

Report to Overview & Scrutiny Committee

Date of meeting: 10th November 2014

Portfolio: Planning Policy

Subject: CLG consultation “Planning and Travellers”

Officer contact for further information: Ian White

Committee Secretary: Adrian Hendry



Recommendations/Decisions Required:

That the Council’s response to the Department for Communities and Local Government consultation document ‘Planning and Travellers’, as set out in the following report, be agreed.

Report:

1. The consultation runs from 14th September to 23rd November 2014, and seeks views on proposed changes to planning policy and guidance for the travelling community – ie Gypsies and Travellers and Travelling Showpeople. The stated intentions of the proposed changes are to (i) ensure that the planning system applies fairly and equally to both the settled and traveller communities; (ii) further strengthen protection of “sensitive areas” and Green Belt; and (iii) address the negative impact of unauthorised occupation. The consultation also states that the Government remains committed to increasing the level of authorised traveller site provision in appropriate locations to address historic undersupply as well as to meet current and future needs.
2. The changes would primarily affect Planning Policy for Traveller Sites (PPTS) published by CLG in March 2012, although there would also be some changes to wider national planning policy, and in particular the National Planning Policy Framework (NPPF).
3. The consultation also includes streamlined draft planning guidance aiming to support councils in robustly assessing their traveller site needs. Members will be aware that the Essex Gypsy and Traveller and Travelling Showpeople Accommodation Assessment (GTAA) was published in July 2014 and was included in the Local Plan Evidence Base at Cabinet on 8th September 2014.
4. The key suggestions in the consultation are:
 - Travellers who have given up travelling permanently should be treated in the same way as the settled community, especially regarding sites in sensitive locations, such as the Green Belt – ie redefining “Gypsy” and “Traveller” to exclude those who no longer travel;
 - Strengthening Green Belt protection by amending the current policy (paras 87 and 88 of the NPPF) so that unmet need and personal circumstances are unlikely to outweigh harm to the Green Belt and any other harm. Ministerial statements earlier in the year had already emphasised that “unmet need, whether for traveller sites or for conventional housing, is unlikely to outweigh harm to the Green Belt and other harm to constitute the “very special circumstances” justifying inappropriate development in the Green Belt;
 - Strengthening the current onus on authorities to “strictly limit new traveller

development in open countryside” (para 23 of PPTS) to “very strictly” limit such developments;

- Downgrading the weight attributed to a lack of an up-to-date five-year supply of deliverable traveller sites – para 25 of PPTS states that this should be a “significant material consideration” when considering applications for temporary permission. The consultation proposes that this would remain a “material consideration”, but its weight would be a matter for the decision taker;
- Addressing unauthorised occupation of land – the Government is concerned about those who intentionally ignore planning rules and occupy land without planning permission. Such actions, particularly in sensitive areas including the Green Belt, (where those who would apply through the proper channels would be unlikely to gain permission), are highly contentious at the local level and can fuel tensions between the site occupants and the adjacent community. The consultation proposes that national planning policy and PPTS should be amended to make it clear that intentional unauthorised occupation, whether by travellers or members of the settled community, should be regarded by decision takers as a material consideration that weighs against the grant of permission;
- More specifically, and perhaps with Basildon in mind, the consultation proposes that “where a local authority is burdened by a large-scale unauthorised site which has significantly increased its need (for pitch provision), and the area is subject to strict and special planning constraints, then there is no assumption that the local authority is required to meet its traveller site needs in full.”

5. The consultation contains 13 questions which are considered below. The appendix to this report also lists the questions with suggested responses based on the comments below.

Definition of “travellers” (Question 1)

6. Annex 1 of PPTS has current definitions for “Gypsies and Travellers” and “Travelling Showpeople”. They are mutually exclusive:

“Gypsies and Travellers” means “Persons of nomadic habit of life whatever their race or origin, including such persons who, on grounds only of their own or their family’s or dependants’ educational or health needs or old age, have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such;

“Travelling Showpeople” means “members of a group organised for the purposes of holding fairs, circuses or shows (whether or not travelling together as such). This includes such persons who, on the grounds of their own or their family’s or dependants’ more localised pattern of trading, educational or health needs or old age, have ceased to travel temporarily or permanently, but excludes Gypsies and Travellers as defined above.”

7. In both cases the consultation proposes deleting the underlined words in the definitions, emphasising that this is not about ethnicity or racial identity, but simply that, for planning purposes, the Government believes that a “traveller” should be someone who travels. The consultation advises that “In determining whether applicants for traveller sites would fall under the proposed new definitions, decision takers should give close scrutiny to whether the applicants are in fact living a nomadic lifestyle.” Question 1 asks “Do you agree that the planning definition of travellers should be amended to remove the words “or permanently” to limit it to those who have a nomadic habit of life? If not, why not?”

8. The proposal raises a number of concerns for officers, particularly around resources. “Close scrutiny” will require gathering, verifying, and monitoring information and, where necessary, enforcing when it is felt that the guidance is not being followed. This latter is likely

to lead to a series of Public Hearings and Inquiries at a time when local authority budgets are being reduced as the national austerity programme continues. It is the case with many Gypsy and Traveller families that the husband travels to find work while the mother stays in one place particularly to ensure that younger children can benefit from a stable education and to be able to register for other services including health. As it stands, the proposal does not make it clear whether the change would differentiate between the husband and the wife in these cases. It would also seem logical that, if some travellers have ceased to travel because of old age and for at least some health reasons, these will not be temporary – the proposed change to the definition does not make allowance for this. Will the proposed change mean that, if planning permission is granted for new pitches, it will only apply as and when the households satisfy the proposed new definition, and therefore when they cease to travel they will have to find and move to a new location? Just because some Gypsies and Travellers have ceased travelling, they are still ethnically Gypsies and Travellers, and this could open the door for legal challenges where permission has been granted for residential use for Gypsies and Travellers.

Measures to support travellers who are nomadic (Question 2)

9. In an attempt to complement the proposed change in definition, the consultation seeks views on measures to support those travellers who would fall under the new definition, in order to facilitate their nomadic habit of life. Specific mention is made of transit sites. Question 2 asks “Are there any additional measures which would support those travellers who maintain a nomadic habit of life to have their needs met? If so, what are they?”

10. The Essex GTAA advises that there are no public transit sites in the county. It recommends that, to accommodate visiting households and to provide a more powerful mechanism for addressing unauthorised encampments, at least two public transit sites should be provided in Essex, with a fairly broad hint that locations in Thurrock and Southend would help to address current levels of encampment in those areas.

11. Officers do not believe that it would be appropriate to provide a public transit site in this district – based partly on Green Belt coverage (92% of the district) and recent infrequent history of unauthorised encampments.

Definition of travellers in the Housing (Assessment of Accommodation Needs) Regulations 2006 (Question 3)

12. Question 3 asks “Do you consider that (a) we should amend the 2006 regulations to bring the definition of “gypsies and travellers” into line with the proposed definition of “travellers” for planning purposes, and (b) we should also amend primary legislation (Housing Acts 1985 and 2004) to ensure that those who have given up travelling permanently have their needs assessed? If not, why not?”

13. Officers believe the answer to (a) is straightforward and logical – if changes are made to the planning definition, similar changes should be made to the housing definition to retain the current consistency and avoid future confusion. Officers would encourage Members to answer “yes” to (b).

Protecting sensitive areas and the Green Belt (Question 4)

14. The consultation proposes that PPTS should be amended to include existing sections from the NPPF which give significant protection to “sensitive areas” including Local Green Space (NPPF paras 76-8) – none so far designated in this district, Sites of Special Scientific Interest (para 118), and areas protected under the Birds and Habitats Directives (para 119). Other types of sensitive area also mentioned (eg Area of Outstanding Natural Beauty) do not occur in the district. Question 4 asks “Do you agree that PPTS be amended to reflect the provisions in the NPPF that provide protection to these sensitive sites? If not, why not?”

15. Officers think this proposal is quite unnecessary. The areas are already protected by the NPPF policies, no doubt backed up by appropriate policies in the relevant local plans. PPTS requires local plans to include criteria-based policies to deal with future applications for sites for the travelling community and, if it is considered necessary or helpful, one criterion could specifically address the protection of “special areas”.

Protecting open countryside (Question 5)

16. Para 23 of PPTS requires local authorities to “strictly limit new traveller site development in open countryside that is away from existing settlements ...” The Government wishes to strengthen this to reflect the importance of accounting for the intrinsic character and beauty of the countryside. Question 5 therefore asks “Do you agree that paragraph 23 of PPTS should be amended to “Local authorities should very strictly limit new traveller sites in the open countryside” (underlined simply to highlight the change). If not, why not?”

17. Officers again think this proposed change is unnecessary, and can best be dealt with in a criteria-based policy, should a local authority consider this to be useful and practical. In a district such as this (and the same argument applies to protection of Green Belt – see below), it is generally accepted that it will only be possible to find suitable sites in the countryside because of comparative land values – ie urban land (effectively only 8% of the district) is simply too expensive for the travelling community. This proposed change would make it even harder for the Council to make adequate provision for travellers, endangering the prospect of achieving a sound new Local Plan. It also does not help that there is no definition of “open countryside” in PPTS.

Significance of a five-year supply of deliverable sites (Question 6)

18. Para 25 of PPTS states “... if a local planning authority cannot demonstrate an up-to-date five year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission.” Para 14 of PPTS also makes it quite clear that traveller sites (temporary or permanent) are inappropriate development in the Green Belt. They should therefore be permitted only where very special circumstances exist, ie where the harm to the Green Belt and any other harm is clearly outweighed by the benefits of the development. Ministerial statements of July 2013 and January 2014 said “unmet need, whether for traveller sites or conventional housing, is unlikely to outweigh harm to the Green Belt and other harm to constitute the “very special circumstances” justifying inappropriate development in the Green Belt”.

19. In this context, Question 6 (slightly re-worded) asks “Do you agree that the absence of an up-to-date five year supply of deliverable sites should be removed from PPTS as a significant material consideration in the grant of temporary permission for traveller sites in the Green Belt and other sensitive areas? If not, why not?”

20. Officers strongly recommend that the answer to this question should be yes. Even without the increased restrictions being proposed by the consultation, it is a very difficult task to identify suitable and deliverable sites for the travelling community in a district which is 92% Green Belt. The GTAA has identified a target of 112 additional pitches in this district in the period up to 2033 – however this is broken down into five-year segments, it is still a very challenging figure in an area with such significant restraints on development.

Personal circumstances and the Green Belt (Question 7)

21. The consultation states that in many cases the weight attached to unmet need for traveller sites, in combination with the personal circumstances of the occupants, is being given greater weight than the harm to the Green Belt, leading to decisions justifying planning

permission for inappropriate development. While the Government recognises that the best interests of a child are a primary consideration in planning decisions affecting children, there is growing concern that there is a greater disproportionate impact on the Green Belt from traveller decisions compared with those for conventional housing.

22. Question 7 therefore asks “Do you agree with the policy proposal that, subject to the best interests of the child, unmet need and personal circumstances are unlikely to outweigh harm to the Green Belt and any other harm so as to establish very special circumstances? If not, why not?”

23. Officers are uncertain about the answer to this question. The implication for this district is that, from the current position of already being very hard, it will become virtually impossible to make suitable and deliverable provision now and into the future for the travelling community, because realistically sites in the Green Belt are the only option. This in turn will severely compromise the likelihood of being able to achieve a sound Local Plan, leading to considerable difficulties in the immediate future of development going ahead in the most suitable locations, and being left at the risk of “planning by appeal”.

24. The extent of Green Belt in different Council areas varies very widely – eg East Herts is about 33% Green Belt while Uttlesford is significantly less – ie both these neighbouring districts have potentially significantly greater options for identifying suitable locations. This proposal by the Government – a “one size fits all” approach seems too blunt and inflexible given the wide variation in Green Belt coverage of affected districts. It is particularly unfair to those districts which have a very high percentage of Green Belt, and where there is already a long-established and sizeable traveller community, while the requirement under PPTS to identify suitable and deliverable sites to meet identified need remains a key issue in determining the soundness of a Local Plan.

Unauthorised occupation of land (Questions 8 to 10)

25. The Government is concerned about those (not just the travelling community) who intentionally ignore planning rules and occupy land without planning permission. In sensitive areas, including the Green Belt where planning permission is unlikely, this action is highly contentious and can fuel tension between the site occupants and the surrounding community. There are also public financial costs in dealing with intentional unauthorised occupation, which would not have been incurred if proper procedures had been followed, seeking and gaining planning permission before occupation and development.

26. While there is no intention to remove the ability to apply for retrospective planning permission, the consultation has three questions relating to this issue:

- Question 8 – Do you agree that intentional unauthorised occupation should be regarded by decision makers as a material consideration that weighs against the grant of planning permission? If not, why not?
- Question 9 – Do you agree that unauthorised occupation causes harm to the planning system and community relations? If not, why not?
- Question 10 – Do you have evidence of the impact of harm caused by intentional unauthorised occupation? (And if so, could you submit details with your response.)

27. Officers agree strongly with the approach promoted in Q8, but it needs to be made very clear that this applies equally to the settled and travelling communities. This can only be seen as fair by all those who use the planning system correctly. As regards Q9 officers also agree that the current situation does cause harm to the planning system generally, and more specifically brings the Council’s role, as perceived by sections of the local community, into disrepute. In response to Q10, Members will be aware that there is a significant concentration of traveller pitches in the parishes of Nazeing and Roydon – at present 91 (78%) of the 117 authorised permanent pitches. Intentional unauthorised occupation of land is similarly a more

frequent occurrence in these parishes, to the extent that a Nazeing Councillor has sought, on a number of occasions, a meeting with the Planning Minister to try to explain the problems being experienced, and the frustrations and disbelief being expressed by the settled community. There is certainly a widely held feeling that unauthorised occupation leads to favourable consideration of retrospective applications discrediting the planning system, devaluing the Green Belt and, to some extent, harming community relations.

Occupation of large-scale unauthorised sites

28. Without naming areas, this section of the consultation must have Basildon (at least) in mind. This Government believes it is unfair that a small number of authorities have to bear the burden in planning to meet needs created by occupation of large-scale sites, significantly distorting the level of local need. The consultation suggests that PPTS could be amended so that, in exceptional cases, where a local authority is burdened by a large-scale unauthorised site which has significantly increased need for authorised pitch provision, and the area is subject to strict and special planning constraints, then there is no assumption that the local authority should be required to plan to meet its traveller site needs in full. Question 11 asks if this would help that small number of local authorities and if not, why not. Suggestions are requested for other measures the Government could take to help local authorities in this situation.

29. Officers agree that authorities in this situation do need external help, and that what is being proposed may be useful to the affected authorities. But what are the implications for their adjoining and other nearby authorities? And what are the ramifications for the travellers for whom no provision will be made? For all that PPTS encourages collaborative working between authorities to produce joint development plans to address the needs of the travelling community, this is very unlikely to become a reality for a variety of reasons. Even this idea seems to be watered down in the consultation which states in para 1.3 that councils “may wish to consider” the production of joint development plans. The issue is being addressed from only one direction, ie that of the immediately affected authorities, and this can only create problems for their neighbours and give no solutions for the travelling community currently living on unauthorised sites.

30. Although the origin and extent of the issue is different, this authority is facing similar problems to those being addressed in this section of the consultation, ie there is too much demand or need for sites and too many and too extensive policy constraints to enable suitable and deliverable provision, particularly if all the proposed changes to policy guidance become a reality.

31. Officers can think of no immediate and practical solutions to the problems, other than to suggest a re-think at national level. The planning system as it currently operates is not making adequate provision for the needs of the travelling community. The problem is particularly acute in Green Belt areas, where there does seem to be a perception of favourable treatment for travellers, but the proposals in the consultation will only exacerbate the overall problem of meeting total needs, and make it very much harder to identify suitable sites in the Green Belt.

32. Question 12 asks “Are there any other points that you wish to make in response to this consultation, in particular to inform the Government’s consideration of the potential impacts that the proposals in this paper may have on either the traveller community or the settled community?” Officers believe that this is answered by the generality of responses to the earlier questions.

33. The last question concerns the streamlined draft guidance for robustly assessing traveller site need (Annex A of the consultation). This is not of immediate direct relevance for this Council or Essex as a whole as the 2014 GTAA was only published in July and included as Local Plan Evidence Base material at Cabinet on 8th September. Officers feel that the

guidance is basic in the extreme – little more than a list to be “ticked off” and makes no mention of the frequency of such assessments or gives no guidance on, let alone mention, household formation rates – which is the source of the main growth in this district, and which is likely to be a bone of contention at Public Inquiries etc. when the GTAA is being used as evidence.

Reason for decision: As this Council has one of the highest Green Belt coverages in the country, any proposals to further restrict provision for the travelling community could have serious repercussions for being able to prepare a sound Local Plan. Responses to this consultation are therefore needed to get this point firmly across to the Government.

Options considered and rejected:

Not to respond to the consultation. This would be inappropriate as the proposed changes would appear to significantly restrict this Council’s ability to make adequate provision for the travelling community, particularly in the context of the findings of the Essex Gypsy and Traveller and Travelling Showpeople Accommodation Assessment (July 2014).

Consultation undertaken:

Internal – Planning Enforcement Officers; Assistant Director (Private Sector Housing and Communities Support); Officer members of the Gypsy and Traveller Co-ordination Group; and Performance and Improvement Officer – Equality and Diversity

Resource implications:

Budget provision: From existing resources

Personnel: From existing resources

Land: Potential implications for identifying Council-owned land and other assets which are not in the Green Belt

Community Plan/BVPP reference:

Relevant statutory powers:

Background papers:

National Planning Policy Framework (CLG March 2012)

Planning Policy for Traveller Sites (CLG March 2012)

Essex Gypsy and Traveller and Travelling Showpeople Accommodation Assessment (July 2014)

CLG “Consultation: planning and travellers” (Sep 14)

Environmental/Human Rights Act/Crime and Disorder Act Implications:

Key Decision reference: (if required) N/A