

TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

08 January 2008

Report of the Director of Planning Transport and Leisure

Part 1- Public

Matters for Recommendation to Cabinet - Council Decision

1 GYPSIES AND TRAVELLERS

Summary

This report has a number of purposes. It reports back on the results of the Gypsy and Traveller Accommodation Assessment following stakeholder consultation over the summer. It reports on the submission of advice to SEERA on alternative pitch distributions as an input to the partial review of the South East Plan and finally, it responds to specific planning questions raised by the KCC Select Committee on Gypsies.

1.1 Gypsy and Traveller Accommodation Assessment

- 1.1.1 The Housing Act 2004 requires the Borough Council as a housing authority to undertake a study of the needs of Gypsies and Travellers. The Council, as planning authority, is bound to have regard to the conclusions of such studies in its development control decisions and in preparing the development plan. In the latter case the pitch requirements for individual districts will be determined by SEERA having regard to the results of the Gypsy and Traveller Accommodation Assessments (GTAA's) for each district (see below).
- 1.1.2 Government Guidance on the preparation of GTAA's recommends that they be carried out on a sub-regional basis. On the basis of this advice a GTAA has been carried out by David Coultie Associates (DCA) jointly for Ashford, Maidstone, Tunbridge Wells and Tonbridge and Malling. I reported jointly with the Director of Health and Housing to your meeting in February on the draft results of that Study (copy of report attached at **Annex A**). The draft Study concluded that there was a need for between 10 and 13 new pitches to be located in the Borough over the period up until 2011.
- 1.1.3 At that time the Council noted and endorsed the findings of the Study for the purposes of targeted consultation. A few technical refinements of the study were subsequently made that do not effect the overall conclusions and it was then subject to a stakeholder consultation event which was held on 20 June 2007 at Lenham. Notes of the meeting are attached at (**Annex B**). The report was then refined in the light of the stakeholder meeting and certain other minor technical

matters and was finally published at the end of August. The overall conclusions for Tonbridge and Malling are no different. It is, therefore, now appropriate for the results of the Study to be formally endorsed by the Council as a material consideration for development control. The Director of Health and Housing is reporting separately to the Housing Advisory Board on the housing policy implications of the findings.

1.2 South East Plan – Gypsy and Traveller Review

- 1.2.1 As I reported to your meeting in June 2007, SEERA, in line with Government Guidance, is in the process of preparing a partial review of the South East Plan with the aim of providing strategic planning advice on the level and distribution of gypsy and traveller accommodation across the South East. This is important because ultimately it will prescribe how many new pitches the Council will need to provide for in its LDF.
- 1.2.2 To inform this process SEERA invited all local authorities in the South East to provide it with advice on pitch distribution in the light of the results of the GTAAs and other planning considerations. In Kent it was agreed that this advice should be provided on a county-wide basis. The deadline for the submission of advice was 15 October 2007.
- 1.2.3 To enable a Sustainability Appraisal to be carried out SEERA required the investigation of two options:
- **Option A** based upon local need as identified through the GTAA but over a 10 year period;
 - **Option B** which had regard to a number of other planning considerations including a more equitable distribution of sites across the County.

It was emphasised that in providing this advice no preference should be expressed at this stage, because SEERA would subsequently decide on the Preferred Option and would consult widely on this during 2008.

- 1.2.4 The technical work was taken forward by an officer Group on which the Chief Planner (Policy) was this Council's representative. The officer Group reported to a Member Group on which the Council was represented by the Cabinet Member for Planning and Transportation. The conclusion of that work was that under **Option A** the 10 year additional need in Tonbridge and Malling was for 15 new pitches, whereas under **Option B** the need was found to be 31 pitches with the total figure for the County as a whole of 386 pitches being the same in each case. The Option B figure was derived from an average of a series of different scenarios. For most scenarios the Option B figure was close to the GTTAA based figure, but for just one scenario the figure for Tonbridge and Malling was significantly higher at 71 pitches which significantly distorted the average.

- 1.2.5 As a result your cabinet Member was instrumental in ensuring that the advice was sent off to SEERA on a without prejudice basis. Indeed, that was the only basis on which the Member Group would agree to the advice being sent at all. In view of our particular concerns about the distorting effect of the single scenario we immediately followed up the submission with a letter to SEERA criticising the technical basis of the conclusions. A copy of that letter is reproduced under **Annex C**.
- 1.2.6 SEERA also required advice on transit sites and sites for Travelling Showmen. Evidence on both of these matters was limited. The provisional conclusion for Tonbridge and Malling on transit sites was that there might be a need for a small site in the Borough to accommodate small encampments on an emergency basis. The needs of Travelling Showmen had not been addressed in most of the GTAAs in the County because the need to do so was only belatedly introduced by the Government earlier in 2007. As a result a small dedicated study was undertaken by DCA for the parts of Kent without such an assessment. The number of interviews was very small and it is therefore very difficult to draw any meaningful conclusions, but for Tonbridge and Malling, on the basis of the Study, the conclusion was that there was no need for any additional sites for Travelling Showmen in the Borough.
- 1.2.7 As mentioned previously, the next stage in this process will be public consultation by SEERA in the spring on the Preferred Options. The Council will have its opportunity to comment formally at that stage. SEERA will then by the end of the year produce the draft plan upon which further comments can be made. The issues raised will then be considered by an independent Panel at an Examination in Public. Modifications may then be proposed in the light of the Panel's recommendations upon which further comments may be made. Ultimately the plan will be approved by the Secretary of State some time later in 2009. Only then will its provisions be binding on the Borough Council. In the meantime the GTAA forms the most reliable source on which to base judgements about need in respect of planning applications.

1.3 KCC Select Committee on Gypsy and Traveller Sites

- 1.3.1 In 2005, KCC set up a Select Committee to look into various aspects concerning the provision and management of sites for gypsies and travellers. The Select Committee included representatives from both the County and District and Borough Councils. Tonbridge and Malling was represented by Cllr Luker. The Select Committee reported back in 2006 with a series of recommendations and some Members will recall that these were reported to this Council's Scrutiny Committee for information in June 2006. The recommendations were noted at that time, but have not been the subject of detailed, formal consideration by Members.
- 1.3.2 Although, inevitably with this topic area, a multi-disciplinary approach is required, four of the Select Committee's recommendations raise issues within the particular

remit of this Advisory Board, and KCC has now raised a series of specific questions in relation to these particular issues (letter dated 3 December 2007). For Members' information, the select Committee's full list of recommendations is set out at **Annex D** and the recent letter is at **Annex E**. I shall comment on each of the four issues in turn. However, as Members will see, the way in which some of the Select Committee's recommendations are expressed betrays a less than complete understanding of certain aspects of the Planning linkages and leaves some uncertainty over what was actually intended. Moreover, a couple of the specific questions that have now been raised appear to ask the Borough Council to comment on how it has been affected by its own actions.

Recommendation 11: For KCC, with District Authorities, to lobby Government to provide sufficient resources to ensure that unsuccessful retrospective planning applications can be dealt with in weeks rather than years.

- 1.3.3 Although it is not entirely clear, this appears to relate to appeals against refusals of planning permission, and the aspiration for such appeals to be dealt with expeditiously. Whilst it would be difficult to argue with that as an objective, it must be seen in the context of the overall resourcing of the Planning Inspectorate. I believe the Inspectorate has made concerted efforts to improve its turnaround time for appeals over the past couple of years, but this has not been helped by additional tasks they have had to perform, such as LDF examinations. It is difficult to see any direct ways in which the proposals in the recently published Planning Bill will impact upon this issue. Nevertheless, it may be worth reiterating the point that the Inspectorate should continue to be adequately and properly resourced.

Recommendation 12: For Kent local planning authorities to consider the importance of ensuring that temporary applications are refused in situations where there are material objections, along the same lines as dealing with permanent permission applications.

- 1.3.4 This appears to relate to situations where it may not be appropriate to grant a permanent planning permission on a particular site but, for some reason, there is a clear need for accommodation that cannot be met in any other way, perhaps due to a temporary state of affairs which might soon be resolved. In these circumstances, planning permissions have sometimes been granted for a temporary period, as opposed to one potential alternative which might be to serve an enforcement notice with a relatively long period for compliance. There is a general principle (relevant to all forms of development) that it is not normally appropriate to grant a temporary permission in circumstances where a permanent permission would not be forthcoming. I see no reasons why, as a matter of principle, this should not also apply to gypsy and travellers' sites, however there has been a suggestion that it might be appropriate to grant temporary permissions pending the outcome of the GTAA assessments and their being reflected in SEERA allocations of site numbers and, eventually, in LDFs, as discussed above. There have been a number of pertinent applications before this Council whilst

work has been progressing on the GTAA and it has been our practice to seek to put these “on hold” pending completion of this work, subject, of course, to the potential enforcement position not being jeopardised. Now that the situation with regard to the likely level of need, as revealed through the GTAA and other work described earlier in this report, has become a little clearer, it has been possible to determine those applications as appropriate to their individual circumstances.

Recommendation 13: For Kent local planning authorities to consider the importance of ensuring that, where rural exception policies are included within LDFs, there is a need to ensure that they are tightly drafted to mitigate any potential increase in planning applications on these grounds.

- 1.3.5 Rural exception policies are not the correct route for the provision of gypsy and traveller sites, and I believe the Select committee to have been misguided in this respect.

Recommendation 14: KCC to facilitate the establishment of a Countywide partnership group, which will work to share best practice and information to reduce and tackle unauthorised developments

- 1.3.6 There is already established a number of effective networks across the County, involving a variety of professional disciplines, whereby these issues are discussed and best practice is shared. In addition, as mentioned above, there is a County-wide Officer Group that meets to discuss broader issues to do with gypsies and travellers. I see little point in establishing another group specifically for this purpose.

1.4 Legal Implications

- 1.4.1 The Council will need to have regard to the results of the GTAA in coming to decisions on planning applications and any related enforcement matters, but it will be only one consideration to be balanced against all others.

1.5 Financial and Value for Money Considerations

- 1.5.1 None directly arising from this report.

1.6 Risk Assessment

- 1.6.1 There is a risk that if the Council disregards the findings of the GTAA in coming to planning decisions that it might lose appeals.

1.7 Recommendations

- 1.7.1 That the conclusions of the Gypsy and Traveller Accommodation Assessment be regarded as a material consideration for development control and be paid regard to in formulating the Borough Council’s position in relation to the partial review of the South East Plan.

1.7.2 That a letter be sent to the County Council in response to theirs of 3 December, reflecting the comments made in paragraphs 1.3.3 to 1.3.6 above.

Background papers:

contact: Brian Gates
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DCA Gypsy and Traveller Accommodation

Assessment

DCA Assessment of Travelling Showpeople

KCC submission to SEERA on Gypsy and Traveller

Pitch Distribution

Steve Humphrey

Director of Planning Transport and Leisure