

In the Matter of:

THE TOWN AND COUNTRY PLANNING ACT 1990

-and-

THE PLANNING AND COMPULSORY PURCHASE ACT 2004

-and-

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

ADVICE – REDACTED VERSION

INTRODUCTION

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

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

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

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

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

ISSUES

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

RELEVANT POLICY PRIORITIES

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

¹ ODPM Circular 1/2006: Planning for Gypsy and Traveller Sites, paragraph 1.
² *ibid*, paragraph 2
³ *ibid*, paragraph 4
⁴ *ibid*, paragraphs 6 - 9
⁵ *ibid*, paragraph 10

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

- a) *to create and support sustainable, respectful, and inclusive communities where gypsies and travellers have fair access to suitable accommodation, education, health and welfare provision; where there is mutual respect and consideration between all communities for the rights and responsibilities of each community and individual; and where there is respect between individuals and communities towards the environments in which they live and work;*
- b) *to reduce the number of unauthorised encampments and developments and the conflict and controversy they cause and to make enforcement more effective where local authorities have complied with the guidance in this Circular;*
- c) *to increase significantly the number of gypsy and traveller sites in appropriate locations with planning permission in order to address under-provision over the next 3 – 5 years;*
- d) *to recognise, protect and facilitate the traditional travelling way of life of gypsies and travellers, whilst respecting the interests of the settled community;*
- e) *to underline the importance of assessing needs at regional and sub-regional level and for local authorities to develop strategies to ensure that needs are dealt with fairly and effectively;*
- f) *to identify and make provision for the resultant land and accommodation requirements;*
- g) *to ensure that DPDs include fair, realistic and inclusive policies and to ensure identified need is dealt with fairly and effectively;*
- h) *to promote more private gypsy and traveller site provision in appropriate locations through the planning system, while recognising that there will always be those who cannot provide their own sites; and*
- i) *to help to avoid gypsies and travellers becoming homeless through eviction from unauthorised sites without an alternative to move to."*

⁶ *ibid*, paragraph 12

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

THE EAST OF ENGLAND EXPERIENCE

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

⁷ *ibid*, paragraph 33

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

STATUTORY REQUIREMENTS AND SOUNDNESS

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

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

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

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

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

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

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

"Legal requirements

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

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

"Soundness"

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

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

Soundness

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

"Justified" means that the document must be:

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

"Effective" means that the document must be:

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

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

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

OPTIONS AND TIMETABLE

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

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

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

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

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

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

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

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

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

SITE SEARCH CRITERIA

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

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

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

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

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

CONSULTATION AND REPRESENTATIONS

54. The Council has yet to carry out the consultation exercise on the Sustainability Appraisal and Strategic Environmental Assessment ("SA/SEA") of the Options Consultation document, as required by section 19(5) of the 2004 Act and the relevant provisions of the Environmental Assessment of Plans and Programmes Regulations 2004⁸
55. The Council must consult the SEA consultation bodies on the information and level of detail to include in the Sustainability Appraisal Report (which will cover the SEA Directive's environmental report requirements). The Government considers that it is good practice to work with other stakeholders, including members of the Local Strategic Partnership, when considering the scope of the sustainability appraisal.
56. Subject to the statutory requirements to consult the SEA consultation bodies, the scope of the consultation on the SA/SEA of the Options identified by the Council is a matter for the Council. The relevant statutory provisions do not include a requirement that the general public be consulted on the SA/SEA of the Council's identified options, however, it is usual for the SA/SEA of the proposed options (whether preferred or not) be published for consultation at the same time that the options themselves are published for consultation.
57. The requirement under Regulation 27 to "*publish*" the draft submission DPD for a minimum of six weeks prior to submitting the DPD to the Secretary of State for independent examination, is not an opportunity for

⁸ SI 2004/1633

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

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

DELIVERABILITY AND RESOURCES

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

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

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

CONCLUSION

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

**Six Pump Court
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**MARK BEARD
2 December 2009**

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ADVICE – REDACTED VERSION

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