

Report to the Cabinet

Report reference: C/027/2007-08.

Date of meeting: 16 July 2007.



**Epping Forest
District Council**

Portfolio: Planning and Economic Development.

Subject: Additional Pitch Provision for Gypsies and Travellers.

**Officer contact for further information: Henry Stamp (01992 – 564325).
Ian White (01992 - 564066).**

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

Recommendations/Decisions Required:

(1) That the Council adopts the Draft Core Strategy policy on Gypsy and Traveller Provision (as set out at the Appendix to this Report) for the purposes of discussions with potential developers, so that provision is delivered along with major developments that may result from the East of England Plan;

(2) That the Council's approach to planned gypsy and traveller provision comprises Core Strategy Policy, and as necessary a Land Allocations Development Plan Document (if the combined effect of Core Strategy Policy and developers' keenness to develop sites does not result in sufficient planned provision);

(3) That GO-East be informed that the Council considers that planned provision is better achieved via the Core Strategy Policy than by a Gypsy and Traveller Development Plan Document, and that the latter approach is expected to lead to greater public unacceptability and challenge, with corresponding delays and consequently less certainty of provision;

(4) That GO-East also be informed that, especially in the light of the lesser effectiveness of a Gypsy and Traveller Development Plan Document, the extra resources that would be required to produce a Gypsy and Traveller Development Plan Document cannot be justified given the burgeoning requirements of the Local Development Framework (and necessary contributing studies) and the range of housing and employment issues arising from the East of England Plan; and

(5) That if the Holmesfield Nursery appeal is dismissed (i.e. the proportion of unauthorised sites does not significantly reduce) further approaches are made to Essex County Council's Gypsy and Traveller Services Manager to seek assistance with other unauthorised sites (particularly Tylers Cross) in formulating planning applications, and if that does not yield a satisfactory answer, to consider the use of consultants to the same end.

Government Advice:

1. ODPM Circular 01/2006 (Planning for Gypsy and Traveller Caravan Sites) came into force on 1 February 2006. The Government concluded that previous advice (DoE Circular 1/94: Gypsy Sites and Planning) had failed to deliver adequate sites for gypsies and travellers in many areas of England.

2. Research indicates that gypsies and travellers experience the worst health and the lowest educational standards of any disadvantaged groups. The Government is satisfied that

there is a strong link between the lack of good quality sites and poor health and education.

3. Provision of an adequate number of suitable sites is now very high on the national political agenda. Indeed paragraph 18 of Circular 1/06 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.”

4. The circular intends:

(a) 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 to 5 years; and

(b) that gypsies and travellers should not become homeless through eviction, without having alternative sites to move to.

5. The definition of gypsies and travellers has also been expanded. Previously they were “*persons of nomadic habit of life whatever their race or origin*”. The new definition retains this but continues “*..., including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such.*” This expanded definition challenges planning decisions which are on the basis that the intended occupants are not gypsies or have ceased travelling.

6. The Housing Act 2004 (s 225 (1)) and Circular 1/06 intend that future provision for gypsies and travellers be brought into the mainstream. The Council as local housing authority will therefore have to include gypsies and travellers in its accommodation assessments, and to indicate how their needs will be met as part of the housing strategy. This links to one of the circular’s main aims, which is “*to create and support sustainable, respectful and inclusive communities.*” (paragraph 12(a)).

7. The circular outlines how the new planning system will address future provision. Gypsy and Traveller Accommodation Assessments (GTAAAs) will inform the Regional Spatial Strategy (RSS) – the East of England Plan (EEP). The RSS will then allocate pitch numbers to each local planning authority area. This identified need will be dealt with at district council level by site allocations in a Development Plan Document (DPD) as part of the Local Development Framework (LDF). Housing numbers for each district in the RSS therefore include provision for gypsies and travellers. The circular stresses that it is no longer sufficient for local authorities to rely on criteria-based policies alone (e.g. policy H10A of the Local Plan Alterations) – site allocations in DPDs will be expected.

8. The circular is rather ambiguous about Green Belt. Encampments for gypsies and travellers are inappropriate development in the Green Belt and Annex E of the circular (Guidance on making planning applications) advises that “Development in such areas is subject to stricter control and the likelihood of getting planning permission ... is much lower than if the site were on “ordinary” land.” This is backed up by parts of paragraph 49 of the circular. However, paragraphs 47 and 48 encourage the use of a “rural exception site policy” where there is a lack of affordable land to meet local gypsy and traveller needs, and local planning authorities are advised to consider in particular the needs of households who are either current residents or have an existing family or employment connection.

9. As the entire rural area of the District is within the Green Belt, any such exception policy would have to identify sites within the Green Belt. Paragraph 49 states that “Pressure for development of sites on Green Belt land can usually be avoided if the local planning authority allocates sufficient sites elsewhere in its area, in its LDF, to meet identified need.” However in Epping Forest District Green Belt boundaries are drawn very tightly round settlements, and pressure for use or re-use of urban sites is such that the potential for use for

gypsies and travellers must be very limited.

10. New land allocations to meet the housing requirement of the EEP will mainly be taken out of the Green Belt and these should include provision for gypsies and travellers. Officers are already making this clear to developers in early discussions about land releases.

11. Paragraph 43 advises “Where there is clear and immediate need, for instance evidenced through the presence of significant numbers of unauthorised encampments or developments, local planning authorities should bring forward DPDs containing site allocations in advance of regional consideration of pitch numbers, and completion of the new GTAAs.” Officers are concerned that there is apparently no attempt to differentiate between need and demand. The consequences of this paragraph are dealt with more fully below, in the context of the Secretary of State’s “minded to direct” letter in relation to the revised Local Development Scheme.

12. The circular is slightly confusing about the future for enforcement action against unauthorised sites. Paragraph 12 (b) indicates that one of the intentions is to “make enforcement more effective where local authorities have complied with the guidance in this Circular.” Paragraph 68 of the Circular then merely lists existing guidance on enforcement – i.e. there is nothing further about “more effective” enforcement.

13. Paragraphs 70 to 72 of the circular discuss human rights and race relations legislation. Romany gypsies and Irish travellers have been recognised as distinct ethnic groups covered by the Race Relations Act (RRA) 1976. Under this Act, as subsequently amended by the RRA 2000, local authorities have a general duty to actively seek to eliminate unlawful discrimination and to promote equality of opportunity and good race relations in all they do. However, this “does not give gypsies and travellers the right to establish sites in contravention of planning control” (paragraph 71).

14. Members have been briefed at various times on the implications of Circular 1/06, and this has also been considered in the context of the proposed Single Issue Review of the East of England Plan. A Member and officer meeting was held with GO-East in July 2006 and Members acknowledged then that the issue would have to be seriously addressed – this being followed shortly by a press briefing where the Leader stated that the Council would have to “bite the bullet” on additional provision for accommodation.

15. The Travellers Task and Finish Panel was similarly briefed and published its final report in July 2006, with the longer-term accommodation issues being passed to Environmental and Planning Services Standing Panel. This indicates the Council’s continuing awareness of the issue and the acceptance that there are significant ongoing problems which require attention.

16. Officers have not yet prepared a Members’ Bulleting briefing item on the Commission for Racial Equality Report: Common Ground – equality, good race relations and sites for gypsies and travellers. This Council participated in the study, the general recommendations for local authorities being:

- (a) Strong leadership at senior officer level;
- (b) Development of a long-term strategy and approach to site provision and enforcement;
- (c) To be proactive in the promotion of community relations and building integrated communities;
- (d) To ensure standards of services for gypsies and travellers are the same as for the wider community;
- (e) To include gypsies and travellers in the Statement of Community Involvement and tailor steps to get them meaningfully involved; and

(f) To give specific advice at an early stage to gypsies and travellers on the most suitable land for residential use.

Need:

17. The Essex Planning Officers' Association commissioned the University of Salford (Housing and Urban Studies Unit) to prepare a report on gypsy accommodation needs in Essex. The subsequent report (Looking Back, Moving Forward (2006)) was the first GTAA published in the Eastern Region. It predicted requirements up to 2016 on a county level, rather than district level, basis and concluded that an extra 59 pitches (provision for 118 caravans) would be needed in the county – although “immediate provision” for 440 caravans on unauthorised sites is also recommended. Methodology for the study included:

(a) literature review;

(b) scoping exercise;

(c) focus groups (comprising planning and housing professionals, site managers, and service providers); and

(d) semi-structured interviews with gypsies and travellers.

18. The Department of Communities and Local Government (DCLG) published further research on strategic provision for gypsies and travellers in March 2007 (Preparing Regional Spatial Strategy Reviews on Gypsies and Travellers by Regional Planning Bodies – the authors of the research included the University of Salford). EERA commissioned the authors to review existing GTAA's in the East of England, and to prepare the Single Issue Review of the East of England Plan which will identify and plan for the accommodation needs of gypsies and travellers in the region, but break these figures into county and district/borough totals. The first stage of this EEP Review – the Issues and Options Consultation Document – has been published with the consultation period lasting until 31 July. Officers have consulted all parish and town councils about this. The EEP Review consultation is the subject to another report on the Cabinet's agenda.

19. The Issues and Options Document only calculates additional demand up to 2011 (although the EEP makes provision for development needs up to 2021, and slightly beyond 2021), and presents 2 options for provision, one being broadly based on areas of current greatest demand, and the second being on a more even distribution. The results contrast sharply with the first GTAA, outlined in 2.1 above. The Essex requirements, only up to 2011, are for 438 additional pitches under the first option, and for 405 under the second. For both options, the additional provision required in this district would be 52 pitches (close to the figure for the whole of Essex up to 2016 in the GTAA). A 3% annual growth rate is suggested for estimating provision needs beyond 2011.

20. EPOA has commissioned independent consultants to determine why the two studies have come up with such different results, and to examine their different methodologies in the light of Circular 1/06. The consultants will be required to report in time for the Essex authorities to include their findings in the responses to the EERA consultation.

Local Development Scheme (LDS):

21. A draft revised LDS was submitted to GO-East in October 2006. This was clearly intended to be an interim measure, because a final version of the LDS would base its programme on the final adoption of the EEP. The revisions were necessary, however, to take account of:

(a) the Urban Places Supplement;

(b) the delay in the EEP timetable which had already occurred (and there have been more delays since); and

(c) a delay in progressing the Statement of Community Involvement.

22. The first two factors also affected most other Essex district and borough councils, requiring the submission of amended LDSs by most authorities. Officers understand that there has been a significant delay in obtaining GO-East's agreement to these revised schemes.

23. GO-East responded to the EFDC draft revised LDS in November 2006 indicating that the "Minister" (un-named) considered that the Council was not attaching sufficient urgency to addressing unmet gypsy and traveller accommodation needs, and that the LDS should therefore include a Council intention to prepare, as a matter of urgency, a Development Plan Document (DPD), dealing specifically with this issue. In making their case, GO-East quoted from recent biannual counts of authorised and unauthorised caravans in the district – this information is analysed in more detail below. The letter therefore advised that the Minister was "minded to direct" the Council to amend the LDS. Following a response to that letter, a meeting was held at GO-East offices in Cambridge on 26 January 2007 to discuss the DPD (draft) direction amongst other issues concerning the LDS. The meeting was attended by the Head of Planning and two of his staff. The Head of Development and Infrastructure and one of his staff represented GO-East, and a gypsy specialist from DCLG also attended. Officers considered the meeting to be a constructive meeting one in which EFDC officers answered all the questions and concerns expressed by GO-East and DCLG officials.

24. The main points discussed were:

(i) The Council's view is that a Direction to produce a separate gypsy and traveller DPD is both unwarranted and a poor use of limited resources - both in relation to the unauthorised sites count, and in terms of what the Council is proposing to do to address the issue;

(ii) The Council Leader had issued a press statement indicating that the authority would "bite the bullet" in relation to the issue. A report for Members had been intended to guide discussions but had been delayed for a number of reasons. GO-East expressed dissatisfaction at the delay, questioning how this sat with the Leader's press statement. The tenor of the report would depend to a considerable extent on the Minister's decision on direction (hence the draft nature of the report which has been prepared now), but EFDC officers stressed their continued intention to prepare a Cabinet report, and the Council's previous good record in granting permission for pitches, despite the fact that the use was inappropriate in MGB terms;

(iii) The total of unauthorised caravans is largely made up from 2 sites – Holmesfield Nursery, Meadgate Road, Nazeing and Tylers Cross Nursery. The former was due to be considered at Public Inquiry in June, EFDC's point being that, if the Inquiry finds in favour of the appellants, the number of unauthorised caravans would be halved at a stroke, significantly reducing the "need" for a separate DPD. (Start of the Inquiry has been delayed because the appellant's agent has been taken into hospital). If the appeal is dismissed, the applicants will need to find another site, pursuing it through due planning process. EFDC officers are unclear what DPD production can contribute to this, given that adoption would not be possible before 2009 (as GO-East acknowledges). The key point is that EFDC would need to be satisfied that investment of resources in the production of a separate DPD can be thoroughly justified, given the resource limitations in the Forward Planning section, the complex demands being placed on it by the new planning system, and the need for joint working with other authorities to meet EEP targets. EFDC suggested that the issue of gypsy and traveller provision should be addressed through the Core Strategy (i.e. to include a specific policy or policies), with site/pitch numbers being allocated through a Land Allocations DPD which would follow the Single Issue Review of the EEP. Officers stressed that they had already pointed out the need for extra provision to potential developers. EFDC suggested that, given the history of the Tylers Cross site, if the background to the recent increase in

caravan numbers could be explained (likely to be for family expansion), there was a reasonable chance that planning permission could be granted, again with significant consequences for the total of unauthorised caravans in the district. GO-East felt that the cycle of application/appeal/enforcement could be broken by bringing forward authorised sites through the production of a DPD. Officers were, and remain, unconvinced that the timetable for such a DPD would be significantly quicker than their preferred alternative in identifying new sites for planned gypsy and traveller provision;

(iv) GO-East's letter of November 2006, which indicated the Minister's "minded to direct" intention, analysed the then current caravan counts for the district. The previous 5 counts (January 04 to January 06) showed an average of over 50 unauthorised caravans in the district, and that this number exceeded 25% of the total of all gypsy and traveller caravans in the district – 25% being the national average of unauthorised caravans. EFDC's point (also made in a previous meeting with GO-East in July 2006) was that the January 2004 figure was unnaturally high (because of a large temporary unauthorised site at Birchfield, Stapleford Tawney), and that this inevitably skewed the average figures. Later analysis (i.e. post the January 07 meeting), including the most recent counts, gives the following average annual figures for unauthorised caravans: 2004 – 87.5; 2005 – 46.5; and 2006 – 37.5. The January 2007 count was 41. This indicates a significant downward trend since the January 2004 high, and the average figure for the last 2 full years is increasingly below 50. In terms of percentage of total caravans, the January 2006 figure was 26.8% (just above the 25% annual average), and July 2006 was 22.4%. While the January 2007 figure has risen to 27.5%, officers believe that the January unauthorised figures tend to be higher than those in July – certainly true in two out of the last three years.

25. Draft minutes of the meeting (taken by GO-East) were sent to the Council on 28 February and officers' suggestions for modifications to the minutes were returned on 23 and 28 March. GO-East replied on 24 May making the following points:

- (i) criticising the delay in making a report to Full Council (which had been due in April);
- (ii) the Holmesfield Nursery appeal decision, whichever way it goes, still does not provide certainty over future proper provision of additional pitches with necessary facilities;
- (iii) while it is a positive sign that developers of larger sites are being made aware of the need to make provision for gypsies and travellers, this again has no certainty, and does not address any urgent need for additional pitch provision. New development plan policy would be the most certain way of achieving additional provision;
- (iv) GO-East accepts that the Council may have challenges in its mainstream forward planning work arising from the EEP. The particular issue about the need for timely provision of additional provision cannot remain unaddressed in the timescales the Council proposes to bring forward in a site allocations DPD;
- (v) the Secretary of State remains minded to direct the Council to amend its LDS to include a separate DPD on gypsy and traveller pitch provision, with submission specified for September 2009. A revised LDS would have to be submitted within 6 weeks of the direction; and
- (vi) any further representations from the Council must be made within 14 days of the letter (i.e. 7 June 2007).

26. Officers responded to these points on 7 June (in the same numerical order):

- (i) the reasons for the delay have been explained above – it has only been possible to undertake more work (started in 2006) on this report once the Secretary of State's further considerations on the "minded to direct" issue have become known;
- (ii) the January 2007 count showed that Holmesfield Nursery included 21 unauthorised

caravans (out of a total of 41). If the appeal is allowed, the number of unauthorised caravans will be halved, removing much of the problem in the short term. The Council would still go ahead with its proposals for dealing with pitch provision through the Core Strategy and a site allocations DPD, so the timetable for doing so would not be affected by the Inquiry decision;

(iii) officers have raised the need for new gypsy and traveller site provision with developers and landowners because of the issue of need. This is the best way to try to achieve the earliest possible provision of completely new sites from what is known of developers' intentions (GO-East have not had such contact to our knowledge, although they did suggest such an approach at the initial meeting here in July 2006). It is the most promising way to achieve the integration/"mainstreaming" of gypsy and traveller site provision that the Government wishes to see. It is true that certainty of provision would be by new development plan policy. The question is which is the best way of doing so: (a) a Gypsy and Traveller DPD; or (b) Core Strategy policies (with Land Allocations DPDs if enough provision does not result from developers' anticipated responses to the Core Strategy policies). Criticism from GO-East is that EFDC actions do not "address any urgent need for additional pitch provision". However, any LDF policy (either in a Core Strategy or in a specific DPD) is going to take some time to put in place and adopt. Officers believe that, for reasons of effectiveness, resource efficiency and public acceptability/involvement, a Core Strategy (and Land Allocations) approach is more likely to result in certainty of new provision, as well as doing so sooner. (A draft Core Strategy policy is included in the Appendix to this report). By contrast, a Gypsy and Traveller DPD is expected to lead to greater challenge (partly on the grounds of priorities and soundness) with corresponding delays and consequently leading to less certainty of provision in the medium and longer term. Brentwood have not advanced far along the path of producing a Gypsy and Traveller DPD, following the Direction they were given by Government, but we understand that Brentwood has already submitted a revised LDS indicating a slippage of at least six months in the preparation of their Gypsy and Traveller DPD. Additionally, if a Gypsy and Traveller DPD were to allocate sites on land with "hope value" for housing development (i.e. in the most sustainable locations) separate from general development land allocations, such gypsy and traveller sites are unlikely to be implemented as it would be against developers/landowners interests to do so;

(iv) officers remain convinced that the resources needed to prepare a separate DPD cannot be justified in the wider picture of other pressing planning, housing and employment issues arising from the EEP, and the burgeoning requirements of the LDF; and

(v) the need for a separate DPD has not been adequately justified, especially given the benefits of a Core Strategy etc approach.

27. Officers were also concerned that:

(a) the reply of 24 May does not reflect in any detail a number of points which were discussed at the January meeting - indeed an agreed set of minutes has not been issued by GO-East; and

(b) requiring a reply from the Council within 2 weeks of the letter seemed unjust in terms of the time it took GO-East to respond to the January meeting.

28. Officers sought Counsel's opinion regarding a judicial review of the Secretary of State's decision to issue a direction. Also, a draft of this report was included for GO-East's information and comment as part of the Council's reply of 7 June.

29. Other options that could be considered are:

(a) to encourage greater involvement by the County Council's Gypsy and Traveller services Manager on "non-County" sites; or

(b) to commission consultants to investigate the existing unauthorised sites and encourage the submission of well-documented planning applications.

30. Either option (or both) could potentially lead to a significant reduction in the number of unauthorised caravans in the District.

Conclusions:

31. For the reasons set out in this report, officers are of the clear view that the Core Strategy etc approach is the best to meet medium/long-term needs (i.e. beyond what might result from Holmesfield Nursery and Tylers Cross in the short term) in terms of effectiveness and resource efficiency in the light of local pressures.

32. The Leader of the Council has publicly stated the need to “bite the bullet” on the issue of pitch provision following the initial approach by Government. It would be encouraging for Government to lift the threat of Direction and let the Council get on and bite the bullet in its preferred way, rather than impose what is seen as an overly heavy-handed solution (which can only be de-motivating).

33. The Council has undertaken to revise its LDS once Ministers approve the final version of the EEP – i.e. when we know there will be no further slippage. Work can then concentrate on the Core Strategy – against a background of members adopting a policy along the lines of the draft included in the Appendix to this report, for the purposes of negotiations with landowners/developers in the meantime. Should it be necessary at any time in the future, it is open to GO-East to impose a Direction. But officers are expecting some developers to bring forward a planning application for a strategic development (with gypsy and traveller provision) early in 2008.

Statement in Support of Recommended Action:

34. Officers are of the clear view that the proposed Core Strategy etc. approach is the best one to meet the medium/long-term needs for gypsy and traveller provision, and to do so sooner than a Gypsy and Traveller DPD. The approach is more effective and resource efficient. It would work ‘with the grain’ of developer/landowner intentions. Adopting the Draft Core Strategy Policy (set out in the Appendix) would assist this approach. Government Office needs to be made aware of Members’ decisions on the Recommendations in this report, following the letter sent to GO-East on 7 June, and as soon as possible. In view of the significance attached to numbers of unauthorised site by the Government Office, if the Holmesfield Nursery Appeal is dismissed an approach to Essex County Council for some assistance is warranted.

Other Options for Action:

35. There appear to be two main courses of action:

- (i) follow the Core Strategy etc. approach recommended; or
- (ii) produce a Gypsy and Traveller DPD (either following a Government Direction or by seeking to revise the LDS again to that end - though a revision to the LDS in this way may not be accepted by Government due to concerns about this being done too frequently by local authorities in England).

Consultation Undertaken:

36. GO-East has been consulted on a draft of this report. Public consultation has not been undertaken because we are not yet at a formal consultation stage in producing a Local Development Document.

Resource implications:

Budget provision: A specific Gypsy and traveller DPD would use far more financial

resources then the recommended Core Strategy etc. approach. There is some budgetary provision for initial work on the LDF, but further resources are to be the subject of a separate report due to be presented in October 2007.

Personnel: A specific Gypsy and traveller DPD would use far more staff resources than the recommended Core Strategy etc. approach.

Land: None specific.

Community Plan/BVPP reference: GU1, GU4, HN1, HN2, HN3, EP3, IP4.

Relevant statutory powers: The Planning and Compulsory Purchase Act 2004 is the statutory basis for Local Development Frameworks, but doesn't provide for adoption of Draft Core Strategy Policies in advance of Core Strategy preparation. Part III of the Council's Constitution (Appendix 2 – Responsibility for functions) requires that the Development Plan (including any supporting plans and strategies) must be recommended by the Cabinet to the Council for adoption.

Background papers: Letters from GO-East of November 2006 and 24 May 2007; draft minutes of meeting with GO-East 26 January 2007.

Environmental/Human Rights Act/Crime and Disorder Act Implications: The draft policy is designed to satisfy the human rights requirements of the travelling and settled communities. Environmental issues are addressed by other planning policies. There are no crime and disorder implications resulting from adoption of the draft policy.

Key Decision reference (if required): Planning and Economic Development Item 1.

Draft Core Strategy policy on Gypsy and Traveller Provision:

Generally, provision for gypsies and traveller accommodation should be made in accordance with the following sequence of locations:

- 1a) close to the larger settlements in the district and to Harlow (a Key Centre for Development and Change);
- 1b) close to other settlements in the district that have reasonable access to public transport and an appropriate range of facilities;
- 2) elsewhere where there is a specific identified need.

All sites considered for allocation, or otherwise for permission, must have their environmental, social and economic impacts assessed in accordance with the requirements of sustainability appraisal.

Specifically, new provision for gypsy and traveller accommodation will be made in land allocations for housing, mixed use, and sizeable employment development (except glasshouses) made in accordance with the East of England Plan (and subsequent reviews) to meet needs identified in the Single Issue Gypsies and Travellers review of the EEP (and subsequent reviews). [These may be indicated on a Key Diagram].