

Report to the Cabinet

Report reference: C-048-2008/09
Date of meeting: 6 October 2008



Portfolio: Planning and Economic Development.

Subject: Gypsy & Traveller Development Plan Document – Public Consultation.

Responsible Officer: Andrew Lainton (01992–564481).

Democratic Services Officer: Gary Woodhall (01992–564470).

Recommendations/Decisions Required:

- (1) To note that the Portfolio Holder, following the meeting of her Advisory Group on 23 September, has decided to refer to the Cabinet the approval of the release of the attached consultation document on gypsy and traveller pitch provision;**
- (2) To note that the Leader of the Council has determined that this item be referred to the meeting of the Cabinet as a matter of urgency in accordance with Section 100B(4) of the Local Government Act 1972 so as to comply with the direction of the Secretary of State dated 17 September 2007 that the Council submit the document for independent examination by 30 September 2009;**
- (3) To note the reasons for the Portfolio Holder’s decision to refer this matter to the Cabinet, as set out in the report; and**
- (4) That a report be submitted to the Council recommending that approval be given to the publication and distribution of the consultation document.**

Executive Summary:

This report has been referred to the Cabinet by the Portfolio Holder for Planning and Economic Development. The Council is asked to consider the draft consultation document on provision of gypsy and traveller sites in the District, and to approve the document for release to the public.

The report arises from a direction from the Secretary of State who requires the Council to submit a development plan document of the provision to be made for gypsies and travellers. The deadline for submission of the development plan is 30 September 2009.

Reasons for Proposed Decision:

The difficulties of this cannot be underestimated. No local authority has yet to use the new system to successfully produce a Gypsy and Traveller Development Plan Document.

The Council now has additional duties towards meeting the needs of Gypsies and Travellers under housing (Housing Act 2005) and race relations legislation (Race Relations Amendment Act 2000). All Council members are politely requested to be aware of their duties under this

legislation.

The Issues and Options consultation document is in two parts:

(a) The first part considers the broad spatial options. It looks at the parts of the District where provision would be possibly acceptable, including the range of factors set down in Government policy such as access to schools, jobs and primary health care. Mapping of these factors has been done through a site suitability study. It also looks at issues such as whether sites should be restricted in parts of the District, which have seen a concentration, and whether there should be a scattering of smaller sites or a few larger sites. The gypsy and traveller community has expressed a need for smaller sites.

(b) The second part looks at potential sites, although it must be stressed that not all will eventually be needed. There are real and genuine choices, but all must be consistent with any chosen strategy, in order to be found 'sound'.

A widespread search for potential sites has taken place across the parts of the District with the best access to jobs, education and primary health care, and where not likely to damage nationally and internationally protected environmental assets. Because of the geography of the District some sites inevitably cluster in certain areas, e.g. where there is a scattering of small paddock areas. Other areas have mostly large arable fields where finding sites without a high visibility/landscape impact is very difficult. Very few potential sites border no existing housing, such 'separated' sites, but still retaining good access being rare

Meeting regional requirements can be a 'very special circumstance' leading to the allocation or granting of planning permission for the 'inappropriate development' in the Green Belt of Gypsies and Travellers sites. For each site a careful balancing act needs to be made in terms of the ability to meet need, against harm to the Green Belt and other harm. The recent appeal decision at Holmsfield Nursery came to the view that all potentially deliverable sites in this District were likely to be in the Green Belt.

Engagement with the gypsy and traveller community, as well as the settled community, will be essential in this process. The former is very much a hard to reach group. Over 50% of gypsy and traveller adults cannot read or write. For this reason Planning has engaged specialist consultancy Myriad to directly liaise with travellers (including production of a DVD which has been well received) to explain the process. The results of this have shown clear preferences in terms of site size, facilities and relationship to the settled community. The study findings called for a new start and confidence building measures to avoid the perception of mutual hostility between the District Council and the gypsy and traveller community.

A key problem is one of deliverability. Despite great efforts the gypsy and traveller community have only put forward four sites, and not necessarily acceptable ones. This is not enough. As a result it is inevitable that finding enough sites may require compulsory acquisition.

Other Options for Action:

Preparation of a local development framework is a statutory requirement under the Planning and Compulsory Purchase Act 2004 and therefore no alternative action is possible.

The framework comprises a number of local development documents. These must be prepared in accordance with a timetable known as a local development scheme (LDS). The Secretary of State has directed the Council to publish a Gypsies and Travellers document, and the Council has amended the LDS accordingly.

Consultation on the document is required by virtue of the Town and County Planning (Local Development) England Regulations 2004 as amended by the Town and County Planning (Local Development) (England) (Amendment) Regulations 2008.

Although the form of such consultation is not specified by the regulations, if certain matters are not consulted on then there is a considerable risk that at a future stage the document will not meet the twin tests of legal compliance and 'soundness' (a policy test set by Government). Specifically if certain sites are favoured by the inspector (who writes a binding report) and the sustainability of these sites has not been appraised and consulted on then the plan cannot progress and an expensive and time-consuming 'back tracking' of stages is necessary.

For these reasons a major 'front loading' of consultation is recommended. Those local planning authorities that have carried out consultation on the key 'spatial choices' have been much more successful in having their plans being found sound than those that have not.

The Council carried out a 'Call for Sites' exercise from 6 June to the end of August, with arrangements being made for a few late submissions. The purpose of this is to satisfy frontloading requirements and ensure that all reasonable options will be consulted on and assessed, although there is no guarantee whatsoever that any site will be eventually included in the final plan.

Since the amendment of regulations in 2008 the number of intended stages of consultation has been reduced from two to one.

Report:

1. This report is brought to the Cabinet at this meeting following a decision of the Portfolio Holder not to issue the consultation document on gypsy and traveller provision without prior consideration by portfolio holders. The Portfolio Holder considers that wider discussion among Councillors would be beneficial and will ensure that members have a greater familiarity with issues involved. The Portfolio Holder has also indicated that the Cabinet may wish to consider reference to the next Council meeting.

The Changed National Context for Gypsy and Traveller Provision

2. Prior to 1994 Gypsy and Traveller provision was made mainly through public sites with a duty to provide such sites by virtue of the Caravan Sites and Control of Development Act 1968.

3. The Criminal Justice and Public Order Act 1994 removed this duty and for about a decade national policy presumed that Gypsies and Travellers would make their own provision through the planning system. In the event few sites were granted planning permission and very few additional sites were allocated in development plans. As a result there has been an acute shortage of sites and problems of enforcement of unauthorised encampments.

4. New policies have resulted both in tougher police powers over unauthorised encampments and a new approach towards planned provision of sites. The aim is to break the cycle of invade-enforce-evict, with its considerable costs, with a new approach to planned provision.

5. Government Circular 1/2006 notes the national priority given to increasing provision for Gypsies and Travellers. In particular the Government wishes to improve access to education and health services, as Gypsies are the ethnic group with the worst education and

health prospects. At a regional level provision levels for local authorities must be set and at a local level development plans must provide that number of additional pitches.

6. 100% funding from national government (via the Homes and Communities Agency) is available to develop sites, but the level of funding is unlikely to be sufficient to meet needs for sites requiring public funding if every local authority took it up to the intended degree.

7. The Circular makes it clear that rural sites are acceptable in principle and that criteria for choosing sites should not be so strict as to effectively preclude provision.

The Requirement to Produce a Plan

8. By virtue of a Direction by the Secretary of State, this Council is required to submit a development plan document on Gypsy and Traveller provision by October 2009.

9. This document will be required to allocate land for a number of additional pitches for Gypsy and Traveller accommodation. The precise number will be set through an amendment to the East of England Plan (EEP). The draft establishes a requirement of 49 extra pitches from 2006-2011 (the Council has already granted permission for 10 additional pitches since 2006), with a growth of 3% per annum (of the overall planned level in 2011, including the 49 additional pitches) thereafter to account for household growth. As the plan must run for 15 years this results in a total requirement for 96 additional pitches – which will be a considerable challenge to deliver.

10. The draft regional provision has been out to consultation and representations will be heard at an independent Examination in Public (EiP) in October 2008. The Cabinet noted the officer level responses to the consultation at the meeting of 9 June and the Council will be represented by a consultant at the EiP. The Secretary of State has confirmed that the finalised East of England Plan amendments will come into force by summer 2009.

11. This gives a very short time horizon until the deadline for submission. The Council will have to consult on strategy and sites without knowing the final EEP figure but this should not be a major problem. Over time pitch requirements at a regional level will go up or come down as the EEP is reviewed. It is an important requirement that plans have sufficient flexibility and 'contingencies' so that major revisions are not necessary if the regional figures change, which they will at some point. This may require having a sufficient 'reserve' of sites to draw from if requirements increase, or sites with a late phasing that might not be needed if requirements decrease.

12. As this report is not asking for policy decisions at this stage, reference to Cabinet (as a key decision) under the terms of the Local Government Act 2000 is not strictly required. The draft Options Paper is being taken to the Portfolio Holder's Local Development Framework Advisory Group, and changes necessary as a result have been appended. Nonetheless the PFH wishes to ensure that such a potentially fraught issue has the widest possible ownership of and understanding by the Executive and whole council membership.

13. This is particularly important once the next statutory stage is reached of having to agree a plan for 'submission' to a binding public examination. Government advice is that as this will be Council policy, it must be agreed at a Full Council meeting. The same meeting must also agree a 'sustainability appraisal' and 'appropriate assessment' of the plan - these are required by European Directives. The former should show that the plan has taken account of economic, environmental and social objectives while the latter deals with potential impacts on sites of European importance for wildlife. At this Full Council meeting there is consequently limited scope for significant amendment. This means that there has to be a prior process involving the whole Council membership to assess and narrow down policy and

site options. The final Full Council meeting is just the end result of this and there has to have been a series of transparent formal and informal decision making processes to arrive at the recommended final plan.

14. This has two consequences. Firstly to minimise risk several authorities (such as South Cambridgeshire) have found it necessary to schedule several Full Council meetings on subsequent weeks, even though only one or two may ultimately be required. If no further consultation (on “preferred options”) prior to the consultation on the submission itself is needed, then these meetings will be required at the beginning of the next municipal year in May. If extra consultation is necessary it will be required over the summer and it is unlikely that the directive deadline could be met, and further discussion with GO-East officers would be sought; subject to the outcome, further Full Council meetings could be programmed for October. As an exercise in risk management it is strongly recommended that these meetings are provisionally included in the forthcoming municipal calendar.

15. Secondly the advisory group must be seen as a process which can involve all council members, not just formal members of the group. As a full Council process it is not one of executive-scrutiny, or administration-opposition. The process is akin to setting a lawful Council budget. It is not a question of whether it is approved but one of what is approved in order to meet set deadlines.

16. Amendments to the document previously submitted to the Portfolio Holder Advisory Group have been incorporated into the final copy in the form of a supplementary as is set out in Appendix 1. The full draft consultation report has already been issued to all members which should be read alongside the supplementary.

17. The final published version will include a glossary and index, have an accompanying ‘easy read’ summary leaflet and a pull out postal questionnaire. The Appendix on regional pitch requirements also needs to be amended to reflect emerging work on the Essex GTAA and the final submission to the East of England Plan review.

Resource Implications:

This Development Plan Document will be prepared within the agreed budgetary provision of the Forward Planning section, as supplemented by the Housing and Planning delivery grant.

A consultant has been employed on an agency basis to take the matter forward.

Legal and Governance Implications:

Planning and Compulsory Purchase Act 2004 (as amended).

Human Rights Act issues, such as the right to family life and the right to a home, are often central in gypsies and travellers site cases. These rights are enjoyed equally by the whole community, including the settled community. Certain cases have recently clarified how the act is to be applied in gypsy and traveller cases. In particular at the very large site at Crays Hill in Basildon the Secretary of State did not consider personal circumstances sufficiently great to allow an unsuitable site. But in a successful challenge to eviction the Judge held great store by the failure of the District to provide the sites required by the East of England plan in effectively granting a stay of execution. The lesson is clear - unless site provision is made it will be hard to successfully evict unauthorised encampments. In addition unless person-by-person assessments of need are made then it will be difficult to evict. This leads to the argument for an emergency stopping place site, which allows the police to immediately evict from unauthorised encampments. The alternative site allows breathing space for consideration of personal circumstances and human rights issues.

Safer, Cleaner and Greener Implications:

There are a number of distinct requirements and constraints set by legislation and European directives.

Consultation Undertaken:

Widespread consultation is programmed to occur between the 4 November and the 20th January 2009. This will be in accordance with the broad principles as set out in the draft Statement of Community involvement. If new sites proposed by third parties for gypsies and travellers come forward it is proposed that a supplementary consultation be carried out immediately afterwards. This will not require further reference to executive or council.

Council Plan 2006-10/BVPP Reference: GU1, GU4, HN1, HN3, EP3 and IP4

Background Papers:

None.

Impact Assessments:

These are elaborated in the consultation document.

Note: The final document will include a summary leaflet and a paper questionnaire.