that legal agreements will be entered into as would normally be the case to ensure that the housing remains in perpetuity for those in housing need. If exception sites are to be allowed then contributions to open space, education, etc. should be made if these are permanent housing sites.

Clearly there is a paradox here in that rural exceptions housing is for a socially identified local need whereas the current predominant need for gypsy sites appears to be in the private gypsy sites' sector where the issue of need is on a wholly different basis and not wholly on the basis of inability to access the local private housing market.

### **Applications Paragraphs 41 – 44**

It is arguably naïve to assume that constructive and positive engagement on all sides will promote trust and may help avoid breaches of planning control. That clearly has not been the case to date.

Of course Planning Authorities will provide pre-application and professional advice to all sections of the community and it is considered superfluous within the Circular to repeat this.

Paragraph 43, recognises the reality that Councils may receive applications from gypsies and travellers without local connections whose needs could not reasonably have been foreseen in the local needs assessment. This Paragraph raises a number of issues. In the first instance therein lies the fundamental difficulty in preparing local needs assessments. If, as is the prevalent experience, that gypsies resorting to certain areas have no local connections then the usefulness of any local needs assessment is questionable. The pattern of gypsy migration and travelling is such that unlike the processes for identification of local housing needs for the settled community, a methodology which recognises accurately the needs requirements of the gypsy community is potentially very difficult.

Secondly, this Paragraph again emphasises the difficulties of a local connections criterion. For the settled community, Authorities are able to develop needs assessments which build on the needs of the local communities especially where there is an affordable housing need. If Councils have to adopt criteria-based policies for dealing with gypsies and travellers without local connections, how should such policies be framed?

## **Sustainability**

### **Paragraphs 45 – 47**

The recognition that issues regarding sustainability are important as material considerations is welcomed. Experience shows, however, that gypsies themselves tend to select sites which are some distance from local services. With regard to material considerations, e.g. the assertion that 'the promotion of peaceful and integrated co-existence between the site and the local community' – is this now a legitimate material consideration? The reference in Paragraph 46 to the locational considerations the Local Planning Authorities should apply in terms of access to services is also an implicit reference to a sequential approach.

## **Planning conditions and contributions**

### **Paragraph 48**

Comments are made later in this report under Annex G, however, issues regarding registration of title and willingness to enter into obligations by the gypsy community should be addressed.

## **Enforcement**

### **Paragraphs 49 – 51**

In Paragraph 50 it is stated that it is essential for Local Planning Authorities to act quickly in responding to breaches of planning control where appropriate. Experience shows that even when Authorities have out-of-hours arrangements and respond quickly to deliberate breaches of planning control within a timely manner, the enforcement provisions are such that ability to take action is very limited. This is very well evidenced by the well-publicised large-scale breaches of planning control across the country recently and locally within Worcestershire. Within Worcestershire arrangements are in place between the two tiers of Local Government to ensure that responses can be made in a timely manner.

The reliance on the new temporary Stop Notice provisions within the 2004 Act to prevent breaches of planning control is in fact, an erroneous promotion of the benefits of such Notices. This is because the regulations and guidance issued with the new provisions specifically advises that they should be used sparingly in residential caravan situations. Therefore, in effect, there is no new legislative tool for Local Planning Authorities to seek to control breaches with regard to gypsy sites.

## **Appeals**

### **Paragraphs 52 – 53**

Paragraphs 52 and 53 add nothing to the current procedures and the material considerations that any Inspector would have to consider as part of an appeal process. However, it is important that the Planning Inspectorate are able to deal with appeals within a reasonable timescale.

The current situation, whereby there is a delay of 12 months in some Inquiries taking place, is most unsatisfactory.

### **Human Rights Paragraph 54**

One of the particular practical difficulties for Planning Authorities in considering Human Rights considerations is change in circumstances on sites. It is quite right that Planning Authorities should have regard to Human Rights considerations as part of any decision making process and these, by implication, have to be on the basis of the circumstances at the time of the determination of the application or the issue of the Enforcement Notice. However, clearly circumstances of individuals change on site (often frequently).

In the context of proportionality, there is a reference to the Council's "chosen remedy" being the one which causes least interference with the rights in question. What other "remedies" are there likely to be other than requiring unauthorised residential uses and works to cease?

Moreover, Paragraph 54 quite rightly suggests the gypsies should co-operate by responding to requests for relevant information. As with any other applicant, the specific material considerations which the applicant wishes the Local Planning Authority to consider at the time should be submitted at the outset of the application and any personal circumstances should be fully set out at the time of submission ensure the expeditious and proper consideration of any application.

### **Race Relations Paragraph 55**

It would be helpful if gypsies and their advisers could provide information at the outset to substantiate any claim with regard to status as a "distinct ethnic group". In cases where gypsies refuse to engage with Council Officers, the Council simply will not know what particular ethnic group the occupants of a site belong to.

### **Monitoring Paragraph 56**

It is unclear why the monitoring of the success rate of applications for gypsies against those of other types of residential development will provide sound information to inform future policy development.

Moreover, in practical terms the suggestion that Local Planning Authorities should monitor applications from gypsies and Irish Travellers would be a departure from the practice with all other types of application, and indeed all other types of hard-to-reach groups. Before expecting Local Authorities to monitor such applications in such a way, benefits of doing so need to be fully explained.

If monitoring is to take place notwithstanding the reservations expressed above, is it reasonable to maintain the incidence of retrospective planning applications and breaches of planning control by particular groups?

## **Financial and manpower implications**

### **Paragraph 57**

It is not clear from information so far available how the new arrangements will work in practice. However, it would appear that there will be significant financial and manpower implications for Local Authorities when all the new requirements are considered in aggregate.

## **Annex C**

### **Good Practice – Criteria**

Comments have already been made above with regard to the issue of setting criteria.

It is with some concern that Paragraph 3 implies the Government wishes to see a more positive approach being taken to making adequate provision for gypsies and travellers – particularly by those Planning Authorities whose present planning policies fail to meet current needs. If one accepts, as the Government seems to do elsewhere in the draft Circular, that the need is not generally a local one, then blaming Local Authorities individually for not meeting need, when the need is at supra Planning Authority level i.e. at regional, national and international levels, is somewhat hard on Local Planning Authorities. These comments also ignore the phenomenon where gypsies and travellers will only approach Authorities where they know there is already provision in place.

The Paragraph 9 list of criteria for gypsy and traveller sites which are regarded as unacceptable includes “The site, either on its own or in conjunction with other sites in the area does not result in over-concentration”.

In our extensive experience of gypsy sites, we consider this should be included as ACCEPTABLE criteria. It is not good planning to allow a small village to be swamped by gypsy sites to the extent that the gypsy population is in danger of exceeding the settled population.

The Paragraph 8 list of acceptable criteria includes “Be of a size to allow integration into the local community”. This raises a number of issues e.g. is it appropriate to have regard to other existing gypsy sites in the vicinity? Do gypsies generally want to be integrated into the local community? How is “local community” defined – is this meant to mean the village where the gypsy site is located or a wider area?

## **Annex D**

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

The implication of the process for assessing needs and policy development could be seen as convoluted. It appears that Local Housing Authorities will be required to assess need at local level which will then inform Regional Housing Strategy and in turn will inform the housing policies of the Regional Spatial Strategy. The associated funding recommendations then made by Ministers to Regional Housing Boards will set out the proposed spend on gypsies and travellers and a sub-regional split. The assumption then is that this pattern of need and funding priorities will somehow be reflected in a Regional Spatial Strategy. It is then assumed that this evidence base and the Regional Housing Board's regional view will inform policy development of the RSS and then the allocation process through the planning process would be specified in the RSS by Planning Authority or sub-regional housing market area.

This will not appear simple or understandable to those involved in the planning process!

The influence the Regional Housing Board, at present an unelected body, needs to be further clarified in terms of the influence it will have on Local Planning Authority decisions.

## **Annex E**

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

As a general comment this Annex could be seen as patronising to Planning Officers who deal with all applicants in a professional manner.

Moreover, the assumption that Local Authorities can designate one person to deal with all enquiries and applications is unrealistic bearing in mind the limited resources within Planning Authorities. It may also be perceived as racist by gypsies and their advisers, if their enquiries and applications are dealt with differently to those from the settled community. Moreover, if leaflets or videos/audio communications are to be prepared, surely this would be best done at a national level and distributed locally.

Finally, Paragraph 5 states that Local Authorities need to make gypsies and travellers aware of the standards they can expect and rights to complain, etc. All Planning Authorities should do this, in any event, for all applicants.

## **Annex F**

### **Guidance to Gypsies and Travellers for preparing planning applications**

Surely in a plan-led system the application procedure set out in Paragraph 2 should be prefaced with an encouragement to engage in the development plan process, to try and identify suitable allocations through that means rather than an ad hoc basis by planning application.

In Paragraph 3 mention is made of 'ordinary' land and the implication of the advice is that planning permission is more likely to be forthcoming on 'ordinary' land rather than Green Belt or other areas of special protection. Whilst this may be the case in some instances, it is dangerous to include a term which is not recognised within the planning system. In rural areas, countryside protection policies apply and policies of the development plan are the most important starting point.

## **Annex G**

### **Planning Conditions and Contributions**

If planning permission is to be granted on human rights grounds because the particular personal circumstances of the occupants outweigh the planning objections, a condition should normally be included on the planning permission restricting occupation to those named persons and their dependants. It would be useful if an additional paragraph could be included in Annex G to reflect this.

Presumably Local Authorities can ask for contributions for such matters as public open space, education, etc. if thresholds are met?

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