

Gypsies and Travellers Development Plan Consultation on Options

14.20 Potential New Sites - around Waltham Abbey, Roydon, Nazeing and Sewardstone

14.21 There are a number of potential sites to the north and south of Waltham Abbey.

14.22 The sites to the north lie along Crooked Mile, one at or in a yard area to the rear of the derelict **Lea Valley Nursery** It could take around 10 pitches, either as a standalone site to the rear or as part of a wider development, if such a development were to be found acceptable. This has been removed from the area permitted for glasshouse extensions in the Local Plan Alterations. It should be noted that this policy (E13) is a permissive one, and does not safeguard land for this use.

14.23 A romany museum was previously proposed for this site and found unacceptable.

There is a planning brief for the site, now somewhat out of date and no longer in conformity with national policy. The future of this site/ area will be considered further as part of the Core Strategy. Any development, if the location were found acceptable, would have to improve open vistas from Crooked Mile, and if necessary would have to enact traffic safety measures on Crooked Mile. Views from Paternoster Hill would be an issue. As with all green belt sites the dereliction by itself is not a material planning consideration, and neither are considerations over whether the existing owner should be rewarded or punished.

14.24 Slightly to the north is a **smallholding area off Crooked Lane**, in a messy area of urban fringe uses, which could accommodate 10 pitches.

Figure 25 Potential New Sites - around Waltham Abbey, Roydon/Nazeing and Sewardstone

Ref.	Site	Parish	Potential Pitches
18a	Yard/Car park at rear of Lea Valley Nursery Crooked Mile, Waltham Abbey	Waltham Abbey	10
18b	Smallholding off Crooked Mile, Waltham Abbey	Waltham Abbey	10
18c	Former Kingsfield Nursery, Sewardstone	Waltham Abbey	4
18d	Chandlers Farm, Sewardstone	Waltham Abbey	8
18e	Part of Northfield Nursery	Waltham Abbey	2
18f	Northfield Farm, and the rear of Beechfield Nursery, Sewardstone	Waltham Abbey	15
18g	Meadows Long Green, Bumbles Green	Nazeing	8
18h	Spinney Nursery Hoe Lane Nazeing	Nazeing	4
18i	Part of Burleigh Nursery Hose Lane Nazeing	Nazeing	4
18j	Hamlet Hill Farm	Roydon	8

Figure 26 Possible Sites North of Waltham Abbey - Crooked Mile



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Figure 27 Possible Sites In Sewardstone

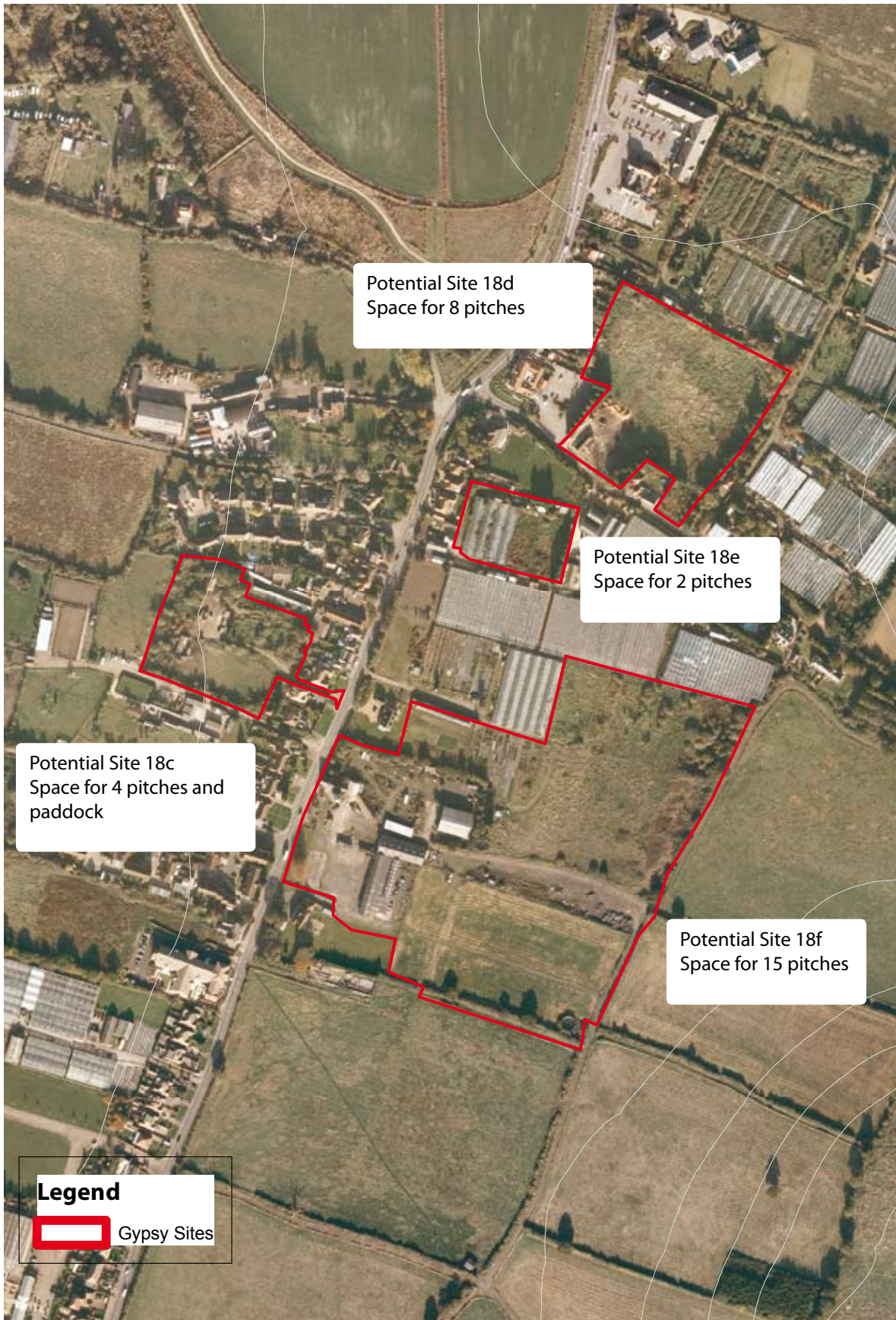


Figure 28 Possible Sites at Hoe Lane Nazeing



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14.25 Sewardstone has potential sites. The northern part of this area closest to the facilities at Waltham Abbey has been the focus of the search.

14.26 The **former Kingsfield Nursery** is now largely overgrown, but part has been given over to a paddock which could be incorporated into any scheme. The site is within the boundary of the Lee Valley Regional Park. It could take 4 pitches. This is zoned as an area where glasshouses are permitted in the local plan as altered.

14.27 Slightly to the North behind the Plough pub is **Chandlers Farm**, in reality just a single field, and is now used for turf sales. It could take 8 pitches.

14.28 To the South is a derelict part of **Northfield Nursery**, which could take 2 pitches.

14.29 Finally there is the site of **Northfield Farm, and the rear of Beechfield Nursery**. This is partly a former nursery falling into dereliction and partly unused ground. Here there may be an opportunity to improve the openness of the green belt through removing disused buildings and creating public access, whilst having a gypsy site of around 15 pitches on the remainder. This has been removed from the area where glasshouses are permitted.

14.30 Because of the number of existing sites in the Nazeing area the Council has not actively sought out additional ones. Several sites have been promoted for gypsy and traveller use in the 'Call for Sites' exercise however.

14.31 One site is at the **Meadows, Long Green**, on the western edge of Bumbles Green, opposite an existing site. This site has twice been refused planning permission on appeal, for 23 pitches in 2003 and for 22 pitches in 2008. It is now being put forward by the owner for 11 pitches. Part of this land is wooded, so the maximum potentially developable area of the site with the plot size and site

layout principles used in this paper is likely to be 8 pitches.

14.32 In the appeal in 2008 the Inspector concluded and the Secretary of State agreed that the development would be a significant extension of a settlement of limited size into the open countryside. This, exacerbated by the undulating topography would cause significant harm to the openness of the green belt and from encroachment into the countryside.

14.33 This was not outweighed by evidence on personal circumstances. No evidence on personal circumstances and need was presented by the appellants.

14.34 At **Hoe Lane** Nazeing there are 4 adjoining areas of 'nurseries', which have been put forward in the 'Call for Sites' exercise by the landowners for gypsy and travellers or other uses such as employment or housing. They are Spinney Nursery, Burleigh Nursery, Ridge House and Stoneyfield.

14.35 In actuality the glass has been cleared on all of this area, apart from one glasshouse at Burleigh Nursery. This is an area zoned for glasshouses under the Local Plan, but the industry has been in decline in this specific area. In reality much of the area of these sites is now firmly established as houses in large gardens, with lawful use of some dwellings granted consent many years ago for horticultural worker occupancy now as unrestricted residential. Together with the poor access on Hoe Lane, the lack of dereliction means that there is a lack of a special case for significant development here. The most scope for gypsy and traveller development here may lie at Spinney Nursery, which has two employment uses granted employment permissions, and the remaining area of glass at Burleigh Nursery. Either of these could accommodate around four pitches. Access issues along Hoe Lane are important, although this did not prove insuperable at the recent Greenleaver planning consent.

14.36 The site of **Hamlet Hill Farm North Roydon** is being promoted by its owner for eight pitches. It was refused permission as a Gypsy and Travellers site in 2001 and the owner is now resident at Holmsfield Nursery. Though it would undoubtedly lead to further concentration of sites in this area arguably it has fewer planning issues than the Holmsfield Nursery site and could serve as a replacement site. An historic site slightly to the south west at Hamlet Hill Farm South has not been proposed (it was refused on appeal in 2003) because it is on a dangerous bend.

Question 19

Potential Sites in the Waltham Abbey, Roydon and Nazeing Areas

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

Site 18a - Yard/Cark park at rear of Lea Valley Nursery, Crooked Mile

Yes No

Site 18b - Smallholding off Crooked Mile

Yes No

Site 18c -Former Kingsfield Nursery, Sewardstone

Yes No

Site 18d - Chandlers Farm Sewardstone

Yes No

Site 18e - Part of Northfield Nursery Sewardstone

Yes No

Site 18f - Northfield Farm and Adjoining Land -Sewardstone

Yes No

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Figure 30 Possible Site South of Victory Hall, Hainault Road Chigwell



Figure 31 Possible Sites off Abridge Lane Theydon Bois



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Figure 32 Possible Site East of Abridge



Figure 33 Possible Site - Former Crowther Nursery, Ongar Road Abridge



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Site 18g- Meadows Long Green/Bumbles Green
 Yes No

Site 18h- Spinney Nursery, Hoe Lane Nazeing
 Yes No

Site 18i- Burleigh Nursery Hoe Lane Nazeing
 Yes No

Site 18j- Site to West of Bumbles Green
 Yes No

Site 18k- Hamlet Hill Farm (North)
 Yes No

Please give reasons for your answer

If you know of other sites in this area that are better and/or also should be considered please state which ones and why

14.37 Potential New Sites - in the Roding Valley

14.38 The constraints of Epping Forest and the River Roding Flood Plain mean that the number of potential sites in the Roding Valley is more limited.

14.39 Because of these constraints no potentially suitable sites have been found around Loughton.

14.40 At Chigwell there is a site of overgrown former allotments south of **Victory Hall** on Hainault Road. It could take two pitches.

14.41 Potential sites have been examined around Chigwell Row, but the village lies atop a ridge making potential sites very visually prominent and this could harm the sensitive setting of Hainault Forest to the south which can be

Figure 29 Potential New Sites - in the Roding Valley

Ref.	Site	Parish	Potential Pitches
19a	South of Victory Hall, Chigwell	Chigwell	2
19b	Coopersale Road	Theydon Garnon	11
19c	Abridge Road	Theydon Garnon	10
19d	East of Abridge, Ongar Road	Lambourne	4
19e	Former Crowther Nursery, Ongar Road	Lambourne	15

seen from a considerable distance including from the northern side of the Roding Valley.

14.42 At Theydon Bois there are potential sites along **Abridge Road**, one is on Abridge Road itself and one on Coopersale Lane - a protected lane.

14.43 Turning to **Abridge** - to the east of the village is a Paddock which might take four pitches.

14.44 Further east is the now disused site of the garden centres at **Crowther Nurseries** on Ongar Road. This could take around 15 pitches.

Question 20

Potential Sites in the Roding Valley Area

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

Site 19a - Site next to Victory Hall Chigwell

Yes No

Site 19b- Paddock east of Theydon Bois - Abridge Road

Yes No

Site 19c- Paddock east of Theydon Bois - Coopersale Lane

Yes No

Site 19d - Paddock east of Abridge

Yes No

Site 19e - Crowther Nursery Abridge

Yes No

Please give reasons for your answer

If you know of other sites in this area that are better and/or also should be considered please state which ones and why.

15. Windfall Sites

Windfall Sites Issues

- Over the period of the plan not all sites allocated (that is zoned for development) may come forward. Also unexpected sites may come forward which may in some cases be preferable to allocated sites.
- These are known as windfall sites. It is necessary to have a policy for assessing the suitability of such sites, and to act as a benchmark for considering the suitability of allocated sites.
- It is not necessary for such a policy to repeat policy elsewhere in the development plan - for example on flood risk or protection of conservation areas, or to repeat national planning policy.
- Government policy in Circular 01/2006 makes it clear that criteria should not be so strict as to effectively thwart site provision.

can be very visually prominent locations and therefore intrude into and be harmful to the character and openness of the green belt.

15.1 Because of this it may not be reasonable to constrain sites to locations away from close proximity to residential properties. Although discussions with gypsies and travellers themselves reveal a desire for some separation from settled communities, to retain privacy and cultural identity, the problem is one of site availability. It might be considered too tight a restriction, not supported by national policy, that would preclude the vast majority of potential sites in the district, and which would favour inaccessible locations with poor access to services. If sites are small, well located and with proper landscaping then experience nationally suggests they can make very good neighbours. This is not to suggest that sites directly on a settlement edge is always a good idea, these

15.2 Secondly the existing local plan requirement to be 'in close proximity to an area frequented by gypsies' has been vague and open to interpretation, and has arguably led to an excessive concentration of gypsy sites in some areas. The key issue is that sites should be in areas gypsies would wish to frequent because of accessibility to jobs and services.

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Potential Policy

Applications for gypsy and travellers sites will be permitted where all of the relevant criteria below are met:

a. The site would be occupied solely by persons meeting the official definition of gypsies and travellers;

b. The site is necessary to meet the required need and phasing of provision for gypsy and traveller pitches as set out in the development plan. If the site is not allocated then it must either meet a shortfall in provision from allocated sites, or be preferable to allocated sites when both are assessed against this policy;

c. Further provision in the Sedge Green, Hamlet Hill and Bumbles Green/Long Green areas will not be permitted as this will exacerbate an unacceptable concentration of pitches in these areas;

d. Where the proposal is for an extension to an existing site then this must be justified by the housing needs of those living on the site or their families;

e. The location must have adequate access to public transport, schools, shops, primary healthcare and local services;

f. The proposal must have a satisfactory relationship with, and must not be likely to cause unacceptable disturbance to, settled residential areas;

g. The proposal must be of an appropriate size so as to not put unacceptable strain on infrastructure or dominate settled communities - schemes of no more than 15 pitches should be the norm but each proposal will be assessed on its merits;

h. Site design must ensure that pitches are of adequate size, with appropriate amenity and

communal facilities including for children's play;

i. There must be no significant detrimental visual impact on the landscape which could not be overcome by appropriate landscaping, planting or screening;

j. The site should have safe and suitable access for caravans and mobile homes; and

k. Where the proposal is in the green belt then there must be very special circumstances (which might include personal circumstances of housing need and the requirement to meet the pitch provision requirements of the development plan) which clearly outweigh the harm by virtue of the inappropriate use, the harm to the openness of the green belt, the harm to the character and appearance of the area and other harm.

Proposals for associated stabling and/or yard working areas will be assessed on their own merits and will be acceptable if they meet these criteria.

Criteria d-k will also be used to assess proposals for sites for Travelling Showpeople. Regard will be had for the need for larger yard sizes and access for plant.

Figure 33 Travelling Showpeoples Site - Moreton



Question 21

Criteria for Windfall Sites

Do you agree with the wording of the suggested policy on this and the the previous page?

Yes

No

Please give reasons for your answer

16. Transit Sites and Emergency Stop Over Sites

Transit and Emergency Stop-Over Site Issues

- Transit sites are sites designed to be occupied on a temporary basis by those undertaking a nomadic lifestyle.
- The need for such sites has lessened as travellers have adopted a more sedentary lifestyle, especially in Epping Forest District.
- The scale of this need is not accurately known as there has not yet been a full regional study of need. There has also been concern that demand may be distorted by the shortage of permanent pitches.
- Initial work at a regional level aims to estimate need by examining the number of summer unauthorised encampments (that is on land not owned by gypsies or travellers). As there are no unauthorised encampments remaining in the district the need is likely to be very low.
- The purpose of an emergency stop-over facility it is to enable swift eviction by the police of unauthorised encampments, by having a temporary alternative place to move on to. Temporary in this case means the time needed to assess personal circumstances - usually several weeks.

16.1 Until there is firmer evidence of need it might be inappropriate to make a significant level of transit site provision, although individual proposals will be assessed on their merits.

16.2 There remains a need for emergency stop over facilities. Earlier in the paper an area at Merlin Way North Weald has been suggested as a potential site. This might also include an element of transit provision.

Question 22

Transit Sites

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

Yes

No

Please give reasons for your answer

17. Travelling Showpeople's Sites

Travelling Showpeople's Sites Issues

- There is a similar lack of evidence regarding travelling showpeople. The Regional Assembly has yet to carry out an assessment of need, although one is being carried out by the Showman's Guild
- Relatively recently an appeal has granted permission for a significant travelling showpersons site at Moreton, on a former caravan park. This has 9 yards.
- It should be noted that the government direction does not cover provision for travelling showpeople as they fall outside the official definition of gypsies and travellers.
- The draft Essex Gypsies and Travellers Accommodation Assessment 2008 includes an estimate of need for provision for travelling showpeople over 15 years. The draft assessment for Epping Forest District is 3 plots, derived from household growth from the existing site. This growth is causing the eviction of one yard to make way for a family member. This creates an urgent need for one additional yard.

17.1 As the need derives from growth of the existing site it makes sense that this be provided at Moreton. The site cannot physically expand because of extensive landscaping. However some of the residential plots are very large and could be subdivided if necessary. This would need to be proposed by the existing

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occupiers if they had requirements from family growth. The single urgent need yard could be accommodated one one of several smaller sites considered earlier, subject to the stricter access and amenity requirements of travelling showpeoples sites. There is also a possibility that some districts may be required to accommodate some overflow from the severe over-concentration of travelling showpeoples sites in Thurrock.

Question 23

Travelling Showpeople

Do you agree with adding two extra yards to the site at Moreton, and one additional yard elsewhere?

Yes

No

Please give reasons for your answer

D Delivering Sites

18. Site Delivery

Site Delivery Issues

- The Gypsy and Travellers Development Plan will require a clear delivery strategy, that is a strategy for bringing sites into use.
- Very few sites are in public ownership. Also it is very unlikely on the basis of proposals so far that sufficient suitable sites will be put forward by landowners and Gypsies and Travellers themselves.
- This leaves a particular problem. It is possible that some very suitable sites may need to be brought forward even though the landowner has either not brought it forward or opposes it.
- This may mean that many more sites than are needed should be allocated - on the expectation that some will not come forward, and/or the need for a fallback position of the use of proactive planning powers, including potentially use of compulsory purchase powers.

18.1 An argument for the use, or threat of use, of such powers, is that often landowners will refuse to release allocated sites on the expectation of higher land values from rural sites from uses such as residential, the value of such sites can be over 100 times that of agricultural use. For the most part though the potential sites included in this document have no prospect of ever being granted permission for residential development.

18.2 For about a decade years from 1994 the presumption was that gypsies and travellers would meet their own needs by developing sites themselves. Adequate provision did not come about however as applicants struggled to get planning permission. By itself though allocating sites and granting planning permission will not meet needs if landowners are not forthcoming in releasing sites.

18.3 Although the District and County have such powers the powers, resources and expertise are much greater in the newly established Homes and Communities Agency.

18.4 The government has made it clear that meeting the housing needs of gypsies and travellers are one of the key roles of the agency.

18.5 The agency has powers to purchase and provide land as well as to regulate housing associations. It also now has responsibility for grant funding of gypsy/traveller sites.

18.6 In the past very few housing associations have provided for such groups, considering it a role for a specialist provider. New guidance published in July 2008 makes it clear that provision of such accommodation is the core business of associations¹. Failure to do so could mean that associations are not meeting their responsibilities conferred on them by the Race Relations (Amendment) Act 2000.

18.7 There is an East of England based registered social landlord (RSL) with particular expertise in this field. The District hopes to work with them in partnership but hopes that in due course local RSLs will consider this part of their core role. The scope for Gypsy and Traveller led Housing Associations is also being explored in some areas.

18.8 100% of the cost of funding new sites (75% for site extensions) is available through the Gypsy and Travellers Sites grant funded through the single housing pot. The single larg-

¹ Gypsies and Travellers Financial Toolkit for RSLs - Niner and Walker 2008

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est allocation for 2008-2011 is available for the East of England.

18.9 Average costs per new pitch (excluding land costs) are £80,000 a pitch for new pitches). Adding land costs (at agricultural land values) using the previous assumptions on pitch size and net site area adds about £1,400 to cost per pitch. There will also be legal, administrative and design costs, and compulsory purchase compensation costs, so final costs are unlikely to be below £100,000 per pitch.

18.10 If the District received grant proportional to pitch provision in the East of England Plan it would receive around 4.1% of grant or £95,000, barely sufficient to provide one pitch.

18.11 Additional site provision will lead to lowered costs of enforcement, which several years ago in the district was running well over £200,000 a year. although this forms part of a business case for provision as a proportion of required costs it is low and makes only a marginal impact.

18.12 It is quite clear then that public funding in this area is inadequate, less than 1% of the funding required if public provision were the sole means of provision.

18.13 In actuality publicly facilitated provision will not be the sole means of provision, but shortage of traveller/landowner promoted sites means that it may have to be the primary means.

18.14 The Council has the ability but no longer the duty to provide sites using the Caravan Sites and Control of Development Act 1961.

18.15 Although additional public sites may be part of the answer consultation has shown that travellers themselves desire to own sites, though like conventional housing not all may be able to afford owner occupancy.

18.16 A solution may lie in an RSL buying a site with the Homes and Communities Agency - whereby the agency compulsorily purchases

a site and the RSL immediately buys it leading to no limited up front cost to the agency.

18.17 The RSL could then sell plots on a leasehold arrangement to gypsies and travellers or sell only a share in the lease on a shared ownership basis. Public investment would need to be protected or recycled. The District could set up a trust which could act as a rolling fund for lending for the capital costs associated with site development. Such mechanisms could lead to much more effective leverage of limited grant funding.

18.18 These mechanisms, which are being pioneered in some authorities, are particularly encouraged as innovations the government wishes to support in grant guidance².

18.19 Because sites would be permitted and zoned only for gypsy and traveller provision they could not in due course become chalet plots. The Council is aware that this situation has arisen in locations in parts of Essex. With suitable planning conditions/obligations and robust enforcement action where necessary this should not become a problem on designated sites.

² Gypsy and Travellers Sites Grant guidance 2006-2008 (Updated 2007) Department of Communities.

Question 24

Site Delivery

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 tick only one.

Please give reasons for your answer

19. Monitoring and Indicators

19.1 The following are potential indicators of how successfully or otherwise the plan is being implemented.

- Number of unauthorised pitches;
- Number of authorised pitches;
- Number of planning approvals given, by allocated and unallocated sites and whether in conformity with the development plan or not; and
- Number of enforcement/stop notices issued

Question 25

Indicators

Do you agree with the proposed suite of indicators?

Yes No

Please give reasons for your answer

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Appendix 1 National and Regional Planning Policy on Gypsies and Travellers

Circular 1/06 (Planning for Gypsy and Traveller Caravan Sites)

In this the Government indicates its intention to (a) increase significantly the number of gypsy and traveller sites in appropriate locations with a focus on increasing provision over the next 3 to 5 years; and (b) ensure that gypsies and travellers should not become homeless through eviction, without having alternative sites to move to.

The Government is satisfied that there is a strong link between the lack of good quality sites and poor health and education – research indicates that gypsies and travellers experience the worst health and the lowest educational standards of any disadvantaged group. Provision of an adequate number of suitable sites is therefore very high on the national political agenda. Paragraph 18 of the Circular states that “There is a need to provide sites, including transit sites, in locations that meet the current working patterns of gypsies and travellers. In view of the changes in their work patterns these may not be the same areas they have located in or frequented in the past.”

The circular Requires that the Local Development Framework should include a strategy for the location of sites and criteria based policy to assess them. Local authorities must then allocate sufficient pitches to meet the requirements of the Regional Spatial Strategy. Sites must be suitable and their should be a realistic likelihood of them being made available. Where necessary allocation documents specific to Gypsies and Travellers should be brought forward in advance of other documents.

In terms of potential locations they should not undermine the objectives for the designation of nationally recognised sites e.g. Sites of Special Scientific Interest, Conservation Areas). Sites on the outskirts of built-up areas may be appropriate, rural settings, where not subject to special planning constraints, are acceptable in principle. Sites should respect the scale of, and not dominate the nearest settled community.

In addition Circular 04/07 on Planning for Traveling Showpeople provides guidance on provision of safe, permanent bases (primarily for winter storage of equipment) and also accommodation. The guidance parallels that for Gypsies and Travellers with a requirement to assess needs as part of GTAAs.

In September 2007, this Council was served with a Direction from the Secretary of State for Communities and Local Government. This Direction requires the preparation of a Development Plan Document (DPD) dealing specifically with increased provision of pitches for gypsy and traveller caravans within the district. The DPD should be ready for submission for independent examination by September 2009 to meet the target identified in the Single Issue Review of the East of England Plan (EEP) – see immediately below.

The East of England Plan – Single Issue Review – Gypsy and Traveller Accommodation

The EEP Single Issue Review (Planning for Gypsy and Traveller Accommodation in the East of England) requires the provision of an additional 49 pitches in the district by 2011 with a 3% annual increase (from planned 2011 levels) in the total number of pitches thereafter to allow for household growth. The Single Issue Review is due to be considered at an Examination in Public (EiP) starting in October 2008. The Council has objected to the figure and may therefore be invited to attend the EiP to present its case for a reduction. Details of the objection are given in Appendix 1.

The Single Issue Review figure does not include any level of transit pitch provision or any consideration of the requirements for travelling showpeople. These are now being assessed in a new Gypsy and Travellers Accommodation Assessment for Essex.

The proposed policy (H4) requires local development documents to consider policies which make exceptions to normal policies of rural restraint and to later green belt boundaries where necessary.

Appendix 2 Legal Background

Race Relations and Inclusive Communities

Issues surrounding gypsies and travellers have often been divisive. In particular, the identification and provision of sites has historically caused tension and has generated a hostile response from some parts of the community.

Epping Forest District Council has a statutory general duty under the Race Relations (Amendment) Act 2000 to 'pay due regard' to the need to eliminate unlawful racial discrimination, to promote equality of opportunity and to promote good race relations between different racial groups.

As legally recognised ethnic groups, Romany Gypsies and Irish Travellers are protected by the Race Relations Act, and included in the scope of the duty to promote race equality and good race relations. This means that it is unlawful for any individual or organisation to treat Gypsies or Irish Travellers less favourably than other groups, or to discriminate against them indirectly.

As the Council wishes to promote sustainable, inclusive communities, when consulting on this document the Council will not tolerate any representations, objections or comments that are deemed to be racist. In general terms, a racist representation is one which includes words, phrases or comments which are likely:

- to be offensive to a particular racial or ethnic group;
- to be racially abusive, insulting or threatening;
- to apply pressure to discriminate on racial grounds ; or
- to stir up racial hatred or contempt.

Human Rights Issues

The Human Rights Act 1998 is a United Kingdom Act of Parliament whose aim is to "give further effect" in UK law to the rights contained in the European Convention on Human Rights. The Act makes available in UK courts a remedy for breach of a Convention right, without the need to go to the European Court of Human Rights in Strasbourg.

Article 8 of the HRA is sometimes cited in planning cases for Gypsies and Travellers.

Everyone has the right to respect for his private and family life [and] his home...

There should be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

Article 8 therefore has to be balanced out with the needs of the wider community as well as the interests of Gypsies and Travellers.

Consideration of Human Rights Act (HRA) issues is a material consideration in the determination of a planning application or a development plan. Personal circumstances are only exceptionally relevant to planning decisions. However the Convention puts emphasis on the rights of the individual unless there is clear justification in interference in these rights in the public interests. Decisions therefore require a careful balancing of individual rights and the public interest.

Article 8 of the HRA is sometimes cited in planning cases for Gypsies and Travellers.

It should be noted that Article 8 gives rights to the whole community and does not single out any specific community. The rights of gypsies and travellers have therefore to be balanced out with the needs of the wider community. It is certainly not a *carte blanche* for gypsies and travellers to establish un-

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authorised encampments without any fear of legal punishment.

A number of key case law precedents and planning appeals have set out how this balancing act is to be carried out.

In *Chichester v Doe & Ors* the case involved Gypsies on land with no special designation and the Inspector concluded that there was minimal visual impact. The Court of appeal upheld the inspector's reasoning on breach of Article 8 based on Chichester's long-standing failure to allow any Gypsy sites in the area despite the proven need.

In *Chapman* case, which went to the European Court of Human Rights because a local authority refused her application to live on land she owned, the court decided that the council had interfered with the rights of her family (article 8) but these actions were justified because of the need to protect the rights of the wider community and preserve the environment.

In all cases the rights of the family needs to be balanced with the rights of the wider community and public policy on the protection of the environment, and following this assessment action must be proportionate. Consideration of unmet need and availability of alternative sites are material considerations in carrying out this assessment.

In a number of recent appeal cases in Essex the Secretary of State, having made this assessment considered that matters of wider public interest were overriding (including at the large encampment at Crays Hill Basildon). However in some cases she has ruled that it would be a disproportionate interference of Article 8 rights, despite the unacceptably of the site, harming the health and education of the occupants, to grant permanent consent in the absence of alternative sites. In these cases temporary consent of three-five years have been granted

to enable alternative sites to be found.

Therefore Human Rights considerations, though material, do not give special exemptions in the exercise of Planning Law to any group.

This balancing of rights also applies in cases of forced eviction of unauthorised encampments, but in a judicial review of eviction at the Crays Hill sites the judge, whilst conceding that eviction at some point was inevitable, overturned³ eviction, partly on the grounds that the District had not made provision for additional gypsy pitches as required by the East of England Plan. The gypsies here now concede they will have to move and have asked the district to provide alternative sites. The lesson then is clear eviction of clearly unacceptable sites may be hindered unless sufficient alternative provision on acceptable sites is made in line with regional policy.

Data Protection

All representations are public and cannot be made confidential.

In some circumstances, particularly where it relates to human rights issues, those making representations may wish to put forward certain personal circumstances as favouring their case. In doing so the Council will have regard to its duties under the Data Protection Act 1998 and in putting forward personal information:

- You should only provide personal information if you are happy for it to be available to the public.
- Do not include personal information about other people (including family members) unless you have told the person concerned and they are happy for you to send it. If such information is included the submission may be returned.

³ [http://www.basildon.gov.uk/80256B92004EA7AF/vWeb/f1EFEN7ELD2K/\\$file/high+court+of+justice+-+judgement+approved+by+the+court+-+9+may+2008.pdf](http://www.basildon.gov.uk/80256B92004EA7AF/vWeb/f1EFEN7ELD2K/$file/high+court+of+justice+-+judgement+approved+by+the+court+-+9+may+2008.pdf)

The Definition of a Gypsy and Traveller Household

There are currently two definitions of Gypsies and Travellers, a planning definition and a proposed housing definition.

The planning definition (circular 1/2006) seeks to define gypsies and travellers specifically for the purposes of regulating the use and development of land. As such the planning definition is limited to those who can demonstrate a specific land use requirement arising from their nomadic lifestyle.

The planning definition defines gypsies and travellers as: Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds of their own or their family's or dependants' education or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such.

The definition was amended following consultation in December 2004, and in recognition of the fact that many gypsies and travellers stop travelling permanently or temporarily because of health reasons or caring responsibilities, but still want to maintain their traditional caravan dwelling lifestyle.

It is not based on ethnicity or cultural tradition, as many ethnic gypsies and travellers will not have an individual history of nomadism, and hence will have no associated land use requirements for a site. On the other hand, groups such as 'new travellers' who have a nomadic way of life may have such a requirement. To fall within the planning definition a person must either have or at some time have had a nomadic habit of life.

The proposed housing definition (for the purposes of the Housing Act 2004) is wider, defining Gypsies and Travellers as: Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds of their own or their family's or dependants' education or health needs or old age have ceased to travel temporarily or permanently, and all other persons with a cultural tradition of nomadism and / or caravan dwelling but

not excluding members of an organised group of travelling show people or circus people travelling together as such.

The definitions are different because they cover different purposes⁴. The housing definition is intended to be a much wider definition which will enable local authorities to understand the possible future accommodation needs of this group and plan strategically to meet those needs. It recognises that there will be movement between sites and bricks and mortar housing, and that an understanding of the full gypsy and traveller community, not just those who are currently travelling, is needed.

The Housing Act 2004 requires local authorities to undertake regular assessments of the needs for gypsies and travellers living in or resorting to their areas and requires them to include their needs in any housing strategies, and to take any such strategy into account when exercising other functions such as planning.

Although nomadism and an itinerant lifestyle remain important for a minority of gypsies and travellers, there has been a shift towards a more settled lifestyle, making access to health, education and employment facilities more important.

4 <http://www.communities.gov.uk/archived/publications/housing/definition>

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Appendix 3 - Background to the Debate over Epping Forest Pitch Require- ments

Planning for gypsies and travellers is required to be based on an up to date assessment of need, a Gypsy and Travellers Accommodation Assessment (GTAA) in accordance with duties set out in the Housing Act 2004. This is done through a Gypsy and Traveller Needs Assessment in accordance with government guidance (issued in October 2007)⁵.

Prior to this an assessment was carried out for the Essex Local Authorities by a team from Salford University in February 2006⁶.

The number of pitches required for each local planning authority is determined by the Regional Spatial Strategy, in this case the East of England Plan, and in this process the number of pitches provided by local level GTAA's are checked and if necessary modified according to new research.

To assist in this process in March 2007 the government published a report, Preparing Regional Spatial Strategy Reviews on Gypsies and Travellers by regional planning bodies⁷. The East of England was used as a case study for the methodology, and as part of this work the report authors concluded that the Essex GTAA was likely to have significantly underestimated the scale of need.

Part of the reason for the wide discrepancy is that the Essex report was carried out at an early stage in the refinement of current methodologies, and for this reason underestimated need. In particular no allowance is made for overcrowding, concealed households (that is households sharing with others but which to form their own) and transfer from housing to sites (about half of gypsies live in settled communities, many of which want to live on sites but cannot because of shortage of sites). It **effectively made** no allowance for the current pitch

5 [http://www.communities.gov.uk/publications/housing/accommodation assessments](http://www.communities.gov.uk/publications/housing/accommodation%20assessments)

6 Ahmed, A Brown, P and Stelle, A (2006) Looking Back, Moving Forward: *Assessing the needs of Gypsies and Traveller in Essex*, Essex Planning Officers Association, Chelmsford.

7 <http://www.communities.gov.uk/publications/housing/preparingregionalspatial>

shortfall other than unauthorised development.

Accepting these inadequacies there was still concern about some of the data sources used in the government report which may have exaggerated need in Essex.

The Regional Planning Body, the East of England Regional Assembly, has carried out a single issue review of the East of England Plan (Regional Spatial Strategy 2001-2021) on the accommodation needs of Gypsies and Travellers. Following consultation in May-June 2007, a draft policy was published between February and May 2008 with formal representations invited. Epping Forest District has submitted its representations and an Examination in Public will hear invited representations in September-October 2008. The Examination Panel will then present a report to the Secretary of State who will publish the final policy amendment in 2009.

In 2008 the Essex Planning Officers Association and the Essex Housing Officers Group commissioned an updated Gypsy and Traveller Accommodation Assessment (GTAA) in accordance with duties set out in the Housing Act 2004 and Government guidance published in October 2007. It is hoped that results of this will be available for use during the Single Issue Review EiP. The GTAA will also assess the need for transit pitches and the future requirements of travelling showpeople.

This timetable will overlap with the consultation on this development plan document; however the pitch requirements should be finalised before Epping Forest has to submit the strategy in October 2009.

There is a considerable variation between the Regional Spatial Strategy needs assessment, based on the government report, and the earlier Essex GTAA. There is a requirement for 28 additional pitches by 2011 estimated in the Essex GTAA, and 186 pitches estimated in the government report.

The Essex GTAA suggested a need for 28 pitches by 2011, in addition to finding provision for the 221 households living on unauthorised developments.

The government report found a need for 186 extra

pitches by 2011, in addition to a need for pitches to accommodate 252 households living on unauthorised developments, a total of 438 pitches in Essex.

In this light Fordham Research were commissioned to carry out a Review of Gypsy and Traveller Pitch Requirement Figures July 2007 for Essex Planning Officers Association. Following the critique of the data used in government report by Fordhams an attempt was made to find common ground. In the event whilst some changes were made no final consensus could be reached on these matters. The submitted regional policy sets out a requirement for 371 pitches by 2011 in Essex of which 49 were required to be in Epping Forest District.

In addition to account for household h after 2011 allowance needed to be made for an annual 3% growth thereafter, in Epping Forest this would be around 4.4 extra pitches per year on the regional figures, or 57 additional pitches over the 15 year life-span of the Epping Forest Gypsies and Travellers Development Plan. In total 106 pitches.

In its representations Epping Forest has challenged these figures. It used the Fordhams Report as the basis of its representations.

The Essex local authorities are now jointly commissioning a revised Gypsies and travellers accommodation assessment from Fordhams.

Needs are dynamic and will change for each site over time. On some smaller long established sites there may no longer be children of school age, but conversely this may need to new households with housing requirements.

The formula used in the government report on needs assessment and the regional spatial strategy policy (single issue review) is effectively as follows:

$$\text{Requirement} = \text{Unauthorised pitches} + (\text{authorised pitches} \times 0.4)$$

Number of caravans per pitch

The number of caravans per pitch figure was based on a regional average of 1.7. Epping Forest District Council submitted that county figures should be based on county specific ratios. The average number of caravans per pitch in Essex is 2 not 1.7.

Secondly the count of unauthorised pitches was initially based on a single count in 2006. The Fordhams review took averages over five years. This produced revised figures of 196 unauthorised and 349 authorised pitches as opposed to 252 unauthorised and 464 authorised in the government report. Following a review of this by Pat Niner Consultant on behalf of EERA this point was conceded and an average of three successive caravan count figures was used (2005-2007).

Thirdly the count of caravans was wrong in the first instance for Epping Forest District.

For example even on the basis of the formula, if the number of authorised pitches is based on the January 2006 caravan count, and using the average of 2 caravans/pitch, Epping Forest's figures for the number of authorised caravans at that date is 110, which converts to authorised 55 pitches, rather than the 94 listed in consultation documents. Also the number of unauthorised pitches in June 06 was 56 not 39 as listed in the CLG report. A correction has also been submitted as the caravan count returns incorrectly identified tolerated pitches as authorised.

Finally the calculation of household growth is based on a sample of gypsy and travellers assessments to obtain an average ratio of household growth to existing caravans. The figure varied widely between 15% and 74%. The Fordhams report excluded outliers and produced a revised multiplier for Essex of 0.3.

On the basis of the distributional strategy of the draft policy, which Epping Forest District Council objected to for reasons given below, the corrected calculation of Epping Forest District should be:

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$$\text{Requirement} = 56 + (55 \times 0.3)$$

2

= 36 pitches.

Epping Forest District Council has also criticised the proposed locational strategy.

Very limited account was taken of the fact that this district, with the exception of the towns and larger villages, is entirely within the Metropolitan Green Belt. Land values in urban areas, and expected densities of development on such sites, effectively preclude any such sites from making provision for the travelling community. The evidence of the local sites already with authorised (and unauthorised) pitches is that all are in the Green Belt, i.e. none of them are in the built-up parts of the district.

Whilst a small reduction in pitches (10) has been made in the Regional Strategy target for Epping Forest District to take account of this we consider this reduction to be too small and there should be a greater redistribution away from wholly green belt districts.

Also Epping Forest District put forward that the distribution of provision away from districts with current high levels of provision towards those with little or no provision is too limited and unfairly penalises the District. The District being close to the urban edge has suffered from high levels of unauthorised development sometimes in large encampments in wholly unsuitable locations. In only redistributing away from the four local authorities in the region with current high levels of provision this penalises Epping Forest District which currently makes the second highest level of authorised provision in Essex. Also a minimum district level figure of 15 pitches was too low for some larger districts currently making no provision.

We put forward that there should be a further redis-

tribution of 10-20 pitches away from Epping Forest District towards those Essex districts making little or no provision. Also we consider district specific figures for unauthorised pitches should pay no part in setting regional targets, rather this should be distributed regionally according to a clear spatial strategy (lacking at the moment) taking into account constraints and accessibility to services, as well as historical patterns of gypsy and traveller settlements and demand.

The District also put forward that the current concentration in the District is contrary to government policy, in particular the reference in the Circular to avoiding dominance of settled communities.

The regional policy suggested that provision be made as part of large scale developments, such as urban extensions, the District put forward that the right timescale, with provision frontloaded in a short timescale by 2011, made this impractical and an extended period should be considered.

Planning permission will be required for what is an inappropriate use, and this is very likely to raise the concerns of the settled community, leading to the need for appeals and Inquiries, all of which will add to the delay in deliverability of the requisite number of pitches. A single field review of green belt boundaries is impractical given the need for permanent and defensible boundaries based on natural features. Also it is very unlikely that urban extensions will come on stream by 2011.

Although the District has put forward the submission that 15-20 pitches by 2011 is a more realistic estimate of need it must be stressed that the Epping Forest Gypsies and Travellers Accommodation Strategy must legally be in general conformity with the East of England Plan and therefore must accept its final figures.

On this basis this policy options paper has used the regional figures of 49 extra pitches by 2011 and a total of 106 extra pitches by 2025 as a starting point, but the strategy itself will need to have flexibilities and contingencies to allow for lower or higher levels of pitch provision in the finalised or future reviews of the regional spatial strategy.

Across Essex a revised Gypsies and Travellers Accommodation Assessment is being undertaken, Preliminary estimates based on secondary data place the level of 'need' arising in Epping Forest District, with the adjustments on the same basis as the single issue review at around 35 pitches. This is before any 'strategy' redistribution away from areas with high numbers of unauthorised pitches or away from green belt areas.

Appendix 4 - The Site Suitability Study

In order to examine the suitability and availability of potential sites for Gypsies and travellers a study has been undertaken. This has had a number of stages.

The first stage was to filter out those areas which were unsuitable for development. This discounted areas which had physical or environmental factors which made them unsuitable for development, factors which largely apply equally to suitability for permanent housing development. This included factors such as steep slopes and safeguarding areas from hazardous installations. A total of 21 layers of information were used (see appendix 2). For some of the more sensitive areas, such as nature conservation areas protected under European legislation a 'buffer' area was also excluded. In all cases information was correct as of May 2008. The best agricultural land was not excluded, as more than half of the district outside Epping Forest Act Land is Grade II this was considered an unreasonable restriction.

At that time mapping of open space/playing fields in the green belt was incomplete so this constraint was applied site by site rather than as part of this broader mapping exercise. The excluded areas were chosen with particular reference to factors important to gypsy/travellers caravan sites, so for example given the sensitivity of caravans to flooding areas at risk were excluded entirely. Although traditionally used by gypsies Epping Forest and Common Land were excluded as these have been effectively closed to gypsies and travellers since the Caravan Sites and Control of Development Act of 1967.

As the factors chosen were based on the physical suitability of sites factors solely of a policy nature – such as green belts, were excluded. This was done so this analysis could inform policy designations including as part of any analysis of whether there is sufficient evidence to justify altering existing boundaries,

The following areas were excluded.

1. Areas with a slope of 20% or more;
2. Special Protection Area – Buffer of 400m

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3. Special Area of Conservation - Buffer of 400m;
4. Sites of Special Scientific Interest;
5. County Wildlife Sites;
6. Ancient Woodland;
7. Common Land;
8. Conservation Areas;
9. Lee Valley Regional park;
10. Setting of Listed Buildings (buffer of 150m);
11. Ancient Monuments;
12. Sites Accessed by Quiet Lanes;
13. Historic Parks and Gardens;
14. Ancient Landscapes;
15. Landfill Sites - (buffer of 250m);
16. Contaminated Land;
17. Areas in the High Pressure Gas Pipeline Safeguarding Zone;
18. Flood risk areas (zones 2 and 3);
19. Areas within 300m of a motorway;
20. Hazardous Installations Consultation Zones;
21. Areas within 150m of a high voltage overhead power line.

From this work the different layers were overlaid progressively excluding parts of the district. The resulting area produced an 'area of search' (see diagrams earlier). Detailed site specific investigation may show that some constraints, such as potentially contaminated land, might not prohibit development.

Within this area additional layers of information were added to map the positive aspects that made an area suitable for development. These layers were chosen specifically to reflect the main factors

which might make an area suitable for gypsies and travellers sites, reflecting national policy in Circular 01/2006, and further advice in the Government 'Draft Guidance on the design of Sites for Gypsies and Travellers'.

The chosen layers were access to primary care (doctors surgeries), access to public transport – weighted according to frequency and capacity of services, access to services (designated shopping areas), each were given equal weighting.

In addition it maps a fairly limited range of objective factors. Other issues such as landscape sensitivity will need to be examined on an area by area and site by site basis. Other factors that will need to be examined in this finer grained analysis are issues such as highway access and the capacity of infrastructure to accommodate development at different scales, as well as issues such as availability of mains services.

At this stage this is a broad brush analysis to help focus attention away from the most patently unsuitable areas and help narrow down options and site choices. In a few cases where a site conflicted with one or two criteria that might not be fundamental on further analysis they were not excluded from consideration as sites.

The data sets used are of varying quality, as will always be the case. Information on County Wildlife Sites and locally important archaeological sites is badly out of date. Where these factors lead to areas being possibly excluded therefore further work will need to be done to ensure that potentially good sites are excluded (or included) because of out of date information.

