

Council Agenda



**Epping Forest
District Council**

NOTICE OF EXTRAORDINARY COUNCIL MEETING

You are hereby summoned to an extraordinary meeting of the EPPING FOREST DISTRICT COUNCIL to be held in the COUNCIL CHAMBER, CIVIC OFFICES, HIGH STREET, EPPING at 7.30 pm on Tuesday, 19 January 2010 for the purpose of transacting the business set out in the agenda.



PETER HAYWOOD
Chief Executive

**Democratic Services
Officer:**

Council Secretary: Ian Willett
Tel: 01992 564243 Email: iwillett@eppingforestdc.gov.uk

WEBCASTING NOTICE

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BUSINESS

1. WEBCASTING INTRODUCTION

1. This meeting is to be webcast. Members are reminded of the need to activate their microphones before speaking.

2. The Chief Executive will read the following announcement:

“This meeting will be webcast live to the Internet and will be archived for later viewing. Copies of recordings may be made available on request.

By entering the Chamber’s lower seating area you consenting to becoming part of the webcast.

If you wish to avoid being filmed you should move to the public gallery or speak to the webcasting officer”.

2. FORMER COUNCILLOR W. A. (JIM) AXON

The Council is invited to stand for a minute’s silence in tribute to the memory of former District Councillor Jim Axon who died on 26 December 2009.

Jim Axon was a member of the District Council for 17 years. He was elected to represent the Theydon Bois Ward in 1979 and was re-elected in 1980, 1984, 1988 and 1992.

He was elected Chairman of the Council in 1991/2 and was appointed Vice-Chairman of the Council in 1990/1. During his terms of office he was also Chairman of a Plans Sub-Committee and a member of many committees, sub-committees and panels.

3. APOLOGIES FOR ABSENCE

4. DECLARATIONS OF INTEREST

(Chief Executive) To declare interests in any item on the agenda.

5. REPORT OF THE CABINET - GYPSY AND TRAVELLER DEVELOPMENT PLAN DOCUMENT - COUNSEL'S ADVICE AND INITIAL ANALYSIS OF THE OPTIONS CONSULTATION RESPONSES (Pages 5 - 58)

To consider the attached report.

6. REPORT OF THE CABINET - LOCAL HIGHWAYS PANEL (Pages 59 - 64)

To consider the attached report.

7. EXCLUSION OF PUBLIC AND PRESS

Exclusion: To consider whether, under Section 100(A)(4) of the Local Government Act 1972, the public and press should be excluded from the meeting for the items of business set out below on grounds that they will involve the likely disclosure of exempt information as defined in the following paragraph(s) of Part 1 of Schedule 12A of the Act (as amended) or are confidential under Section 100(A)(2):

Agenda Item No	Subject	Exempt Information Paragraph Number
Nil	Nil	Nil

The Local Government (Access to Information) (Variation) Order 2006, which came into effect on 1 March 2006, requires the Council to consider whether maintaining the exemption listed above outweighs the potential public interest in disclosing the information. Any member who considers that this test should be applied to any currently exempted matter on this agenda should contact the proper officer at least 24 hours prior to the meeting.

Confidential Items Commencement: Paragraph 9 of the Council Procedure Rules contained in the Constitution require:

- (1) All business of the Council requiring to be transacted in the presence of the press and public to be completed by 10.00 p.m. at the latest.
- (2) At the time appointed under (1) above, the Chairman shall permit the completion of debate on any item still under consideration, and at his or her discretion, any other remaining business whereupon the Council shall proceed to exclude the public and press.
- (3) Any public business remaining to be dealt with shall be deferred until after the completion of the private part of the meeting, including items submitted for report rather than decision.

Background Papers: Paragraph 8 of the Access to Information Procedure Rules of the Constitution define background papers as being documents relating to the subject matter of the report which in the Proper Officer's opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) have been relied on to a material extent in preparing the report and does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of executive reports, the advice of any political advisor.

Inspection of background papers may be arranged by contacting the officer responsible for the item.

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Report to the Council

Committee: Cabinet

Date: 19 January 2010

Portfolio Holder: Councillor Mrs D Collins
(Leader's Portfolio)

Item: 5

**1. GYPSY AND TRAVELLER DEVELOPMENT PLAN DOCUMENT - COUNSEL'S
ADVICE AND INITIAL ANALYSIS OF THE OPTIONS CONSULTATION
RESPONSES**

Recommending:

- (1) That an urgent meeting be sought with the relevant Minister to discuss the future preparation of the Gypsy and Traveller Development Plan Document;**
 - (2) That the letter attached as Annex 2 to this report be sent to the relevant Minister prior to the meeting referred to in (1) above;**
 - (3) That, pending the outcome of further discussions with the Government Office for the East of England (Go-East), preparation of the Gypsy and Traveller Development Plan Document be continued;**
 - (4) That the sites identified within the Options Consultation Document not be rejected without formal consideration of the responses to the Consultation;**
 - (5) That officers be authorised to continue discussions with Counsel and Go-East about sites which are within or in close proximity to settlement; and**
 - (6) That the initial results of the analysis of the consultation responses be noted.**
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Introduction

- ...
1. At our meeting on 4 January 2010, postponed from 21 December 2010, we considered the attached report (Annex 1).
 2. The report contains advice from Counsel about the future direction for the preparation of the Gypsy and Traveller Development Plan Document. We have taken account of that advice and the views of our officers and we are of the opinion that as a matter of urgency a meeting should be sought with the relevant Minister to discuss the Direction served by the Secretary of State in September 2007 which requires the Council to amend its Local Development Scheme to specify that:
 - (a) it includes a Gypsy and Traveller Development Plan Document; and
 - (b) work will commence on the Development Plan Document as soon as possible with submission of the draft for examination by 30 September 2009.

3. Prior to a meeting with the relevant Minister we are recommending that a letter be sent to him outlining the matters for discussion and a copy of the proposed letter is attached to this report as Annex 2.
- ...
4. Members will note that there are three major points which it is considered should be addressed at a meeting:
- (a) the very substantial increase in provision for gypsy and traveller pitches made in the District since the Direction;
 - (b) the adverse effect on achieving an up-to-date Local Development Framework as a result of continuing with a requirement to complete a separate Gypsy and Traveller Development Plan Document; and
 - (c) the other results of a Local Development Framework Review that the Council has undertaken.

Increase in Pitches

5. The increase in provision of pitches can be seen from the table attached to the letter which compares the position as at 2006 with that as at late 2009. Members will note that there has been a significant increase in the number of private authorised sites, an increase in the number of tolerated sites, a significant increase in the number of temporary sites and a significant reduction in the number of unauthorised sites.
6. Progress made by the Council can also be contrasted with the position elsewhere in Essex as shown in the chart attached to the letter which shows gypsy and traveller populations by District as at July 2009. It will be noted that this Council has the greatest percentage of caravans in the County with the exception of Basildon District. In relation to the number of unauthorised caravans it can also be seen that there are other districts in the County with a higher percentage than this Council.

Threats to the Local Development Framework

7. The Council has allocated a very significant level of financial and human resources towards preparing the draft Gypsy and Traveller Development Plan Document. Such resources are finite and they can only be stretched so far without materially undermining the Council's other strategies and priorities.
8. The cost to the Council of the Gypsy and Traveller Development Plan Document so far (not including staff costs which are considerable) is already in the region of £180,000. The Council's budget agreed in December 2007 for the preparation of the entire Local Development Framework is £1.3m. We believe that using over 10% of the total budget on a single, albeit important, issue is disproportionate.
9. The Local Development Framework process was intended to be quicker, cheaper and more flexible than the old Local Plan and using Local Development Framework resources to such a degree on a single development plan document does not fit with that aim.

The Local Development Framework Review

10. The Council has recently participated in a Planning Advisory Service Diagnostic as part of an overall review of the progress the Council has made in the preparation of its Local Development Framework as required by the Planning and Compulsory Purchase Act 2004. The Planning Advisory Service report highlights the direct and adverse impact that the preparation of the Gypsy and Traveller Development Plan Document has had on progress with the preparation of the Council's Core Strategy

but is very complimentary about the work the Council has undertaken in respect of making provision for additional provision for Gypsy and Traveller pitches, particularly in its attempts to engage with the travelling community.

11. The Planning Advisory Service report also raises more subtle, but very worrying, concerns about public perception of the planning process as a consequence of the Gypsy and Traveller Development Plan Document Options Consultation.
12. Between November 2008 and February 2009 the Council carried out an Options Consultation on its proposals for the Gypsy and Traveller Development Plan Document to which an excess of 10,500 responses were received. The volume and complexity of the response to the Options Consultation on the Gypsy and Traveller Development Plan Document resulted in the Council being unable to meet the deadlines set by the Secretary of State's Direction for the submission of a draft Development Plan Document by September 2009.
13. Officers had been in discussions with Go-East since July 2009 in the hope of agreeing a revised timetable for the preparation of the Development Plan Document and how best to progress with the work necessary to prepare that document, having regard to the fact that the Council is also required to prepare a Core Strategy in co-ordination with Harlow and East Hertfordshire District Councils as required by the Regional Spatial Strategy for the East of England. Go-East suggested a process for shortening the revised timetable but Counsel advises that the suggestion be rejected.

Development Plan Document Preparation

14. Counsel has also advised that it would not be appropriate or reasonable to abandon the preparation of the Gypsy and Traveller Development Plan Document and we accept that advice.
15. As regards rejecting all or most of the sites identified in the Options Document without formally considering responses to the consultation, Counsel again advises against pursuing this course of action. He concludes that this would render the Development Plan Document "unsound" as it would not be justified because its evidence base would not be robust or creditable. We accept this advice. Evidence is key to the new planning system, and consultation responses will constitute a key part of the evidence base for preparing a Development Plan Document. Ignoring or not using that evidence would be considered wholly unsound by an Inspector at an Examination in Public.
16. Paragraph 65 of Circular 1/06 (Planning for Gypsy and Traveller Caravan Sites) states that local authorities should first consider locations in or near existing settlements with access to local services, e.g. shops, doctors and schools. All of these factors (and others) were taken into account in identifying potentially suitable sites for the purposes of the consultation. However, there are particular issues affecting the District which restricted the possible availability of land in terms of this guidance. We have taken account of Counsel's advice and are recommending that officers be authorised to continue discussions with Counsel and Go-East about perspective sites which are within or in close proximity to settlements.

Recommendations

17. Any significant extension to the timetable for preparing the Development Plan document will have significant implications for other forward planning work, notably the Core Strategy of the Local Development Framework. Ignoring or rejecting Counsel's advice could lead to the intervention of the Secretary of State with decisions being taken on the location of sites for new pitches being outside of the control of the Council.

18. Accordingly, we recommend as set out at the commencement of this report.

Report to the Cabinet

Annex 1

Report reference:

C-065-2009/10

Date of meeting:

21 December 2009



**Epping Forest
District Council**

Portfolio: Leader

Subject: Counsel advice on progress with the Gypsy and Traveller Development Plan Document, and initial analysis of the Options Consultation responses

Responsible Officer: Ian White (01992 564066)

Democratic Services Officer: Gary Woodhall (01992 564470)

Recommendations/Decisions Required:

- (1) To continue with the preparation of the Gypsy and Traveller DPD, pending the outcome of further discussions with the Government Office for the East of England (GO-East);**
- (2) To agree that the Options consultation sites cannot be rejected without formal consideration of the responses;**
- (3) To authorise officers to continue discussions with Counsel and GO-East about sites which are within or in close proximity to settlements;**
- (4) To consider the need for a meeting with the relevant Minister to discuss the future preparation of the Gypsy and Traveller DPD;**
- (5) To note the initial results of the analysis of the consultation responses.**

Executive Summary:

Counsel has given a range of advice about the future direction for the preparation of the Gypsy and Traveller DPD which is considered in this report. Various options for action are rejected, and other options are discussed. Officers need to meet with GO-East in the light of the advice and because recent permissions and CLD decisions are making significant inroads into the Regional Spatial Strategy target set by the Single Issue Review. Members are asked to consider arranging a meeting with the relevant Minister to discuss the particular issues facing the District.

Members are also asked to note the initial quantitative results of the Options consultation responses.

Reasons for Proposed Decision:

Any significant extension to the timetable for preparing the DPD will have significant implications for other Forward Planning work, notably the Core Strategy of the Local Development Framework. Ignoring or rejecting Counsel advice could lead to the intervention of the Secretary of State with decisions being taken on the location of sites for new pitches

which are outside the control of this Council.

Other Options for Action:

To reject or ignore Counsel advice.

Report:

Counsel advice

1. At the meeting on 10 September 2009, Local Development Framework Cabinet Committee recommended that external legal and planning advice be sought by the Council about the process and risks still to be faced in continuing with the preparation of the Gypsy and Traveller Development Plan Document (DPD). This recommendation was agreed by Cabinet on 12 October 2009.

2. Mark Beard of Counsel was subsequently instructed to advise the Council on the following issues:

- The scale of resources needed (monetary and staff time) and the negative impact on other important forward planning work.
- The elongation of the timescale.
- Following Government guidance about sustainable locations in terms of proximity to services and public transport, especially with regard to sites within or adjacent to settlements which are causing friction locally.
- Two of the most commonly expressed concerns or questions at the consultation exhibitions were fear of crime and effect on property value. Crime and fear of crime are material to planning, but there appears to be very little Government research on this. Effect on property value is not a planning issue, but this obviously does not satisfy members of the settled community who are concerned about the proposals in the consultation. This issue is exacerbated by the current economic climate and the elongation of the timetable, leading to possible blighting of property sales.

3. Counsel was asked to advise specifically on the risks and costs to the Council of the following options:

- The Council advising GO-East that it wishes to cease any further work on the DPD and/or to reject all of the sites identified in the consultation document. The Government could intervene under s27 of the 2004 Act, with the Council being responsible for any related costs, but are there other default powers available to the Government?
- The Council agreeing a revised but not prolonged timetable with GO-East, although the latter is currently unclear in its guidance, despite discussions commencing in July.
- The Council seeking to challenge (with or without GO-East support) some of the guidance/criteria used to date. This would be with particular regard to circumstances applying in this District, ie with the rural area being entirely in the Green Belt with consequent high land values in the urban areas, and where low density, low-rise caravan sites are inappropriate neighbours to more densely developed areas.

- The Council attaching different weight to the criteria in Government guidance.
 - If either or both of the last two bullet points can be implemented, this would lead to the deletion of some sites, particularly those in close proximity to settled areas. Can this really be done without formally considering the public consultation responses? Would such a change in approach be likely to lead to judicial review concerning the consistency of approach, particularly regarding the consideration of omission sites?
4. In giving advice on the above issues and options, Counsel also considered:

(a) the Draft Delivery Strategy for Gypsy and Traveller pitches which has been prepared by Officers from the Housing, Environment and Street Scene, and Planning and Economic Development Directorates; and

(b) the draft Planning Advisory Service Diagnostic of the governance of the preparation of the Local Development Framework. The full version of Counsel advice and the draft PAS Diagnostic are restricted to Members and are listed as background papers but will be published as “pink copies”. A summary of the former has been prepared which is available for public use.

DPD Preparation

5. Counsel advises (paragraph 38) that abandoning the preparation of the DPD is not an acceptable option for the following reasons:

(a) the Secretary of State could intervene to prepare and approve the DPD and recover the costs from the Council;

(b) such intervention would reflect poorly on the Council, and could result in a complete loss of control over future pitch provision (eg through appeal decisions), public confidence in the Council would be undermined;

(c) the working relationship with GO-East could also be adversely affected, which could in turn affect the implementation of the Council’s Local Development Scheme (LDS);

(d) the requirement for additional pitch provision will remain even if the Council does not comply with the Direction, which could again lead to unwanted appeal decisions;

(e) abandoning the DPD now would lead to accusations of wasting public funds in terms of work that has been done to date; and

(f) cost and delay in the preparation of the DPD is primarily due to the controversial nature of the topic, and will have to be addressed somewhere in the Council’s LDF.

6. For these reasons Counsel concludes (paragraph 67) that it would not be appropriate or reasonable to abandon the preparation of the DPD. Officers concur with these findings, and Members will be aware that (a), (b) and (d) in particular repeat advice or comments that have been given previously.

Rejection of Options consultation sites

7. As regards rejecting all or most of the sites identified in the options document without formally considering responses to the consultation, (an idea raised at Cabinet on 16 November to address the issue of blight in relation to the extension of the timetable for preparing the DPD), Counsel again advises (paragraphs 52 and 53) against pursuing this

course of action. He concludes that this would render the DPD “unsound” as it would not be justified because its evidence base would not be robust or credible.

8. Officers accept this conclusion. Evidence is key to the new planning system, and consultation responses will constitute a key part of the evidence base for preparing a DPD. Ignoring or not using that evidence would be considered wholly unsound by the Inspector at an Examination in Public. Officers recognise, however, Members’ concerns about the continuing blight of affected properties, and hope that the proposals outlined below can address this, at least in part.

Revised timetable

9. Counsel concludes (paragraph 39) that the only sensible way forward in continuing to prepare the DPD is for the Council “to attempt to agree” with GO-East a revised timetable for the preparation of the DPD. The new timetable should be realistic and reasonable, taking into account, inter alia:

(i) the pressing need for the Council to make meaningful progress with other parts of the LDF, notably the Core Strategy; and

(ii) collaborative working with Harlow and East Herts Councils on urban extensions to Harlow.

10. Counsel notes the conclusions of the draft Planning Advisory Service (PAS) Diagnostic on the preparation of the LDF that the resources needed so far to deal with the Gypsy and Traveller DPD have had a serious and significant impact on other LDF work. His full advice suggests 8 issues that should be discussed with GO-East in attempting to reach agreement about a revised timetable.

11. Counsel rejects (paragraph 58) GO-East’s suggestion for linking consultation on the Sustainability Appraisal of the Options document with the period for receiving representations on the draft DPD (this suggestion was one of the catalysts for seeking independent legal advice).

12. GO-East officers are aware that the Council has contacted Counsel for advice. Depending on Member decisions on this report, officers will write to GO-East asking for a meeting to discuss a revised timetable, taking into account the issues raised by Counsel, and also considering the potential timetable for the Core Strategy preparation.

Criteria

13. Circular 1/06 (Planning for Gypsy and Traveller Caravan Sites) offers a range of guidance for identifying potentially suitable sites, and making land available:

(a) Paragraph 35 advises about:

- the disposal of public land for less than the best consideration;
- making full use of the registers of unused and under-used land owned by public bodies;
- the use of compulsory purchase powers; and
- co-operating with neighbouring authorities to provide more flexibility.

(b) Paragraph 49 acknowledges the difficulty of finding sites in the Green Belt – “Alternatives should be explored before Green Belt locations are considered. Pressures for development of sites on Green Belt land can usually be avoided if the local planning authority

allocates sufficient sites elsewhere in its area ...”

(c) Paragraph 54 states “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.”

(d) Paragraph 64 considers sustainability issues, which should include:

- transport mode and distance from services;
- peaceful and integrated co-existence between the site and the local community;
- the wider benefits of easier access to GP and other health services;
- children attending school on a regular basis;
- the provision of a settled base that reduces the need for long-distance travelling and possible environmental damage caused by unauthorised encampment; and
- not locating sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans.

(e) Paragraph 65 clearly states that local planning authorities “should first consider locations in or near existing settlements with access to local services, eg shops, doctors and schools.”

14. All these factors (and others) were taken into account in identifying potentially suitable sites for the purposes of consultation. There are, however, particular issues affecting the District which restricted the possible availability of land in terms of this guidance:

(a) Despite a Call for Sites exercise which included public authorities and agencies, and a check of the Council's Land terrier, very little public land was identified as being potentially suitable (only 2 sites on North Weald Airfield); and

(b) The entire rural area of the District is in the Green Belt (as indeed are all existing sites for Gypsies and Travellers and Travelling Showpeople). The Holmsfield Nursery decision of 2007 included the following statement from the Inspector (paragraph 25), which was endorsed by the Secretary of State: “Policy H10A of the Local Plan Alterations provides for gypsy sites within the Green Belt where very special circumstances are shown to exist. But all land outside the urban area of the District is in the Green Belt, and environmental and residential amenity considerations, and competing urban uses and land values militate against gypsy site provision in the built-up area. Consequently, additional gypsy site provision is likely to be in the Green Belt and the primary determining issues are likely to be the nature of the land and its suitability for purpose rather than its Green Belt designation.”

15. In paragraphs 42 to 50 of his advice, Counsel considers the case for re-visiting the criteria for site selection, based on officers' experience of the consultation exercise. His conclusion in paragraph 69 is “...any reconsideration of the criteria for identifying sites, or the application of those criteria, must comply with Government policy but can properly take account of the particular physical and planning constraints and circumstances which apply to the District.” His paragraph 46 is more specific about a particular feature of the site selection criteria, and is of particular relevance to the consultation: “However, the Council must not adopt an approach that does not comply with Government policy and must ensure that any reconsideration (*of criteria*) only takes account of material planning considerations and is based on evidence. Whilst opposition to the sites included within the Options Consultation may provide part of the justification for a reconsideration of the Council's approach, care must be taken to ensure that the opposition to the proposals for the DPD do not reflect a fundamental opposition to further site provision generally, or can be explained by opposition due only to the proximity of a site to respondents' properties.” (underlining by officers) This causes concern for the reasons outlined in the following paragraphs.

16. Officers are in no doubt that the considerable amount of concern expressed by the settled community during the consultation and in the questionnaire responses is at least partly, if not mainly, down to the proximity of some of the potential sites to properties or settlements. As far as this District is concerned, it would seem that two of the criteria for identifying potentially suitable sites are mutually incompatible – i.e. identifying sites in or near settlements, and peaceful and integrated co-existence between the site and the local community. A similar view has been expressed by some members of the travelling community in discussions with officers, but there is unfortunately no written record of this. Officers are of the opinion that, if the outcome of the DPD is to be the identification of suitable and deliverable sites, the criterion for proximity to settlements (and in turn to services) will have to be relaxed.

17. There is also the question of the efficiency of use of land. By their very nature, mobile homes and caravans are normally a fairly low density of development. Green Belt restrictions mean that the most efficient use of land should be made within or adjoining settlements to minimise the need to release more Green Belt land for development. This would indicate that rural settings are the most appropriate locations for Gypsy and Traveller sites in this District.

18. This suggests that sites in “less sustainable” locations are the only ones that may prove to be acceptable to the settled community, and this could raise reasonable and fair concerns about accessibility to services for the travelling community. In this context, it may be worth noting the findings of the Essex Gypsy and Traveller Accommodation Assessment (Final Report November 2009), in relation to the County Council owned site at Hop Gardens, Stanford Rivers. This is unquestionably a remote site which would not meet the standards for location of current Government guidance. Paragraph 8.8 of the report notes, however, that “....satisfaction levels were higher on some sites than on others: participants living in Hop Gardens, reported the highest levels of satisfaction”. Figure 8.2 indicates that 75% of participants were “very satisfied” and 25% were “satisfied”. While this is only one site, its residents’ attitudes would suggest that, at least to them, a degree of separation from services such as schools, doctors and shops is not a particularly significant issue.

19. Officers have concluded from the experience of the Options consultation that the requirements in paragraph 65 of Circular 1/06 about first considering locations in or near existing settlements, have been satisfied. The results of the exercise indicate, however, that sites distinctly separate from settlements are the only ones which are likely to be acceptable to both the settled and travelling communities, and therefore have more chance of being deliverable than any within or in close proximity to settlements.

20. Officers believe that the results of the consultation should be used as part of the filtering process described in the report to Cabinet on 20 April to identify sites which can no longer be considered to have any potential for use for pitches, on the grounds that they are too close to existing settlements. This may, at least in part, address the concerns of some members of the settled community who own property in close proximity to a site identified in the Options Consultation, but care needs to be taken in light of the advice given by Counsel (referred to in paragraph 15 above). This needs resolution as a matter of urgency, either through further consultation with Counsel, or discussion with GO-East. There is no point in proceeding with sites which are simply unacceptable to the local community, because this will not achieve peaceful co-existence, but the Council will need to be satisfied that this approach will be judged to be sound.

The need for further consultation

21. Members will be aware that responses to the options consultation included suggestions for 49 “omission” sites. Full details of some of these sites still need to be

finalised and officers will then need to assess them against the 21 criteria listed in Appendix 4 of the consultation document. The omission sites which have been accurately identified so far are separate from settlements, obviously reflecting the wishes of the settled community. Depending on the outcome of discussions with GO-East and/or the Minister, officers now believe that a second round of consultation on potential sites will be needed which could include:

- (a) original Options sites which are considered to be not too close to settlements;
- (b) omission sites which satisfy the 21 criteria; and
- (c) any appropriate sites in the north-east of the District, this area previously being excluded on the grounds that it was too remote from services.

22. All of these 3 categories would be subject to Sustainability Appraisal so that this was included as part of the consultation. This would address the issues raised in paragraphs 54 to 56 of Counsel's advice, and would also ensure that this consultation would be entirely separate from the requirement to publish the draft DPD to allow representations to be made direct to the Inspector (paragraphs 57 to 60 of the advice).

23. A second consultation exercise obviously has implications for the extension of the timetable, which in turn brings in potential clashes with other LDF work, notably the preparation of the Core Strategy. This should form a significant part of future discussions with GO-East and/or the Minister, because it is currently intended that consultation on Issues and Options for the Core Strategy should proceed in the summer of 2010. Officers are attempting to co-ordinate this stage with the Core Strategy programmes for Harlow and East Herts, so it is important that this programme is adhered to as closely as possible.

24. Officers wish to propose to GO-East that, given the reduction in the RSS target figure from 34 pitches to 20, because of recent permissions and CLD decisions, the Gypsy and Traveller issue should be subsumed into the Core Strategy as part of the wider housing agenda. Other applications for new pitches are outstanding and it is possible that the figure can be further reduced. Mainstreaming the travelling community's needs with broader housing issues would meet the intentions of current Government legislation. If this can be accepted by GO-East (and, in turn, the Minister), this should lead to the reconsideration of the purpose of the Direction.

Ministerial meeting

25. Counsel considers in his full advice the value of seeking a meeting with the relevant Minister to discuss the problems the Council has encountered in trying to meet the timetable set by the Direction. He feels that this should await the outcome of a further meeting with GO-East, but that, because of changes in CLG personnel since the Direction was made, there could be benefits on all sides from such a meeting.

Initial analysis of Options Consultation responses

26. The information discussed below (Appendices 2 to 4 of the report) is being presented simply for Members to note, and not for any decisions to be taken.

27. Appendices 2 and 3 of this report summarise, in a quantitative fashion only, the public responses to the consultation. They are being presented in this fashion now because of Member requests for some feedback. Officers stress that much more work needs to be done on the analysis of the responses, because many of the questions asked for reasons for answering "yes" or "no" and this information also needs to be presented to Members before a full qualitative interpretation of the results can be made. The views of the statutory consultees

also need to be considered. It is probably inevitable that some of these figures will be used by residents and groups to back up particular points of view about the principle of undertaking this work, and about specific sites, but officers stress that the figures being presented here do not give anything like the full picture, and should therefore not be used out of context. It is also important to take into account the following paragraphs.

28. Appendix 2 gives a very broad summary of the main conclusions of the quantitative analysis. Appendix 3 gives a more detailed breakdown of the yes/no answers to the consultation questionnaire. It includes the total number of responses received for each of these questions with this figure also being given as a percentage of the total number of people who replied. Responses were made either as individuals or as groups of widely differing sizes (eg the largest group included 2,102 signatures while there were 241 groups of 5 or less comprising 596 people). The total number of responses is therefore the sum of the individual responses plus the number of people associated with each group. There will be an element of double counting in these totals because some people will have responded as individuals as well as group members, but officers believe that this will be of little statistical significance. In all, therefore the total number of people who responded to the consultation was 10,601.

29. Appendix 4 contains the full text of all the consultation questions, to be used in conjunction with Appendix 3.

30. Officers are satisfied that responses to the consultation are overwhelmingly, if not totally, from the settled community. Despite the use of Myriad Consultants to try and engage the travelling community in the consultation process, it now seems very likely that no questionnaires have been returned. This is disappointing, but not wholly surprising, given the relatively restricted involvement of the travelling community in the planning process prior to this consultation. The number of applications for new pitches has increased in the last year, and this may be how Gypsies and Travellers have chosen to respond to the consultation. Any analysis of the (quantitative and qualitative) responses, and conclusions to be drawn from the findings, must therefore be viewed in the light of negligible input at best from the travelling community.

31. The questions broadly fall into two types: "general" dealing mainly with strategy or policy issues, and "site-specific" dealing with the potential suitability of individual sites or areas. There is a notable difference in the level of response to the two types, with the general questions attracting as much as a 96% response (eg question 1 on objectives), while the site questions can have a much lower level of reply (eg 77% no response for question 11 on two sites in Roydon and Nazeing). This obviously reflects residents' unfamiliarity with various sites in the District.

Resource Implications:

A budget of £1.3 million over a 4 year period was agreed for the preparation of the Local Development Framework, which includes this DPD, in December 2007. The costs of preparation of this DPD (currently estimated at about £180,000 exclusive of staff time) greatly exceed the original estimates. The Options Consultation, which ran from November 2008 to February 2009, effectively involved the whole Forward Planning team full time, with consequent significant adverse impact on other work. Continuation of the project, particularly if this involves another consultation exercise, will have similar impact on staff time and on other important Forward Planning work.

Legal and Governance Implications:

Preparation of the DPD, separate and in advance of the Core Strategy, is required by a

Direction made by the Secretary of State in September 2007.

Safer, Cleaner and Greener Implications:

The intention of the process is to identify sites which are safe and in a sustainable location, and which satisfy the needs and concerns of both the travelling and settled communities.

Consultation Undertaken:

This report has been considered by the Corporate Executive Forum.

Background Papers:

ODPM Circular 1/06 – Planning for Gypsy and Traveller Caravan Sites
Holmsfield Nursery Appeal Report to the Secretary of State (December 2007) – APP/J1535/C/06/2014682
The Council’s Consultation on Options document (November 2008)
Cabinet Report 20 April 2009 – Analysis of Gypsy and Traveller Options Consultation
Instructions issued to Counsel in September 2009
EFDC Gypsies and Travellers’ Sites Delivery Strategy 2009-2011 (Draft) November 2009
Essex GTAA Final Report November 2009 (Fordham Research)
Supplementary questions for Counsel issued in November 2009
Draft PAS Diagnostic on the LDF – restricted to Members
Full version of Counsel advice – restricted to Members
Summary of the advice received from Counsel in December 2009

Impact Assessments:

Risk Management

One of the main reasons for approaching Counsel was to request advice on the risks associated with a range of actions the Council could take. Consideration of that advice forms the main part of this report.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council’s general equality duties, reveal any potentially adverse equality implications? Yes

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? Yes

What equality implications were identified through the Equality Impact Assessment process?
Impression by the settled community that the process of preparing the DPD is giving the travelling community an unfair advantage which is directly disadvantageous to the settled community.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?

By proposing that sites within or in close proximity to settlements should no longer be considered for Gypsy and Traveller pitches, this is intended to:

- (a) reduce friction between the two communities;

(b) achieve a more obviously even-handed approach which recognises the needs of both communities; and

(c) result in more peaceful co-existence in the medium and long term.

In the Matter of:

THE TOWN AND COUNTRY PLANNING ACT 1990

-and-

THE PLANNING AND COMPULSORY PURCHASE ACT 2004

-and-

**THE EPPING FOREST DISTRICT COUNCIL LOCAL DEVELOPMENT SCHEME:
PROPOSED GYPSY AND TRAVELLER DEVELOPMENT PLAN DOCUMENT**

ADVICE – REDACTED VERSION

INTRODUCTION

1. By virtue of Part I of the Town and Country Planning Act 1990 ("the 1990 Act") within its jurisdictional area Epping Forest District Council ("the Council") is the local planning authority. In accordance with the requirements of Part 2 of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act"), the Council has submitted a Local Development Scheme ("LDS") for the approval of the Secretary of State for Communities and Local Government ("the Secretary of State").
2. The Council's LDS sets out the proposed timetable for the preparation and adoption of the Local Development Documents ("LDDs") that will in due course comprise the Council's Local Development Framework ("LDF"), including a Core Strategy and other Development Plan Documents ("DPDs").
3. Pursuant to section 15(4) of the 2004 Act, by way of a letter dated 17 September 2007, the Secretary of State directed the Council to amend its LDS to specify that (a) it includes a Gypsy and Traveller DPD and (b) work

will commence on the DPD as soon as possible with submission of the DPD for examination by 30 September 2009 ("the Direction"). In accordance with the Direction, the Council revised its LDS to include the preparation and adoption of a Gypsy and Traveller DPD and, in November 2007, submitted the revised LDS to the Government Office for the East of England ("GO-East") for the approval of the Secretary of State.

4. Thereafter, the Council commenced work on the preparation of the Gypsy and Traveller DPD ("the DPD") and published a document entitled '*Consultation on Options – Development Plan Provision for Gypsies and Travellers in Epping Forest District*' ("the Options Consultation") which sought the views of interested persons on the strategy to be adopted for additional pitch provision in the district and the potential sites which may be acceptable or otherwise for such provision.
5. The Options Consultation resulted in excess of 10,000 responses, causing and continuing to cause an enormous strain on the Council's resources and significant delay in the preparation of the DPD. Consequently, the Council sought a revision of the terms of the Direction to allow further time for the preparation of the DPD.
6. To date, GO-East have refused that request but have acknowledged that it will not now be possible to comply with the requirement within the Direction to submit the DPD for independent examination by 30 September 2009. As a result, GO-East invited the Council to submit a revised timetable for preparation of the DPD as soon as possible. The Council's proposals for the revised timetable have been submitted to GO-East for consideration.
7. On 10 September 2009, the Council's LDF Cabinet Committee considered the proposals for the preparation of the DPD and recommended that a 'stock take' be undertaken to include seeking independent legal advice in respect of the options available to the Council having regard to a number of key considerations identified in my Instructions, including the scale of resources necessary to complete the preparation of the DPD, the delayed

timetable and the adverse impact on the preparation of other necessary formal planning work.

8. The Council is also very concerned that the application of criteria contained in Government policy and guidance, which are used to identify suitable sites, results in the identification of sites that are considered to be unacceptable by both the settled and traveller population. Consequently, I am asked to advise the Council as to whether those criteria and their application to the identification of sites can be reconsidered and the consequences of such an approach.
9. The Council also seeks my advice in respect of the delivery of sites and the consequences of any shortfall in delivery, together with the phasing of delivery and opportunities for provision as part of the proposals for urban extension.
10. The advice herein is a redacted version of my written Advice dated 1 December 2009 ("my full written Advice"). For the avoidance of doubt the disclosure of this redacted version of my full written Advice does not constitute waiver on the part of the Council of legal privilege in respect of the content of my full written Advice.

ISSUES

11. In response to the various issues identified in my Instructions, I have structured my Advice under the following topics:
 - i) Relevant Policy Priorities;
 - ii) Statutory Requirements and Soundness;
 - iii) Options and Timetable;
 - iv) Site Search Criteria; and
 - v) Delivery and Resources.

RELEVANT POLICY PRIORITIES

12. Those instructing me are well aware of the requirements of current Government planning policy issued by the Office of the Deputy Prime Minister ("ODPM") in ODPM Circular 1/2006 '*Planning for Gypsy and Traveller Sites*' (February 2006) ("the Circular").
13. The introduction to the Circular makes clear that the guidance in the Circular should be seen in the context of the Government's key objectives for planning for housing – to ensure that the everyone has the opportunity of living in a decent home.¹ The Government also makes clear that the Circular was necessary because the previous Circular (DOE Circular 1/1994) had failed to deliver adequate sites for gypsies and travellers in the last 10 years,² since the duty to provide gypsy sites was abolished by the Criminal Justice and Public Order Act 1994.
14. The guidance in the Circular also makes clear that provision of adequate sites for gypsies and travellers is part of the Government's desire to create and sustain strong communities as part of the Government's overall Respect Agenda.³ The policy approach is designed to make best use of the reforms to the planning system, including the strengthening of planning at the regional level, brought about by the 2004 Act.⁴
15. The guidance in the Circular also notes that the Housing Act 2004 will require local housing authorities to include gypsies and travellers in their accommodation assessments and to take a strategic approach, including the production of a strategy demonstrating how the accommodation needs of gypsies and travellers are going to be met, as part of the authority's wider housing strategies.⁵

¹ ODPM Circular 1/2006: Planning for Gypsy and Traveller Sites, paragraph 1.

² *ibid*, paragraph 2

³ *ibid*, paragraph 4

⁴ *ibid*, paragraphs 6 - 9

⁵ *ibid*, paragraph 10

16. The main intentions of the guidance in the Circular should inform the preparation of the DPD and are stated as follows:⁶

- a) *to create and support sustainable, respectful, and inclusive communities where gypsies and travellers have fair access to suitable accommodation, education, health and welfare provision; where there is mutual respect and consideration between all communities for the rights and responsibilities of each community and individual; and where there is respect between individuals and communities towards the environments in which they live and work;*
- b) *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;*
- c) *to increase significantly the number of gypsy and traveller sites in appropriate locations with planning permission in order to address under-provision over the next 3 – 5 years;*
- d) *to recognise, protect and facilitate the traditional travelling way of life of gypsies and travellers, whilst respecting the interests of the settled community;*
- e) *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;*
- f) *to identify and make provision for the resultant land and accommodation requirements;*
- g) *to ensure that DPDs include fair, realistic and inclusive policies and to ensure identified need is dealt with fairly and effectively;*
- h) *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; and*
- i) *to help to avoid gypsies and travellers becoming homeless through eviction from unauthorised sites without an alternative to move to."*

⁶ *ibid*, paragraph 12

17. As those instructing me know well, the Circular introduces a process for planning for gypsy and travellers' sites that begins with the preparation of a Gypsy and Traveller Accommodation Assessment ("GTAA"), which informs a review of the RSS that must set the additional pitch requirements for each local authority area. Thereafter, local planning authorities must allocate land in DPDs to make the required additional site provision.
18. The Circular is absolutely clear that local authorities must allocate sufficient sites for gypsies and travellers, in terms of the number of pitches required by the RSS, in site allocations DPDs. Criteria must not be used as an alternative to site provision where there is an identified need for pitches. Furthermore, LPAs will need to demonstrate that sites are suitable and that there is a realistic likelihood that specific sites allocated in DPDs will be made available for that purpose and how the land will be made available for a gypsy and traveller site and the timescales for provision.⁷

THE EAST OF ENGLAND EXPERIENCE

19. The Secretary of State published the Regional Spatial Strategy for the East of England Region, the East of England Plan, in May 2008. Following the publication of Circular 1/2006, as the preparation of the RSS was at an advanced stage, in February 2006 the Regional Planning Body for the East of England, the East of England Regional Assembly ("EERA"), agreed to prepare a single issue review of the RSS on the accommodation needs of gypsies and travellers ("the Single Issue Review").
20. The Single Issue Review was concluded on 20 July 2009 with the publication by the Secretary of State of the final revised policies within the RSS for the provision of additional pitches for gypsies, travellers and travelling showpeople. The number of additional pitches required in Epping Forest within Policy H3 of the RSS is not based upon the GTAA prepared by Essex planning authorities; rather it is based upon a formula devised in research jointly commissioned by EERA and DCLG.

⁷ *ibid*, paragraph 33

21. Revised Policy H3 of the RSS identifies a need for an additional 34 residential (or permanent) pitches for gypsy and traveller accommodation within Epping Forest District. Paragraph 5.15 of the revised RSS states that DPDs should identify sites to deliver the deliver the pitch requirements in Policy H3 of the RSS in locations likely to be attractive to the local Gypsy and Traveller communities while avoiding areas at risk of flooding and adverse effects on areas of wildlife and landscape importance. Furthermore, that guidance on site location is provided in ODPM Circular 01/2006 and on site layout and design in Designing Gypsy and Traveller Sites, CLG May 2008.
22. In respect of delivery of the additional pitch requirements contained within the revised polices within the RSS, paragraph 5.18 acknowledge that delivery of the 1,237 additional residential pitches poses challenges that require co-operation and joint working to ensure delivery. Revised Policy H3 stresses the importance of using opportunities presented by major developments to secure delivery.
23. The requirement for an additional residential 34 pitches in Epping Forest District by 2011 has been reduced as a result of the Council granting permanent planning permission and grants of temporary planning permission that secure residential pitches for temporary periods beyond 2011. At present the outstanding number of additional residential pitches that must be provided before 2011 in Epping Forest District is 22.

STATUTORY REQUIREMENTS AND SOUNDNESS

24. The 2004 Act (as amended) and the Town and Country Planning (Local Development) (England) Regulations 2004 (as amended) ("the Regulations") set out how LDDs (including DPDs) are to be prepared, adopted and approved. This includes independent public examination of any LDDs, which are DPDs (see Regulations 24 and 45).
25. The emphasis is on decisions being made at an early stage in the process, before the plan is submitted to the Secretary of State for approval, and on

extensive consultation. This concept is referred to as 'frontloading' and is now very familiar to those involved in spatial planning. The contents of the DPD are intended to take account of consultation as they progress to the final submission document. After submission for examination there is limited opportunity for the LPA to change the contents of the DPD.

26. The statutory amendments made in 2008 introduced a critical new stage in the preparation of DPDs or, rather, they have re-introduced a version of the modifications stage that used to exist which allowed planning authorities to adjust the draft DPD to respond to sensible suggestions. The amendments to the Regulations are described by the Government as providing "*improved*" consultation arrangements, however, whilst these give the public greater opportunity to get involved at the beginning of the process, they reduce the overall amount of consultation required.
27. A single but broad statutory requirement (in Regulation 25) is placed on the LPA to consider who should be involved in the preparation of the DPD and thereafter to take what steps they think appropriate to engage them. The process of preparing the DPD would be tailored to the circumstances: for example a major core strategy may require a process that includes consultations at what was previously known as the preferred options stage, in order for the authority to be confident that the DPD is sound when eventually published (see below). By contrast, a small scale DPD, or a minor change to a DPD may not require this approach.
28. The former requirement for a first formal consultation stage (the 'Issues and Options' stage) followed by the consultation at the 'Preferred Options' stage has been abolished. Instead, it has been left to the LPA to carry out consultation – with the specified statutory bodies and with the general public – as it sees fit, according to its own view of what each DPD requires.
29. The revisions also mean that the final formal representations are made on the draft DPD and will be considered by the LPA, before the DPD is submitted for examination. The LPA has also now been permitted to give not less than six weeks for representations on the draft DPD to be made,

should they consider this to be necessary ("the Representations"). The same day that the LPA publishes all these documents, they also must make a request to the Regional Planning Body for an opinion on general conformity of the DPD to the RSS (see Regulation 29).

30. The LPA have the option to decide whether to make amendments to the draft DPD following these formal representations, rather than risk the DPD being found to be unsound, or may even decide that the changes required are too great. In the latter situation, the LPA could give up on the published version of the DPD and start again, by way of the proposed route involving the LPA to (technically) withdraw the DPD and make available a new DPD for formal representations.
31. The requirements within Part 6 of the Regulations, relating to the process from examination onwards, remain unchanged. The Inspector must arrange for the examination of the DPD and of the representations submitted. This is intended to take less than a year and can involve round table sessions, hearings and (occasionally) formal inquiry sessions. The Inspector must report on the findings of his or her examination and the recommendations are binding on the LPA.
32. A DPD may be withdrawn by the LPA at any time before it is adopted. However, there is no power to withdraw a draft DPD if it has been submitted for independent examination, unless the Inspector recommends this, or the Secretary of State directs the document to be withdrawn.
33. The purpose of the independent examination under section 20(5) of the 2004 Act is to determine, in respect of the development plan document, whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents and whether it is sound.
34. The first part of the statutory test in section 20(5) of the 2004 Act is a technical check. The second is at the heart of the statutory amendments made in 2008 - the Inspector's role is not now confined to a consideration

of the objections to the DPD but to consider the overall soundness of the DPD.

35. This begs the question as to which is meant by "sound" a term that is not defined in the 2004 Act or the Regulations. Consequently, it is necessary to refer to PPS 12, the relevant parts of which provide as follows:

"Legal requirements

4.50 *Under the Planning and Compulsory Purchase Act 2004 [Section] 20(5)(a) an Inspector is charged with firstly checking that the plan has complied with legislation. This includes in particular checking that the plan:*

- *has been prepared in accordance with the Local Development Scheme and in compliance with the Statement of Community Involvement and the Regulations;*
- *has been subject to sustainability appraisal;*
- *has regard to national policy;*
- *conforms generally to the Regional Spatial Strategy; and*
- *has regard to any sustainable community strategy for its area (i.e. county and district)."*

"Soundness"

4.51 *In addition the Section 20(5)(b) of the Act requires the Inspector to determine whether the plan is "sound".*

4.52 *To be "sound" a core strategy should be JUSTIFIED, EFFECTIVE and consistent with NATIONAL POLICY."*

Soundness

To be "sound" a core strategy should be *JUSTIFIED, EFFECTIVE* and consistent with *NATIONAL POLICY*.

"Justified" means that the document must be:

- *founded on a robust and credible evidence base*
- *the most appropriate strategy when considered against the reasonable alternatives*

"Effective" means that the document must be:

- *deliverable*
- *flexible*
- *able to be monitored*

The concepts of justification and effectiveness are expanded at paragraphs 4.36 – 4.38 and 4.44 – 4.47 of PPS 12."

36. Although the foregoing excerpts from PPS12 specifically apply to the preparation of Core Strategies, paragraph 5.2 of PPS12 makes clear that the principles apply to equally to the preparation of other DPDs.

OPTIONS AND TIMETABLE

37. The first issue to be addressed is whether, notwithstanding the requirements of the Direction, it is appropriate for the Council to cease the preparation of the Gypsy and Traveller DPD on the basis the Council has reached an impasse and it is no longer feasible, having regard to the excessive costs associated with the preparation of the Gypsy and Traveller DPD, the likely further delays to the preparation of the DPD due to the controversial nature of the proposals and the detrimental impact on the preparation of the remainder of the LDF, in particular, the Core Strategy, Statement of Community Involvement and other DPDs.
38. Unless the Council is willing to challenge (by way of a judicial review) the Secretary of State's refusal to withdraw or revise the Direction, or is able to renegotiate the overall approach to its LDS (including a withdrawal or

revision of the Direction), I do not consider abandoning the preparation of the Gypsy and Traveller DPD to be an acceptable option, for the following reasons:

- i) The risks associated with refusing to comply with the Direction, including the risk that the Secretary of State exercising the default powers contained in section 27 of the 2004 Act;
- ii) The likely consequences of an intervention by the Secretary of State, including a loss of control over the location for additional pitch provision in the District;
- iii) The risk of seriously undermine the Council's working relationship with GO-East, a relationship that is essential for the implementation of the Council's LDS;
- iv) The difficulties that the Council will inevitable face defending planning appeals involving proposals for additional caravan site development and the risk of a wholly unplanned and ad hoc approach to pitch provision in the District;
- v) The resources employed to date that would be wasted; and
- vi) The fact that additional pitch provision must be addressed somewhere in the Council's LDF.

39. In my view, the only sensible way forward is for the Council to attempt to agree a revised timetable for the preparation of the Gypsy and Traveller DPD that is both realistic and reasonable, whether or not the revised timetable is reflected in a formal revision to the Direction. The position adopted by GO-East to date indicates that it is unlikely that a formal revision to the Direction will be made.

40. As I understand matters, the Council's LDS is under review and the revised LDS is due to be submitted to the Secretary of State in January 2010 for approval. The revisions to the LDS should properly reflect the reality of the circumstances as they exist currently and ought to include a revised timetable for the preparation of the Gypsy and Traveller DPD, whether or

not a revised timetable can be agreed with GO-East by the time the revised LDS is submitted.

41. The approach to be adopted in all negotiations with GO-East should reflect the guidance in PPS12 relating to LDSs, which also applies to Government Offices when consulted by planning authorities. Paragraph 4.58 of PPS12 provides as follows:

"Local planning authorities should keep to the timetables agreed in local development schemes. When rolling these schemes forward, local planning authorities should consult Government Offices. In responding to these consultations Government Offices will take the following matters into account:

- 1) *Is any postponement of milestones justified by reference to special circumstances?*
- 2) *Does the LDS reflect government priorities on subject matter?*
- 3) *Is the LDS realistic in programme management terms, taking into account the resources available?*
- 4) *Does the LDS take proper account of the need to produce a robust evidence base and the time and resources this will take?"*

SITE SEARCH CRITERIA

42. The Council considers that the application of the criteria for identifying suitable sites for pitch provision has identified sites that have proven to be very unpopular with both the settled and travelling communities. The criteria applied by the Council closely follows the advice in the Circular and does not reflect the historical approach to gypsy and traveller site provision that, at the very least, ensures that there is a degree of separation between gypsy and traveller sites and existing settlements.
43. The Council seeks my advice as to whether some of the criteria can be removed, by which I understand the Council to mean that they be ignored for the purpose of the undertaking the exercise of identification of sites, or accorded less weight in that exercise.

44. Having regard to the relevant statutory requirements (above), for the DPD to be sound it must comply with current Government policy, in particular, the policy guidance in the Circular. On that basis, I do not consider that the Council can reasonably ignore any of the criteria that Government policy states are relevant and a failure to have regard to those criteria will increase the risk that the DPD will not be sound.
45. However, particular circumstances within the District may be relevant when applying the criteria contained within the Circular and the Council must take account of local considerations when applying the criteria. So long as there is a reasoned planning justification that is based upon evidence, the Council may decide which criteria should be accorded more weight than others. When doing so, the Council should give careful regard to whether its approach is consistent with the main intentions and key aims of the Circular (see above).
46. The Council must not adopt an approach that does not comply with Government policy and must ensure that any reconsideration of the criteria for selecting sites only takes account of material planning considerations and is based upon evidence. Whilst opposition to the Sites included within the Options Consultation may provide part of the justification for a reconsideration of the Council's approach, care must be taken to ensure that opposition to the proposals for the DPD do not reflect a fundamental opposition to further site provision generally, or can be explained by opposition due only to the proximity of a site to respondents' properties.
47. In the absence of evidence to justify fear of crime as a material planning consideration, I doubt that the Council can properly give any, or any significant weight, to such concerns. Similarly, the effect of pitch provision on property values is not a material planning consideration but the Council may consider that the aim of achieving tolerant, inclusive and cohesive communities may be furthered without providing sites immediately adjacent to existing settlements. Clearly land values and the consequences on delivery of addition pitches will be relevant in this regard.

48. The other matters identified in my Instructions that amount to material planning considerations, such as the physical and planning constraints within the District and the likely manner in which further pitches are likely to be delivered, potentially justify a reconsideration of the application of the criteria. The approach adopted by the Inspector and the Secretary of State in the Holmsfield Nursery appeal reflects the importance of taking proper account of the particular circumstances within the District.
49. Should the Council decide to reconsider the criteria and their application such that there is a significant change in the Council's approach and/or the consequent identification of sites, it will be necessary in my view to undertake a further consultation exercise ahead of the publication of the draft submission DPD to enable Representations to be made. In short, a judgement must be made as to whether persons that are likely to be affected by any proposed changes in approach, or inclusion or exclusion of specific sites, have had the opportunity to make their views known to the Council.
50. In the circumstances, it will be necessary for the Council to discuss any proposals for reconsideration of its approach to the strategy for identifying and selecting sites with Go-East, both in its negotiations over the timetable for the preparation of the Gypsy and Traveller DPD and in respect of the oversight role that GO-East undertakes as to the form and content of the draft DPD.
51. Very recently I have been asked to consider whether it is appropriate for the Council to identify and designate a small number of sites to provide the additional pitches required by Policy H3 of the RSS, with the intention of abandoning the remainder of the sites identified in the Options Consultation, without formally considering the responses to the Options Consultation. As I understand matters, this suggestion was recently raised at a Cabinet Meeting in the hope that it would avoid 'blighting' the remaining sites identified in the Options Consultation.
52. If such a proposal were pursued, it is most unlikely that the resultant draft Gypsy and Traveller DPD would be sound as it would not be justified,

within the meaning given to that term in PPS12, in that the DPD would not be based upon a robust and credible evidence base and it would be difficult for the Council to contend that the DPD represented the most appropriate alternative, when considered against other alternatives.

53. It is also unlikely that a draft Gypsy and Traveller DPD which was prepared in such a manner would fulfil all relevant legal requirements as set out in paragraphs 4.50 and 5.2 of PPS12.

CONSULTATION AND REPRESENTATIONS

54. The Council has yet to carry out the consultation exercise on the Sustainability Appraisal and Strategic Environmental Assessment ("SA/SEA") of the Options Consultation document, as required by section 19(5) of the 2004 Act and the relevant provisions of the Environmental Assessment of Plans and Programmes Regulations 2004 ⁸
55. The Council must consult the SEA consultation bodies on the information and level of detail to include in the Sustainability Appraisal Report (which will cover the SEA Directive's environmental report requirements). The Government considers that it is good practice to work with other stakeholders, including members of the Local Strategic Partnership, when considering the scope of the sustainability appraisal.
56. Subject to the statutory requirements to consult the SEA consultation bodies, the scope of the consultation on the SA/SEA of the Options identified by the Council is a matter for the Council. The relevant statutory provisions do not include a requirement that the general public be consulted on the SA/SEA of the Council's identified options, however, it is usual for the SA/SEA of the proposed options (whether preferred or not) be published for consultation at the same time that the options themselves are published for consultation.
57. The requirement under Regulation 27 to "*publish*" the draft submission DPD for a minimum of six weeks prior to submitting the DPD to the Secretary of State for independent examination, is not an opportunity for

⁸ SI 2004/1633

public participation, nor is it a consultation. The purpose of publishing the draft submission DPD is to allow representations to be made directly to the Inspector, or Panel, appointed by the Secretary of State to conduct the examination in public, as to whether the draft submission DPD complies with relevant legal requirements and is sound, within the meaning of PPS12.

58. In my view, it is not appropriate to undertake a consultation on the SA/SEA of the Council's Options identified in the Options Consultation, or a further consultation on (revised) options at the same time as the publication of the draft submission DPD (required by Regulation 27) to enable representations to be made directly to the Secretary of State.
59. The purpose of the Regulation 27 Publication and Regulation 28 representation stage is to allow interested persons to make representations in respect of the submission DPD that the Council can address immediately ahead of its submission to the Secretary of State and not to make fundamental changes to the DPD.
60. The draft DPD that is published pursuant to Regulation 27 should not contain options and should, in effect, be the DPD that the Council are satisfied is sound and should be submitted to the Secretary of State. As a matter of principle, the Council cannot reasonably be satisfied that the draft DPD complies with all the legal requirements and is sound, without carrying out the consultation on the SA/SEA, or without undertaking consultation on changes to the Council's identified options.

DELIVERABILITY AND RESOURCES

61. Having regard to the information presently available, there appears to be an acknowledged and very significant problem relating to delivery of the further pitch provision that the Council will be required to provide. As the Council well knows, in the absence of a clear and realistic delivery strategy, the Gypsy and Traveller DPD is unlikely to be sound.

62. As I have stated, issues relating to the delivery of additional pitches will necessarily influence the timetable for the preparation of the Gypsy and Traveller DPD and the allocation of resources. Unless the Council can identify how the sites included in the DPD for further site provision will be acquired and developed, there is no realistic prospect of preparing a satisfactory DPD for submission.
63. The possibility of increasing pitch provision through the planning applications and appeals process should not be ignored. However, as should always be the case, each application or appeal should be determined on its merits and the Council should be cautious about determining planning applications in a manner that is inconsistent with the plan-led approach that it has embarked upon by preparing the Gypsy and Traveller DPD.
64. Whilst it may be tempting for the Council to grant permanent planning permission to increase the overall pitch provision in the District, great care needs to be taken to avoid inadvertently creating a precedent for granting permanent permission. The Council will find it difficult to resist grants of permanent permission on sites that it considers are unsuitable as residential caravan sites and must ensure that any grants of permanent permission ahead of the adopted on the DPD are justified on grounds that are specific to the application.
65. Unless the Council can demonstrate to GO-East that circumstances have materially changed in respect of the delivery of sites since the Direction was made, GO-East is unlikely to give any, or any substantial, weight to the difficulties associated with the delivery of sites when considering the Council's request for delay in the preparation of the Gypsy and Traveller DPD. That said, I readily accept that the recent economic downturn will be relevant to these considerations.
66. Subject to the observations I have made in my full written Advice, until such time as the Council takes strategic decisions as to the manner in which it will make additional pitch provision and the location of the sites upon

which the additional pitch provision will be made, it is unlikely that the a delivery strategy could be realistic or robust.

CONCLUSION

67. For the reasons stated in my full written Advice, it is not appropriate, or reasonable for the Council to abandon the preparation of the Gypsy and Traveller DPD.
68. Having regard to those matters identified in my Instructions and addressed herein, the Council should seek to renegotiate the timetable for the preparation of the Gypsy and Traveller DPD, so that it is realistic and achievable, and takes proper account of the Council's wider spatial planning priorities.
69. The Gypsy and Traveller DPD must be prepared in accordance with the statutory requirements I have summarised herein and any reconsideration of the criteria for identifying sites, or the application of those criteria, must comply with Government policy but can properly take account of the particular physical and planning constraints and circumstances which apply to the District.
70. Should those instructing me require anything further, I trust that I will be contacted in Chambers,

**Six Pump Court
Temple
London
EC4Y 7AR**

**MARK BEARD
2 December 2009**

In the Matter of:

**THE TOWN AND COUNTRY
PLANNING ACT 1990**

-and-

**THE PLANNING AND COMPULSORY
PURCHASE ACT 2004**

-and-

**THE EPPING FOREST DISTRICT
COUNCIL LOCAL DEVELOPMENT
SCHEME: PROPOSED GYPSY AND
TRAVELLER DEVELOPMENT PLAN
DOCUMENT**

ADVICE – REDACTED VERSION

Colleen O'Boyle
Director of Corporate Support Services
Epping Forest District Council
Civic Offices
High Street
EPPING
Essex CM16 4BZ

DX: 40509 EPPING

CONSULTATION ON OPTIONS QUESTIONNAIRE - ANALYSIS

Each questionnaire is considered as a single response and in the case of residents associations, parish councils and other groups not as multiple responses from individual signatories.

Figures are calculated as a percentage of all the received responses and “no response” answers have been included.

In total 2066 responses were received. Of these responses, 271 were group responses. A total of 10601 people responded in some way to the consultation.

Definitions:

Type of respondent	How many groups of this kind are there?	How many individuals in total do these groups represent?
Large group 6 or more signatories	30	8210
Small group 5 signatories or less	241	596
Individual	1795	1795
Total	2066 total number of questionnaire responses	10601 total number of people who responded to the consultation

KEY FINDINGS:

- 83% **do not agree** with the draft objectives
- 93% **do not agree** that the search for sites should be broadly confined to the west and south of the district closest to the main urban areas.
- 84% **do not agree** with the proposed phasing of pitch provision
- 81% **prefer** sites of 1-5 pitches
- 57% would **prefer** no special restriction in Roydon and Nazeing, with sites being considered on their merits.
- 80% **prefer** a strategy involving wider distribution of sites throughout the district
- 63% **do not agree** with the proposed site search sequence
- 51% **agree** with large brownfield sites in urban areas outside of the Green Belt being required to provide 20% of their land area for travellers pitches
- More than 54% **agree** with proposals for gypsy/traveller sites being provided as part of urban extensions to the West and North East of Harlow.

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Appendix 3 - G & T Questionnaire Responses

The figures given in the tables below are the total individual responses plus the total numbers of individuals in each group which replied. The percentages are based on the total number of people (Individuals and group members) who responded to the consultation, ie, 10,601.

The full wording of each question from the Options consultation is listed in Appendix 3.

Question	Yes	Yes %	No	No %	Did not respond	Did not respond %
Q1 Objectives	1335	12.6	8839	83.4	427	4.0
Q2 Focus of Search	263	2.5	9818	92.6	520	4.9
Q3 Phasing	1098	10.4	8921	84.2	582	5.5
Q4 Scale of Sites:						
1 – 5 pitches	8554	80.7				
5 – 10 pitches	251	2.4	n/a	n/a	933	8.8
16 – 30 pitches	863	8.1				
Q5 Concentration in Roydon and Nazeing:						
(a) No restriction	6021	56.8				
(b) Restriction in named areas	2855	26.9	n/a	n/a	527	5.0
(c) No further permissions	1198	11.3				

Question	Yes	Yes %	No	No %	Did not respond	Did not respond %
Q6 Main Strategies:						
(a) Urban edge/extensions	1636	15.4				
(b) Rural areas	43	0.4	n/a	n/a	481	4.5
(c) Wider distribution	8441	79.6				
Q7 Site Search Sequence	3309	31.2	6611	62.4	681	6.4
Q8 Large Urban Sites:						
(a) Brownfield sites	5357	50.5	4162	39.3	1082	10.2
(b) Off-site provision	754	7.1	8281	78.1	1566	14.8
Q9 Harlow Urban Extensions						
(a) West	5748	54.2	3597	33.9	1256	11.9
(b) North-east	5785	54.6	3523	33.2	1293	12.2
Q10 Other Urban Extensions	3402	32.1	6024	56.8	1175	11.1
Q11 Potential expansion of:						
(a) Little Brook Road, Roydon	360	3.4	2083	19.7	8158	77.0
(b) Greenleaver, Hoe Lane, Nazeing	357	3.4	2050	19.3	8194	77.3
Q12 Unsuitability for expansion of other authorised sites	2743	25.9	1914	18.1	5944	56.1
Q13 Permanent allocation of 4 tolerated sites	3546	33.5	3588	33.9	3467	32.7
Q14 Extension of Bournebridge Lane Site	3184	30.0	1836	17.3	5581	52.7

Question	Yes	Yes %	No	No %	Did not respond	Did not respond %
Q15 Unsuitability of 4 unauthorised sites	3722	35.1	1097	10.4	5782	54.5
Q16 No extension of permission for Holmsfield Nursery	2627	24.8	1903	18.0	6071	57.3
Q17 Merlin Way, North Weald						
(a) Permanent site	1076	10.2	4006	37.8	5519	52.1
(b) Transit site	987	9.3	4120	38.9	5494	51.8
Q18 Epping/North Weald						
(a) Wintry Wood former Allotment	818	7.7	4067	38.4	5716	53.9
(c) Wintry Wood paddock	803	7.6	4086	38.5	5712	53.9
(d) Rear of 137-163 Lindsey Street	781	7.4	4090	38.6	5730	54.1
(e) West of Epping Green	843	8.0	2551	24.1	7207	68.0
(f) East of Epping Green	793	7.5	2602	24.5	7206	68.0
(g) Duck Lane, Thornwood Common	833	7.9	2099	19.8	7669	72.3
(h) Rear of Forest House, Thornwood Common	815	7.7	2109	19.9	7677	72.4
(i) High Road/Upland Road, Thornwood Common	826	7.8	2095	19.8	7680	72.4
(j) High Road/Rye Hill Road, Thornwood Common	850	8.0	2063	19.5	7688	72.5
(k) Tylers Green, North Weald	155	1.5	2063	19.5	8383	79.1

Question	Yes	Yes %	No	No %	Did not respond	Did not respond %
Q19 Waltham Abbey/Roydon/Nazeing						
(a) Lea Valley Nursery	915	8.6	3152	29.7	6534	61.6
(b) Smallholding, Crooked Mile	900	8.5	3159	29.8	6542	61.7
(c) Kingsfield Nursery, Sewardstone	880	8.3	3163	29.8	6558	61.9
(d) Chandlers Farm, Sewardstone	887	8.4	3155	29.8	6559	61.9
(e) Brookfield Nursery, Sewardstone	890	8.4	3150	29.7	6561	61.9
(f) Netherhouse Farm, Sewardstone	911	8.6	3135	29.6	6555	61.8
(g) Meadows, Bumbles Green	858	8.1	1416	13.4	8327	78.5
(h) Spinney Nursery, Hoe Lane	172	1.6	2105	19.9	8324	78.5
(i) Burleigh Nursery, Hoe Lane	171	1.6	2107	19.9	8323	78.5
Q20 Roding Valley						
(a) Victory Hall, Hainault Road, Chigwell	834	7.9	1797	17.0	7970	75.2
(b) Coopersale Lane, Theydon Bois	802	7.6	1838	17.3	7961	75.1
(c) Abridge Road, Theydon Bois	804	7.6	1964	18.5	7833	73.9
(d) East of Abridge	828	7.8	1918	18.1	7855	74.1
(e) Crowther Nursery, Abridge	897	8.5	1888	17.8	7816	73.7
Q21 Windfall Sites Criteria	3348	31.6	6426	60.6	827	7.8
Q22 Low Need for Transit Sites	8687	81.9	265	2.5	1649	15.6

Question	Yes	Yes %	No	No %	Did not respond	Did not respond %
Q23 Extension of Travelling Showpeople's site, Moreton	1130	10.7	1332	12.6	8139	76.8
Q24 Site Delivery						
(a) More sites than needed	478	4.5			6130	57.8
(b) Compulsory purchase	3993	37.7				
Q25 Range of Indicators	1345	12.7	8330	78.6	926	8.7

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Gypsy & Travellers Development Plan Provision in Epping Forest District

– Consultation on Options Questionnaire

Objectives

Q1 Do you agree with the draft objectives?

Yes

No

Q2 Do you agree that the search for sites should be broadly confined to the west and south of the district closest to the main urban areas, rather than the more rural north east of the district?

Yes

No

Phasing of Sites

Q3 Do you agree with this proposed phasing of pitch provision?

Yes

No

Scale of Sites

Q4 Which option do you prefer for the typical scale of Gypsy and Traveller sites?

Option one - Sites of 1-5 pitches, with potential for expansion to 2-7 pitches (requiring at least 15 additional sites)

Option two - Sites of 5-10 pitches, with potential for expansion to 15 pitches (requiring 5 additional sites)

Option three - Sites of 16-30 pitches, with potential to expansion to 21-45 pitches (requiring 2-3 additional sites)

Concentration in Roydon and Nazeing Area

Q5 Which option do you prefer? (this is a compulsory question)

Option one - No special restriction, sites in this area considered on their merits

Option two - Restriction on new sites in the Roydon Hamlet/Hamlet Hill, Sedge Green and Bumbles Green/Long Green areas but authorisation of tolerated sites and expansion of existing suitable sites

Option three - No further permissions granted in the whole of the Roydon and Nazeing areas

The Main Possible Strategies

Q6 Which option do you prefer? This question refers to pages 15 to 16 (this is a compulsory question)

Option one - Edge of Urban Areas/Urban Extensions Option

Option two - Rural Areas close to Chigwell, Abridge, Waltham Abbey, Epping and Epping Green, Theydon Bois and North Weald Bassett

Option three - Wider distribution throughout the district

Site Search Sequence

Q7 Do you agree with the above proposed site search sequence?

Yes

No

Large Urban Sites

Q8 A) Should large brownfield sites (1 hectare+) in the urban areas outside the Green Belt be required to provide 20% of their land area for Travellers pitches?

Yes

No

B) Should the alternative of off-site provision be allowed even if this were in the Green Belt?

Yes

No

Q9 A) Do you agree with these proposals for Gypsy/Traveller sites to be provided as part of urban extensions to the west of Harlow?

Yes

No

B) Do you agree with these proposals for Gypsy /Traveller sites to be provided as part of urban extension to the north east of Harlow?

Yes

No

Sites as part of Harlow Urban Extensions

Q10 Do you agree that one of the urban extensions to the towns in the district that is likely to be required after 2017 should be required to provide a Gypsy/Travellers site or sites totalling 15 pitches?

Yes

No

Potential for Expansion of Two Existing Sites

Q11 A) Do you agree with the expansion of the site at Little Brook Road, Roydon by up to four pitches?

Yes

No

B) Do you agree with the expansion of the site at Greenleaver, Hoe Lane, Nazeing by a further five pitches?

Yes

No

Potential for Expansion of Other Existing Authorised Sites

Q12 Do you agree with the assessment of the unsuitability for extension of these sites?

Yes

No

Tolerated Sites

Q13 Do you agree with the assessment that the listed four tolerated sites should be allocated permanently?

Yes

No

Potential Extension of Tolerated Site - Bournebridge Lane, Stapleford Abbots

Q14 Should this site be expanded by around five pitches?

Yes

No

Unauthorised Sites

Q15 Do you agree that the unauthorised sites are unsuitable?

Yes

No

Q16 Do you agree that this site should not be given temporary permission beyond five years (or the coming on stream of sites secured through urban extension to Harlow if these do not come forward within five years)?

Yes

No

Rural Brownfield Sites at North Weald - Merlin Way

Q17 A) Do you agree that a small permanent Travellers' site is suitable in this location?

Yes

No

B) Do you agree that this location is suitable for a transit and/or emergency stop over facility?

Yes

No

Potential Sites in the Epping and North Weald Bassett Areas

Please tell us whether or not each of these sites should be taken forward

Site 18a - Former Allotment - Wintry Park, Epping

Yes

No

Site 18b - Paddock - Wintry Park, Epping

Yes

No

Site 18c - Land at Rear of 137-167 Lindsey Street, Epping

Yes

No

Site 18d - South West of Epping Green

Yes

No

Site 18e - East of Epping Green

Yes

No

Site 18f - Duck Lane Woodside, Thornwood Common

Yes

No

Site 18g - Woodside Road to the rear of Forest House

Yes

No

Site 18h - Junction of High Road and Upland Lane, Thornwood Common

Yes

No

Site 18i - Rear of Gulf Garage, Thornwood Common

Yes

No

Site 18j - West of Tylers Green, North Weald Bassett

Yes

No

Potential sites in the Waltham Abbey, Roydon and Nazeing Areas

Please tell us whether or not any of these sites should be taken forward

Q19 Site 19a - Yard/Car park at rear of Lea Valley Nursery, Crooked Mile

Yes

No

Site 19b - Smallholding off Crooked Mile

Yes

No

Site 19c - Former Kingsfield Nursery, Sewardstone

Yes

No

Site 19d - Chandlers Farm, Sewardstone

Yes

No

Site 19e - Part of Brookfield Nursery, Sewardstone

Yes

No

Site 19f - Netherhouse Farm and Adjoining Land - Sewardstone

Yes

No

Site 19g - Meadows Long Green/Bumbles Green

Yes

No

Site 19h - Spinney Nursery, Hoe Lane Nazeing

Yes

No

Site 19i - Burleigh Nursery, Hoe Lane Nazeing

Yes

No

Please tell us whether or not any of these sites should be taken forward

Q20 Site 20a - Site next to Victory Hall, Chigwell

Yes

No

Site 20b - Paddock east of Theydon Garnon - Coopersale

Yes

No

Site 20c - Paddock east of Theydon Bois - Abridge Road

Yes

No

Site 20d - Paddock east of Abridge

Yes

No

Site 20e - Crowther Nursery, Abridge

Yes

No

Criteria for Windfall Sites

Q21 Do you agree with the wording of the suggested policy?

Yes

No

Q22 Do you agree with the initial assessment that the need for transit sites is very low in the district?

Yes

No

Travelling Showpeople

Q23 Do you agree with adding two extra yards to the site at Moreton?

Yes

No

Site Delivery

Q24 Which option towards ensuring site delivery do you think should be prioritised?

A) Allocating many more sites than are needed on the expectation that some will not come forward, or

*B) Purchase of sites using compulsory powers if necessary
Please give reasons for your answer*

Indicators

Q25 Do you agree with the proposed suite of indicators?

Yes

No

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The Right Honourable John Healey MP
Minister for Housing & Planning
Communities & Local Government
1/A2 Eland House
Bressenden Place
London
SW1E 5DU

ANNEX 2

Dear Minister,

Epping Forest Gypsy and Traveller DPD

I refer to the Direction served by the Secretary of State in September 2007, requiring this Council to amend its Local Development Scheme (LDS) to specify that (a) it includes a Gypsy and Traveller DPD; and (b) work will commence on the DPD as soon as possible with submission of the draft for examination by 30 September 2009. The Council submitted the revised LDS to GO-East in November 2007.

As Leader of this Council, I am writing to you as a matter of urgency to request a meeting with you and relevant officials to discuss the Direction and provision of additional Gypsy and Traveller pitches in the District.

There are three major points which the Council considers should be addressed at such a meeting, as follows;

- To consider the very substantial increase in provision for Gypsy and Traveller pitches now made (see table in attachment for brief details) The progress could be described by reference to numbers, but is more importantly about the progress made for individual families. Indeed, live applications for provision are still being made and considered.
- To note that continuation with a requirement to complete a separate Gypsy and Traveller DPD is seriously threatening the process of achieving an up to date Local Development Framework (LDF); this includes reference to the limits on the resources which this Council can devote to Forward Planning.
- The other results of a Local Development Framework Review that the Council has undertaken.

These points will be expanded upon briefly in this letter and the attachments, but as you will readily appreciate, the evidence base for these underlying issues is very considerable.

In the circumstances, the Council does not consider that the overall interests of local spatial planning can properly be served by requiring the preparation of a separate Gypsy and Traveller DPD, and the Council now seeks the withdrawal or substantial amendment of the Direction.

The issues that I have outlined above mean that I, and other Members of the Council, are increasingly concerned that continuing with the preparation of the DPD will intensify the adverse impacts on other LDF work both in terms of costs and staff resources. That cannot be in the best interests of planning for the future of this area.

The Government's Chief Planning Officer has recently reminded Councils about the need to make progress with their core strategies.

It would therefore be very helpful to meet you to discuss these issues, and to consider options for withdrawing, suspending or amending the Direction, or for subsuming the G & T pitch provision into the wider housing provision of the Core Strategy. I would expect to be supported by one other Councillor and two officers at such a meeting. If timings allow I may also be supported by Counsel who has undertaken the stock take.

I look forward to your early reply.

Councillor Mrs Diane Collins
Leader of Epping Forest District Council

This letter is being copied to the three Members of Parliament whose constituencies include parts of the District, namely Mrs Eleanor Laing, Eric Pickles and Bill Rammell, together with the shadow Minister, Mrs Caroline Spelman.

Attachments

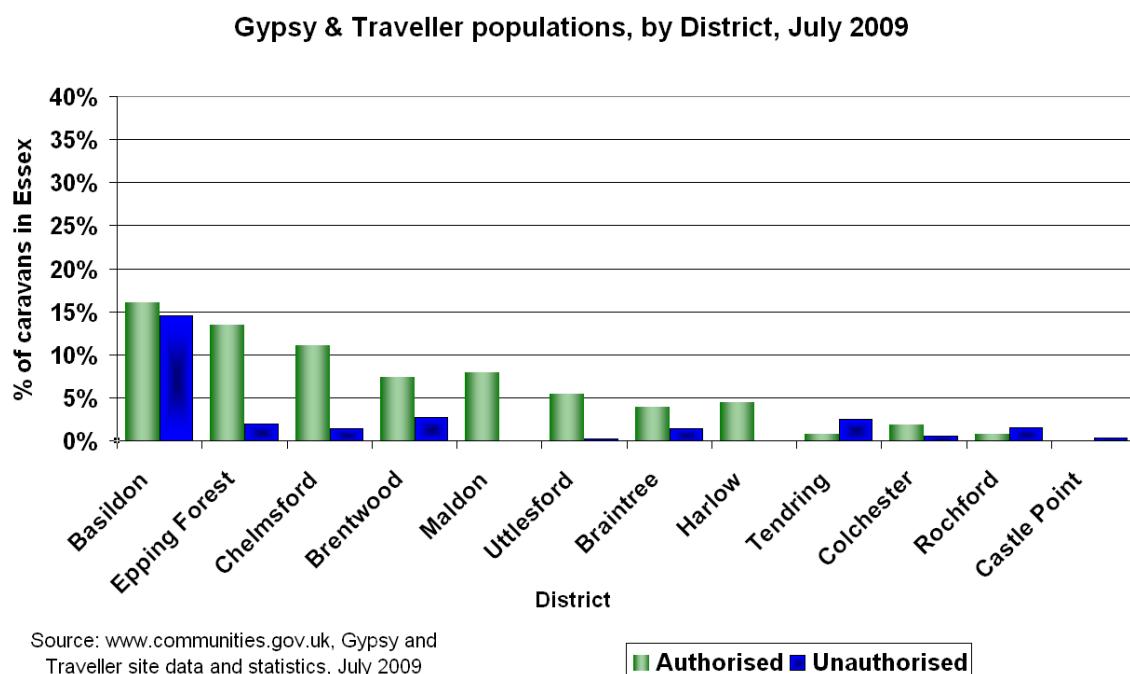
Progress

1.0 The table gives information from 2006 compared to the position in late 2009:

	2006 Total	2009 Total	Comments
Public Authorised	16	16	Same
Private Authorised	95	114	Significantly increased
Tolerated	10	12	Increased
Temporary	0	27	Significantly increased
Unauthorised	32	9	Significantly reduced
TOTAL	153	178	

2.0 Progress can also be contrasted with the position elsewhere in Essex; see figure 1, which shows the population of Gypsies and Travellers in Essex on authorised and unauthorised sites.

Figure 1: Gypsy and Traveller populations, by District, July 2009



Threats to LDF

3.0 Were the Council to continue work on a Gypsy and Traveller DPD, the experience to date is that the Council could not run a consultation exercise on the next draft of the DPD at the same time as any other consultation exercises and/or associated processes for any other parts of the LDF, including the mandatory Core Strategy and Statement of Community Involvement. To date the Council has allocated a very significant level of financial and human resources towards preparing the draft Gypsy and Traveller DPD. Such resources are finite and they can only be stretched so far without materially undermining the Council's other strategies and priorities.

4.0 The cost to the Council of the Gypsy and Traveller DPD so far (not including staff costs which, as you will readily accept, are considerable) is already in the region of £180,000. The Council has a budget of £1.3 million (agreed in December 2007) for the preparation of the entire LDF. Using over 10% of the total budget on a single, albeit important, issue is disproportionate.

5.0 Senior Staff and Councillors also had, and continue to have, a heavy involvement in these matters. Work on other Forward Planning issues virtually ceased for the duration of the consultation period, and the most experienced member of the team still deals with the topic almost full time to this day. This has obviously had a significant and adverse impact on other LDF work, and will continue to do so particularly if the Council has to undertake a second consultation exercise on amended options.

6.0 It is also not correct to assume that the detrimental impact of preparing a separate Gypsy and Traveller DPD is confined to the Council's LDF, or local spatial planning in the District. The Council's Core Strategy does not just have to deal with the requirements of the East of England Plan (RSS) as they relate to Epping Forest District; the Council is also required to undertake joint working with Harlow District Council and East Hertfordshire District Council to plan for the proposed growth of Harlow as a Key Centre for Development and Change. (See below)

7.0 The LDF process was intended to be quicker, cheaper and more flexible than the old Local Plan; using LDF resources to such a degree on a single DPD does not fit that bill.

The Local Development Framework Review.

8.0 The Council has recently participated in a Planning Advisory Service (PAS) Diagnostic as part of an overall review of the progress the Council has made in the preparation of its LDF as required by the Planning and Compulsory Purchase Act 2004. The PAS report highlights the direct and adverse impact that the preparation of the Gypsy and Traveller DPD has had on progress with the preparation of the Council's Core Strategy, but is very complimentary about the work the Council has undertaken in respect of making provision for additional provision of Gypsy and Traveller pitches, particularly in its attempts to engage with the travelling community. In respect of these matters the PAS report states as follows:

"The authority is and has taken a very robust approach to the delivery of the Gypsies and Travellers DPD with some particularly good work around engagement with the community and innovative approaches to engaging with the Travellers. However,

given limited resources, the attention on this document has undermined progress on the Core Strategy”.

9.0 The PAS report raises more subtle, but very worrying, concerns about public perception of the planning process as a consequence of the Gypsy and Traveller DPD Options Consultation (referred to below) which, the Report states, is likely to impact on the preparation of other LDF documents. One can describe that as “starting off on the wrong foot” with the entire local community. The authors of the report also express concern about the costs that are being incurred by the Council in attempting to comply with the Secretary of State’s Direction. The main findings of the Diagnostic are summarised as a further attachment to this letter, or a full copy of the diagnostic can be provided once it has been considered by Councillors.

10.0 Between November 2008 and February 2009, the Council carried out an Options Consultation on its proposals for the Gypsy and Traveller DPD to which in excess of 10,500 responses were received. A significant number of those responses were very lengthy and raised complex issues. The Council’s entire Forward Planning team was engaged almost full time with the Options Consultation, including arranging and manning exhibitions and dealing with a huge number of questions from members of the public, expressions of concern and, on occasion, distress, or requests for ever more detailed information. The Council has had to deal with responses from both the settled and, to a lesser extent, the travelling communities.

11.0 The timetable imposed by the Secretary of State’s Direction meant that it was not possible for the Options Consultation to be linked with a consultation on the Sustainability Appraisal/ Strategic Environmental Assessment (SA/SEA) of the proposals within the Options Consultation. It was decided at a very early stage that, given the very controversial nature of the subject, the SA/SEA of the proposals within the Options Consultation should be carried out independently. The Council subsequently appointed the Spatial Planning Group within Essex County Council to carry out the SA/SEA. This exercise was not completed until July of this year. To comply with the requirements of domestic and European law, the Council must carry out a consultation exercise on the SA/SEA that has been completed to date.

12.0 The volume and complexity of the response to the Options Consultation on the Gypsy and Traveller DPD made it apparent that the Council would be quite unable to meet the deadline set by the Secretary of State’s Direction (i.e. submission of the draft DPD to the Secretary of State by the end of September 2009.) Consequently Council officers have been in discussions with GO-East (including two meetings) since July 2009 in the hope of agreeing a revised timetable for the preparation of the DPD and how best to progress with the work necessary to prepare the DPD, having regard to the fact that the Council is also required to prepare a Core Strategy in co-ordination with Harlow and East Hertfordshire District Councils, as required by the Regional Spatial Strategy for the East of England (i.e. the East of England Plan).

13.0 One of GO-East’s suggestions for shortening the revised timetable was to link consultation on the SA/SEA of the proposals within the Options Consultation with the requirement of Regulation 27 of the Town and Country Planning (Local Development) (England) Regulations 2004 (as amended) to publish the draft submission DPD to allow representations to be made to the Secretary of State on the soundness of the draft DPD. The suggestion made by GO-East included a rider that the Council should seek its own legal opinion in respect of this proposal.

14.0 Very recently, the Council sought the advice of independent Planning Counsel on the suggestion made by GO-East and in relation to the preparation of the Gypsy

and Traveller DPD, and the Council's LDF generally. A summary of the advice received is attached, and it is notable that Counsel (a) strongly advises against pursuing GO-East's suggestion for linking the two consultations; and (b) proposes a Ministerial meeting to discuss competing local spatial planning priorities.

15.0 In reviewing the evidence base gathered to date, it is clear that some of the criteria in Circular 1/2006 regarding location of sites raise particular difficulties in this district, to the extent that officers believe that the weight given to some of those criteria needs to be reconsidered. As a consequence of this, the Council believes that several of the sites proposed within the Options Consultation should now be discounted, as they are simply unacceptable to the settled community, and the Council doubts seriously whether they would hold any attraction for the travelling community. Please also find attached our analysis on these points. As a result of the responses to our Options Consultation exercise it is considered that there are weaknesses in the guidance in ODPM Circular 1/2006, which will affect seriously the deliverability of sites and therefore the achievement of additional pitch provision as required by the Single Issue Review of the East of England Plan (published in July 2009). Even more crucially, these matters will have wider repercussions beyond this district.

16.0 A touchstone of the LDF system is the emphasis given to the evidence base; having undertaken a significant Options Consultation, and received such a significant response, it is plainly common sense to take notice of what it is telling us all.

17.0 One of the more positive outcomes of the Options Consultation has been an increase in the number of applications from the travelling community for new pitches – this appears to be the way that a significant part of the travelling community has chosen to respond, rather than completing the Options Consultation questionnaire. This has meant that (i) a number of further planning permissions have been granted, and (ii) some Certificates of Lawful Development (CLDs) have been approved so that there has been a significant addition to the number of authorised pitches in the District.

18.0 Necessarily, these grants of planning permission and CLDs in part meet the additional pitch requirements in the Single Issue Review of the East of England Plan. Details of these decisions are summarised in the table at the start of this attachment. I am confident that you will be satisfied that very substantial progress is being made by this Council in terms of meeting the RSS additional pitch requirement targets, and I would be very surprised if any other Council in the Eastern Region can show such positive achievements.

Report to the Council

Committee: Cabinet

Date: 19 January 2010

Portfolio Holder: Councillor S A Stavrou

(Community Safety and Transport Portfolio)

Item: 6

1. LOCAL HIGHWAYS PANEL – REVIEW OF CONSTITUTION

Recommendations:

(1) That the principle of Parish Council representatives on the Local Highways Panel having voting rights in future be approved; and

(2) That the Local Highways Panel be requested to review its Constitution as a matter of urgency prior to the Annual Council meeting in May 2010 by:

(a) taking account of the Council's decision on recommendation (1) above; and

(b) considering experience gained in the first year of operation of the Panel.

-
1. At the Council meeting on 28 April 2009, the establishment of a Local Highways Panel under the Essex Localism Initiative to deal with traffic and related matters within the District was approved. It was agreed that officers should draw up a Constitution for the Panel based on the principles set out in the Essex County Council's Localism Manual. This Constitution was agreed in consultation with the then Portfolio Holder and the Panel has met on a number of occasions during the current year.
 2. Currently, the Constitution (set out in the Appendix to this report) provides for eleven District Councillors (appointed at each Annual meeting on pro-rotas) and three Town and Parish Council representatives, one from each of the three Area Plans Sub Areas. The Constitution requires that the Parish and Town Council representatives should not have voting powers. The latter provision has attracted criticism from Parish and Town Councils and we have now received representations on behalf of the Epping Forest Association of Local Councils seeking an amendment to the Constitution so as to accord voting rights as apply to parish representatives. These representations were put to us in person at our last meeting by the Chairman of the Association, Councillor Jason Salter.
 3. Following the discussion on this matter, we agreed that the Constitution of the Panel might benefit from a review as we are now approaching the end of the first year of its operation. The need for this review was acknowledged when the Panel was first established. This review will include amongst other things, the following matters which were raised at our meeting:
 - (a) whether the number of Parish Council representatives should be increased; and

(b) how Parish and Town Council representatives and District Councillors should be appointed to ensure that they represent the widest possible number of communities across the District.

4. We are recommending that the Panel should commence this review as a matter of urgency so that any changes can be taken into account at the Annual Council meeting in May 2010. We are also recommending that the principle of Parish Council representatives on the Panel having full voting rights in future should be approved and this would also be taken into account in amending the Panel's Constitution.
5. We are satisfied that Parish and Town Council representatives should have the same voting rights and that to make that change in respect of Parish representatives would allow the Panel to function more smoothly in the future and achieve a more effective voice in lobbying Essex County Council on highway priorities.
6. We recommend as set out at the commencement of this report.

APPENDIX

Local Highways Panel, Epping Forest District Constitution and Terms of Reference

1. Title

The Panel shall be known as 'Epping Forest District Local Highways Panel'.

2. Terms of Reference

- a) To review and make comment upon the revenue and capital programmes of highway works for the District submitted each year by the local Area Highways Manager
- b) To consider proposals for and the funding (including joint funding) of highway schemes submitted by constituted bodies such as the Epping Forest District Council, Parish Councils, Residents' Associations or similar elected bodies which represent the local community
- c) To consult the public on its proposals and priorities
- d) To oversee and set priorities for schemes funded through the localism process and the work of the Highway Ranger service
- e) To make recommendations for project approval to the Essex County Council Cabinet Member for Highways & Transportation
- f) To monitor the progress of approved schemes through reports received by the local Highways Manager or their nominated representative
- g) To monitor and review the Council's car parking service
- h) To consider requests for reviews of existing or the implementation of new parking restrictions within the district
- i) To receive, review and comment upon County Council Highways strategic documents on speed and freight management (referred from the Safer, Cleaner, Greener Scrutiny Standing Panel)
- j) To maintain an overview on highways matters relating to the "Nazeing Action Group" (referred from the Safer, Cleaner, Greener Scrutiny Standing Panel)
- k) In liaison with the Safer, Cleaner, Greener Scrutiny Standing Panel, monitor the level of those killed and seriously injured on the District's highways (referred from the Safer, Cleaner, Greener Scrutiny Standing Panel)
- l) To consider any other relevant highway matter referred to the Panel from time to time by other Council constituted Committees, Panels or Groups.

3. Membership

a) Voting Members - 11 District Councillors appointed at each Annual Meeting of the District Council divided between the political groups represented on the Council in accordance with pro rata requirements.

b) Co-opted Members without Voting Powers - 3 Parish Council representatives, one for each of the areas covered by the District Council's Area Plans Sub- Committee, nominated by the Local Councils' Liaison Committee for the District.

4. Chairman

The Chairman of the Panel shall be the Epping Forest District Council Cabinet member with responsibility of Highway and Parking Matters.

5. Meetings

a) Meetings of the Panel shall be held on at least six occasions in each Council year at the Civic Offices, Epping at the date and time indicated on the agenda.

b) Meetings may be held at other venues if the Panel so decide.

c) Meetings shall be open to the press and public.

d) Minutes and agenda of the Panel meetings shall be circulated to the following:

- Panel Members (Voting and Co-opted)
- All District Councillors
- Each Parish and Town Clerk
- County council Portfolio Holder with responsibility for Highways
- District and County Council Officers.

e) The quorum for the Panel meetings shall be no less than 6 voting members.

6. Officers

a) Essex County Council Highways shall nominate a head officer who shall attend all meetings of the Panel for the purpose of supporting and giving advice on highways matters.

b) Epping Forest District Council will support the Panel by the attendance of relevant officers from:

Environment & Street Scene
Democratic services (Secretary Support)

And such other officers as may, from time to time, be required.

7. Representations at Panel Meetings

a) Any Parish or Town Council representative or any District Councillors who is not a Panel Member shall be able to request that any item within the Panel's terms of reference shall be placed on the agenda for any meeting.

- b) Any such person may attend the meeting concerned and address the Panel on that item.

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