

Report to the Cabinet

Report reference: C/079/2007-08.
Date of meeting: 12 November 2007.



**Epping Forest
District Council**

Portfolio: Planning and Economic Development.

Subject: Local Development Scheme – Direction from the Secretary of State.

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Recommendations/Decisions Required:

(1) To amend the first revised Local Development Scheme in accordance with the Secretary of State’s Direction of 17 September 2007:

(a) to include a Gypsy and Traveller Development Plan Document (DPD); and

(b) to programme the preparation of this DPD such that it will be submitted for examination by 30 September 2009; and

(2) To withdraw the draft Core Strategy policy as agreed by Council on 24 July 2007, in light of the Secretary of State’s Direction of 17 September 2007.

Background:

1. The Portfolio Holder for Planning & Economic Development provided an oral report to Members at Cabinet on 8 October 2007, setting out briefly that the Secretary of State has issued a Direction to the Council that the Local Development Scheme (LDS) must be amended to show a Development Plan Document (DPD) dealing with Provision for Gypsies and Travellers. This document is to be prepared to a specified timetable, which requires that it is submitted for examination by 30 September 2009.

2. The Local Development Scheme (LDS) is a published timetable identifying the documents to be produced (and highlighting specific milestones) under the Local Development Framework (LDF) over at least a 3 year period. The LDS has to be approved by the Council’s executive – the Cabinet – and submitted to the Secretary of State for Communities and Local Government (SoS) via GO-East. The LDS should be revised “when necessary” (paragraph 3.19 of PPS 12 – Local Development Frameworks).

3. The Council’s first draft LDS was submitted to the Government Office for the East of England (GO-East) in March 2005 to meet the timetable requirements of the Planning and Compulsory Purchase Act 2004. Minor changes were suggested by GO-East in April 2005, which were included in the published final version of the first

LDS.

4. The first revised LDS was submitted to GO-East in October 2006. Changes were needed to take account of (a) the County Council's Urban Places Supplement to the Essex Design Guide; (b) slippage in the timetable for the adoption of the East of England Plan (EEP); and (c) delay in progressing this Council's Statement of Community Involvement. It was always intended that the first revision of the LDS would itself be an interim document as it was anticipated that there would be further slippage before the EEP could be adopted.

5. GO-East wrote to the Council on 3 November 2006 indicating that the SoS was "minded to direct" the Council to amend the submitted revised LDS. An additional and separate Development Plan Document (DPD) was felt to be necessary to address the provision for new sites to accommodate gypsies and travellers resorting to the District.

6. A meeting between GO-East officers and Council planning officers was held in Cambridge in January 2007 to discuss the content of the letter. There was a subsequent exchange of e-mails clarifying various points, and although GO-East staff took notes of the meeting, an agreed set of minutes has not been published.

7. GO-East wrote again to the Council on 24 May effectively dismissing all the arguments put forward at the January meeting and advised that the SoS had not changed her view about the need to amend the revised LDS. The Council was given two weeks to respond. The Head of Legal, Administration and Estates Services replied on 7 June and included a draft of the July Cabinet report on "Additional Pitch Provision for Gypsies and Travellers".

8. That report was considered by Full Council on 24 July when Members agreed to adopt a "draft" Core Strategy policy to ensure that provision for gypsies and travellers was included in discussions with potential developers dealing with development sites identified to satisfy the EEP targets. The Head of Legal, Administration and Estates Services wrote again to GO-East, advising its Head of Development and Infrastructure of the Cabinet and Full Council recommendations.

9. GO-East replied in a very disappointing and frustrating fashion on 17 September, advising that, having considered the Council's responses to the "minded to direct" letters, the SoS had not changed her view in any way and was consequently now directing the Council to make the following amendments to the LDS:

(a) Include a Gypsy & Traveller Site DPD; and

(b) Work to commence on the DPD as soon as possible with submission for examination by 30 September 2009.

10. The letter also required that the amended LDS be submitted to the SoS no later than 15 October.

11. The 17 September letter is disappointing because, despite what officers felt was a reasonably constructive meeting in January with GO-East officers, and despite Full Council's recommendation to make a more or less immediate start on increasing provision for gypsies and travellers, the Council's case has apparently been summarily dismissed by the SoS. The letter is also frustrating because no reasons are given for the decision (and indeed, the full basis for taking this course of action in

the first place), so we know that the Council's case has been wholly rejected, but we do not know why. Counsel's opinion has been sought on the content of the letter but the advice is that the Council would not have a good case to pursue any form of legal challenge.

Government Guidance & the Regional Position:

12. There can be no doubt that the Government is concerned at the perceived failure of DoE Circular 1/94 (Gypsy Sites and Planning) to make adequate provision for gypsies and travellers. That document has been superseded by ODPM Circular 01/2006 (Planning for Gypsy and Traveller Caravan Sites) and the issue remains quite high on the political agenda. Indeed a Single Issue Review of the EEP is already underway to address provision at a regional level. Officers remain concerned however that the SoS and her senior advisers appear to have focused on a "one size fits all" solution in those areas where there is considered to be a significant under-provision. An arbitrary level of the total number of pitches that are unauthorised is used to determine under-provision. In this district, this figure may be changed significantly by the outcome of one appeal hearing (as reported to Cabinet in July). Other authorities, including Brentwood, have been similarly threatened with directions to include DPDs specifically dealing with gypsies and travellers, and it appears that no other approaches, including the ideas put forward by this Council, have been accepted.

13. By setting a deadline of September 2009 for submission of the DPD, GO-East is intending that the DPD will "track" progress of the Single Issue Review of the EEP, currently programmed for adoption by the above date. The Single Issue Review will identify the number of additional pitches to be provided by every district and borough council in the Eastern Region, but only for the period up to 2011. Officers are also concerned, therefore, that the DPD will be prepared to meet the specified timetable, but will in the end have a very limited practical lifespan, and a further review will almost immediately be needed to plan for provision beyond 2011. In accordance with the current guidance on housing provision, Councils are required to demonstrate there is a five-year supply of housing land available and suitable for use in that period. In addition, assurances of land availability over 10 and 15-year periods must also be shown. It is conceivable therefore to consider that the same approach should be adopted in relation to Gypsy & Traveller provision. The current framework does not permit this approach to be adopted.

14. With considerable reluctance, officers have concluded that this issue has been taken as far as possible, and that there is now no chance of the SoS changing her decision. It will therefore be necessary to amend the LDS as directed by the GO-East letter of 17 September, and to establish a work programme (including extensive public consultation and the associated staff and financial resources that this will require), to ensure that the DPD will be submitted for examination by September 2009.

The Council's Approach:

15. As recapped above, Members supported the draft Core Strategy approach that was presented to Full Council on 24 July 2007. In light of the Direction, and further consideration of the guidance in Government Circular 1/2006 this approach now warrants more detailed consideration.

16. A sequential approach should be adopted when considering the allocation of sites for Gypsies & Travellers, in line with the key locational drivers that underlie the

achievement of sustainable development. Sites should be sought in a sequence initially starting with existing urban areas, followed by sites on the outskirts of built-up areas, and finally that will require a Green Belt land release. ODPM Circular 01/2006 specifically advises "Alternatives should be explored before Green Belt locations are considered" (paragraph 49). Consideration must also be given to "mainstreaming" the provision of sites for Gypsies & Travellers as part of new major development projects.

17. At this stage it appears there is more potential to include Gypsy & Traveller provision as part of major development schemes (arising from the EEP), where this can be integrated into the development proposals as part of a holistic approach. In addition, some trends can be identified in the manner in which sites have come forward in the past. All the currently lawful sites in the district are within the Metropolitan Green Belt. This is a reflection of a number of issues including high land values in the urban areas, and the potential amenity impacts on neighbouring uses and potential occupiers. Gypsy & Traveller sites also manifest into relatively low density development, which could be perceived to be making inefficient use of land contrary to national policy guidance. In considering sites just outside of the existing settlement boundaries similar issues arise. However, the procedural requirements to produce a DPD will require a full assessment of all available sites under the Sustainability Assessment regime.

18. For the above reasons it is considered appropriate now to withdraw the "draft Core Strategy policy" agreed by Council on 24 July 2007. At the time this was intended as an expression of intent to demonstrate to GO-East and the SoS that the Council was treating the need for additional provision as a matter of urgency, by making the most of sites inevitably coming forward early for residential development once the EEP is adopted. The "draft policy" would have no legal standing but was intended for use as a negotiating tool with such developers/applicants. Officers now believe that the Direction renders the draft policy obsolete, but negotiations with developers will continue as and when the opportunity arises, on the grounds that provision on these new development sites will meet:

- (a) the sequential approach outlined above; and
- (b) guidance in the Circular.

Amendment of the LDS:

19. The LDS must now be amended to incorporate the stipulation of the Direction. A copy of the amended LDS has been circulated separately to all members of the Cabinet, with an additional copy placed in the Members' Room; further copies can be obtained from Democratic Services if required. The Council will shortly be required to amend the LDS further to reflect the final outcomes of the EEP. The Plan is currently anticipated to be approved early in the new year, and will necessitate a further review being brought before Members and submitted to GO East shortly thereafter. As above, this highlights the inefficiency of the approach the SoS has taken in this matter. Very early indications show that the proposed Gypsy & Traveller DPD will be adopted only a matter of months before the Core Strategy.

20. Further, in December 2006 a letter was sent to all Chief Planning Officers stating "...from 1 April 2007 GO-East will only expect [the LDS] to be departed from in exceptional circumstance or as agreed in response to annual monitoring." The issue of a Direction, and fundamental changes in the Regional Planning framework can be considered "exceptional circumstances". However it is now likely that three

such reviews will take place in quick succession (receipt of the Direction; final approval of the EEP; outcome of the single issue review on Gypsy & Traveller provision), and this may not be well received by Go East. An opportunity therefore arises to undertake a more fundamental review at this stage, bearing in mind the potential risks of producing a timetable that may be subject to slippage as a result of any further delay in the final publication of the EEP.

Statement in Support of Recommended Action:

21. Despite putting forward a cogent case for a different approach, which could bring about more immediate results, officers believe that the SoS will remain intransigent, and that the Direction to amend the LDS will be enforced if necessary. A further opportunity is now available to reconsider the Council's policy approach to Gypsy & Traveller provision.

Other Options for Action:

22. These have been pursued through a meeting and correspondence with GO-East officers. The SoS has rejected all of the Council's suggestions for different approaches although there has been no direct contact with her or her senior advisers. Counsel's opinion is that the Council has little prospect for successful legal challenge. Ignoring or refusing to adopt the Direction would mean the Council could not adopt its LDS, and could potentially leave us open to legal challenge by other authorities, including the gypsy and traveller community, and weaken the Council's ability to defend its position at appeals.

Consultation Undertaken:

23. There has been intermittent consultation with GO-East officers.

Resource Implications:

Budget Provision: This will be the subject of a separate report to Cabinet in the context of the overall costs of the Local Development Framework.

Personnel: From existing resources.

Land: Not known at this stage.

Council Plan 2006-10/BVPP Reference: GU1, GU4, HN2, HN3, EP3, IP4.

Relevant Statutory Powers: The Planning and Compulsory Purchase Act 2004.

Background Papers: Correspondence with GO-East officers.

Environmental/Human Rights Act/Crime and Disorder Act Implications: The DPD will address perceived under-provision of sites for gypsies and travellers resorting to the district, and therefore is intended to satisfy their housing needs as well as meet their human rights. Environmental issues will be addressed by the Core Strategy and other parts of the Local Development Framework. The identification of appropriate sites in the DPD should improve the effectiveness of enforcement powers when dealing with other unauthorised sites.

Key Decision Reference (if required): N/A.