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Title: DCLG Consultation: planning and travellers

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Summary

1. The DCLG is consulting on proposed changes to planning policy and guidance in relation to travellers to ensure fairness in the planning system; and strengthening protection of our sensitive areas and Green Belt.
2. The proposals would ensure that the planning system applies fairly and equally to both the settled and traveller communities; further strengthen protection of our sensitive areas and Green Belt; and address the negative impact of unauthorised occupation.
3. The consultation closes on 23 November 2014

Recommendations

4. That the Working Group discusses the issues raised by the consultation and recommends how the Council responds to the consultation.

Financial Implications

5. None

Background Papers

6. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

None

Impact

- 7.

Communication/Consultation	The council is responding to a government consultation
Community Safety	N/A
Equalities	The consultation aims to ensure that the planning system applies fairly and equally to both the settled and traveller

	communities
Health and Safety	N/A
Human Rights/Legal Implications	The consultation aims to ensure that the planning system applies fairly and equally to both the settled and traveller communities
Sustainability	N/A
Ward-specific impacts	All
Workforce/Workplace	N/A

Situation

Ensuring fairness in the planning system

8. Planning Policy for Traveller Sites (PPTS) was published in March 2012 at the same time as the NPPF and they were designed to be read in conjunction. The PPTS defines gypsies and travellers for the purposes of planning policy as *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.*
9. Current policy requires that those who have ceased travelling permanently for reasons of health, education or old age (be it their needs or their family's or dependents') are for the purposes of planning, treated in the same way as those who continue to travel.
10. The Government feels that where a member of the travelling community has given up travelling permanently, for whatever reason, and applies for a permanent site then that should be treated no differently to an application from the settled population (for example, seeking permission for a Park Home). This would not prevent applications for permanent sites, but would mean that such applications would be considered as any other application for a permanent caravan site would be: i.e. not in the context of Planning Policy for Traveller Sites.
11. The consultation stresses that this is not about ethnicity or racial identity but that for planning purposes the Government believes a traveller should be someone who travels.
12. The Government therefore proposes amending the current definition of both "gypsies and travellers" and "travelling showpeople" in Annex 1 to Planning Policy for Traveller Sites to remove the words or permanently (underlined in the current definitions in paragraph 7 above) to the effect that it would be limited to those who have a nomadic habit of life.

13. The Government also wishes to simplify and streamline the processes for assessing needs of gypsies and travellers for planning and housing purposes. They are therefore seeking views on amending secondary legislation to bring the definition of “gypsies and travellers”, set out under the 2006 regulations, into line with the proposed planning definition of “travellers” set out above. The effect would be to limit the definition to those who have a nomadic lifestyle.
14. The Essex Gypsy and Traveller and Travelling Show People Accommodation Assessment 2014 reports on the results of over 400 interviews with gypsies and travellers of which 25 were in Uttlesford and makes the following commentary on the propensity to travel (paragraphs 6.18 – 6.20).

Nearly two thirds (64%) of those surveyed reported that they had not travelled at all during the last 12 months. Amongst those who had travelled in the last 12 months, most (82%; 99 respondents) had travelled for less than 3 months. 8% said they had travelled all year round. For the majority (96 respondents) their level of travelling in the last 12 months was normal; however, 15 respondents said they had travelled less in the last few years.

The reasons provided for travelling were for a holiday (52 respondents), fairs (42 respondents), family reasons (34 respondents) and for work (27 respondents).

The majority (62%) of those who had not travelled in the last 12 months reported that they had not travelled in the past either. The main reasons given for not travelling in the last 12 months were: wanting a more settled lifestyle (69%), so that children can receive an education (28%) and because it is no longer easy to camp on the side of the road while travelling. Given the current government intend to consult on changing in the planning definition of a Gypsy and Traveller to cover only those who travel. This has potentially major implications if many households do not travel. However whilst the announcement that the Government was considering to bring forward this consultation was made in January 2014, to date it has not been forthcoming. ORS are also of the view that the introduction of such a policy would be subject to significant Human Rights challenges.

15. The consultation paper asks the following questions which is followed by a suggested response.

Q1 – Do you agree that the planning definition of travellers should be amended to remove the words or permanently to limit it to those who have a nomadic habit of life? If not, why not?

The Council support this amendment. However, the results of the Council's need assessment raises lots of questions about whether someone has a nomadic lifestyle or not which we will need to consider when determining applications for traveller sites. It is asked that further clarification be given in the guidance as to

- what constitutes travel?
- what is meant by temporary cessation of travelling?
- does the nomadic lifestyle have to relate to the whole family or can it just be a member of the family?

- the length of time over which a travelling lifestyle needs to have taken place to be considered nomadic.
- How does a local planning authority assess the likelihood of a nomadic lifestyle is continuing?
- If it becomes apparent that Travellers subsequently abandon a nomadic lifestyle is this grounds for enforcement against breach of an occupation condition?
- if a family travel between two or more sites, is its need to be assessed in all locations?

Q2 – Are there any additional measures which would support those travellers who maintain a nomadic habit of life to have their needs met? If so, what are they?

The location, size, and form of sites must be geared towards it being resided in by people who travel or have temporarily stopped from travelling.

Q3 – Do you consider that a) we should amend the 2006 regulations to bring the definition of “gypsies and travellers” into line with the proposed definition of “travellers” for planning purposes, and b) we should also amend primary legislation to ensure that those who have given up travelling permanently have their needs assessed? If not, why not?

The Council supports the amendment to bring the 2006 regulations in line with the definition for planning purposes. The council wishes to ensure that the needs of all residents of the District are assessed so that they can be appropriately addressed.

Protecting sensitive areas and the Green Belt

16. The Government is proposing to replicate parts of the NPPF in the PPTS relating to the protection of sensitive sites such as those protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest.
17. The Government is also proposing to strengthen the importance of accounting for the intrinsic character and beauty of the countryside by adding the word ‘very’ to paragraph 23 of the PPTS so that it reads ‘that Local planning authorities should very strictly limit new traveller sited development in open countryside.’
18. The Government is proposing to amend paragraph 25 of the PPTS so that the absence of an up-to-date five year supply of deliverable sites would no longer be a significant material consideration in favour of the grant of temporary permission for sites in the above mentioned sensitive areas and the Green Belt. It would remain a material consideration, but its weight would be a matter for the decision taker
19. The Government recognises that case law derived from the United Nations Convention on the Rights of the Child establishes that the best interests of the child are a primary consideration in planning decisions affecting children, and

that no consideration is inherently more important than the best interests of the child. However the Government is concerned that there is a greater disproportionate impact on the Green Belt from traveller decisions compared with those for conventional housing. It is therefore proposing to amend national planning policy and Planning Policy for Traveller Sites to provide that, subject to the best interests of the child, unmet need and personal circumstances are unlikely to outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.

Q4 – Do you agree that Planning Policy for Traveller Sites be amended to reflect the provisions in the National Planning Policy Framework that provide protection to these sensitive sites? If not, why not?

This is supported

Q5 – Do you agree that paragraph 23 of Planning Policy for Traveller Sites should be amended to “local authorities should very strictly limit new traveller sites in the open countryside”? If not, why not?

This is supported

Q6 – Do you agree that the absence of an up-to-date five year supply of deliverable sites should be removed from Planning Policy for Traveller Sites as a significant material consideration in the grant of temporary permission for traveller sites in the areas mentioned above? If not, why not?

This is supported

Q7 – Do you agree with the policy proposal that, subject to the best interests of the child, unmet need and personal circumstances are unlikely to outweigh harm to the Green Belt and any other harm so as to establish very special circumstances? If not, why not?

This is supported, but the Government needs to be satisfied that it could conceive of circumstances in which harm to the Green Belt and any other harm would not be the overriding consideration. It needs to be able to demonstrate that its policy is not de facto an absolute ban on Traveller Site development in the Green Belt. It also needs to consider whether it is true that traveller decisions where approved do have a greater disproportionate impact on the Green Belt than conventional housing, as mobile homes are generally smaller in scale than conventional properties. Is it not possible that impacts could be controlled by planning conditions?

As the best interests of the child are paramount in any planning decision, the Government should be satisfied that it can justify citing these interests in its policy of Traveller Site development and not in relation to its planning policy on any other category of development.

Addressing unauthorised occupation of land

20. The Government proposes to amend the NPPF and PPTS to make clear that intentional unauthorised occupation, whether by travellers or members of the

settled community, should be regarded by decision takers as a material consideration that weighs against the grant of permission.

21. For the avoidance of doubt, this does not mean that retrospective applications should be automatically refused, but rather failure to seek permission in advance of occupation will count against the application. It will, the Government hopes, encourage all applicants to apply through the proper planning processes before occupying land and carrying out development.

22. The Government is also consulting on amending policy to allow authorities who are burdened by a large-scale unauthorised site which has significantly increased their need and their area is subject to strict and special planning constraints, then there is no assumption that the local authority is required to plan to meet their traveller site needs in full.

Q8 – Do you agree that intentional unauthorised occupation should be regarded by decision takers as a material consideration that weighs against the grant of permission? If not, why not?

This is supported, but to ensure that Traveller Site development is not being treated differently to other unauthorised development the same principle should be applied to all intentional unauthorised development.

Q9 – Do you agree that unauthorised occupation causes harm to the planning system and community relations? If not, why not?

The Council agree

Q10 – Do you have evidence of the impact of harm caused by intentional unauthorised occupation? (And if so, could you submit them with your response.)

The Council has some experience of intentional unauthorised Traveller Site development. Such breaches tend to give rise to a disproportionate number of representations and concern about social impact in the main. However, where appeals have been allowed against an enforcement notice or a retrospective planning application has been approved; private Traveller Site developments have become accepted as concerns have proved to be unfounded.

Q11 – Would amending Planning Policy for Traveller Sites in line with the proposal set out in paragraph 4.16 above help that small number of local authorities in these exceptional circumstances? If not, why not? What other measures can Government take to help local authorities in this situation?

If this proposal proceeds the Council asks that it is made clear that meeting the need does not fall on adjoining authorities under the duty to cooperate requirements either.

Q12 – Are there any other points that you wish to make in response to this consultation, in particular to inform the Government's consideration of the

potential impacts that the proposals in this paper may have on either the traveller community or the settled community?

None

Risk Analysis

23.

Risk	Likelihood	Impact	Mitigating actions
That the Government has not complied with its duties under legislation to protect the rights of ethnic groups, children or other persons with Protected Characteristics	2 It may be expected that Gypsy and Traveller representative organisations test the legality of the proposed policy changes	2 Any decisions that the Council takes under the Policy as revised may themselves be challenged in the courts.	Respond to the consultation within the specified time period as suggested in the report above.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.