

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**PLANNING and TRANSPORTATION ADVISORY BOARD**

**14 June 2011**

**Report of the Director of Planning Transport and Leisure**

**Part 1- Public**

**Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)**

**1 GOVERNMENT CONSULTATION – PLANNING FOR TRAVELLER SITES**

**Summary**

**This report recommends a response to a Government consultation on proposed changes to guidance and policy on planning for Gypsies, Travellers and Travelling Showmen.**

**1.1 Introduction**

1.1.1 The Government is seeking views on a new draft Circular to replace the existing separate Circulars dealing with Gypsy and Traveller Caravan sites (01/2006) and Sites for Travelling Show People (04/2007). The new Circular will deal with both groups to be referred to generically as “Travellers”. The reasons for the change are that the existing Circulars are becoming increasingly out-of-date in the context of wider reforms to the planning system, in particular the move towards more local decision making, shorter and fewer statements of planning policy and specifically the abolition of Regional Strategies. Once finally approved, the intention is that the content of the new Circular will be incorporated in the National Planning Policy Framework to be published next year.

1.1.2 The Government says that its overarching objective is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community. The new policy aims to:

- enable local planning authorities to make their own assessment of need for the purposes of planning;
- ensure that local planning authorities, working collaboratively, develop fair and effective strategies to meet need through the identification of land for sites;
- encourage local planning authorities to plan for sites over a reasonable timescale;

- protect the Green Belt from development ;
- promote more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites;
- reduce the number of unauthorised developments and encampments and make enforcement more effective;
- ensure that the development plan includes fair, realistic and inclusive policies;
- increase the number of traveller sites, in appropriate locations with planning permission, to address under-provision and maintain an appropriate level of supply;
- reduce tensions between settled and traveller communities in plan-making and planning decisions;
- enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure;
- have due regard to the protection of local amenity and local environment

1.1.3 The Government has also indicated that Traveller Sites will be included under the New Homes Bonus Scheme to incentivise planning authorities to provide appropriate sites. It has also resumed grant funding for site provision from April 2011 and intends to bring Local Authority Traveller Sites under the Mobile Homes Act 1983 to give residents improved protection against eviction. Overall, the Government is aiming to treat the provision of Traveller Sites in much the same way as the provision of any form of housing (as set out in PPS3).

1.1.4 The consultation paper mentions that the Government is considering the strengthening of enforcement powers but does not include any new proposals. As an example the strengthening of Stop Notices powers is being considered. Currently that provision is not available in respect of caravans or mobile homes which form a main residence. The Council has itself made practical suggestions directly to Ministers and the DCLG as to how enforcement procedures might be amended.

1.1.5 I set out below more detail about the proposals together with my commentary on them. The consultation document includes a number of specific questions. I do not address all of them and indeed raise additional issues. The Council's response will therefore be based upon the following commentary and any views that Members express having regard to and aligned against the prescribed questions as appropriate.

## 1.2 The Proposals

### *Evidence Base*

- 1.2.1 Abolishing Regional Strategies will remove the top-down imposition of traveller pitch targets. In future it will be for local planning authorities to establish their own local targets for permanent and transit site provision based upon robust evidence of local need in the light of historic demand. In this respect, the Government does not intend to prescribe the type and amount of evidence required and has specifically removed reference to the existing *Gypsy and Traveller Accommodation Needs Assessment Guidance*.
- 1.2.2 **Commentary** On balance this is not helpful and will inevitably lead to inconsistencies and unnecessarily prolonged debates at Local Inquiries. Whilst the setting of local targets is to be welcomed, the removal of national guidance on how to assess local need and set those targets is unhelpful. Elsewhere in the document there is a requirement for collaboration between neighbouring authorities over assessing need and the suggestion that Joint Plans should be prepared to facilitate redistribution between authorities. If this is to be the case, then it is going to be important that adjoining authorities use the same basis for assessing to ensure a consistent approach. National Guidance on assessing needs would therefore still be helpful, but that is not to say that the existing Guidance should not be significantly revised because it is over-complicated and has, itself, led to very different approaches being adopted in different areas. Simple guidance on the minimum that needs to be done is all that is required.
- 1.2.3 It is questionable whether historic demand is the best way to predict future need. If past demand has been constrained it will not properly reflect need. On the other hand, if an existing backlog of need can be met by new provision it is possible that future needs may be able to be accommodated by the simple turn-over of existing pitches. In any case, planning should be about meeting “need” rather than unfettered “demand”, particularly in restraint areas such as green belt locations.

### **Planning for Traveller Sites**

- 1.2.4 Planning authorities should set out policies in the development plan for meeting the locally set targets and should identify sufficient **specific sites to enable continuous delivery for at least 15 years from the date of adoption of the Plan. In this respect, it must be possible to demonstrate at least 5 years worth of deliverable sites**. Planning authorities should consider the preparation of joint development plans that set targets on a cross-authority basis to provide more flexibility in identifying sites, particularly in areas of planning constraint. Where there is “no identified need”, criteria-based policies should be included to deal with ad hoc applications. Planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally including promoting peaceful and integrated co-existence between the site and the local community.

- 1.2.5 **Commentary** Demonstrating a 5 year (or 15 year) supply of identifiable sites seems unachievable in practical terms. In this respect, there needs to be a distinction drawn between private sites and 'affordable provision' (ie publicly provided sites). In the latter case, it may be possible to identify future need and sufficient publicly owned or controlled sites (or a commitment to provide such sites) to meet that need. Indeed that is what the Council, in partnership with KCC is seeking to deliver at the Coldharbour site near Aylesford.
- 1.2.6 However, there is evidence that many travellers (other than Travelling Showmen) do not wish to be on communal sites and aspire to an individual site or a site large enough for an extended family that is available for private purchase and occupation. Such sites where they currently occur are normally small and not readily identifiable in advance. To seek to positively plan for such provision would be the equivalent of allocating sites in the Development Plan for individual houses. In any event, to do this would immediately inflate the land value and probably put the site beyond the means of a travelling family.
- 1.2.7 The other important consideration in trying to plan for the provision of private sites is how the planning authority could ever demonstrate that chosen sites were genuinely available and deliverable, in the wider sense of the phrase that applies to the allocation of development sites. The conclusion might be drawn that the only sites that can realistically be regarded as deliverable are those already owned by Travellers or by the planning authority (or other public body). Further guidance and clarification is required on this matter.
- 1.2.8 The suggestion that authorities might voluntarily get together to share meeting requirements with one authority generously meeting the needs of another seems optimistic in the extreme. The redistribution of sites from one authority to another is exactly what the Region Spatial Strategy sought to do which is one reason why it was so unpopular.
- 1.2.9 It should be recognised that criteria-based policies should be sufficient in areas where "there is no significant shortfall" in accommodation. To suggest that the preparation of a dedicated Site Allocations Development Plan Document (DPD) is necessary in all cases where there is an identified need, no matter how small that need, is disproportionate to the problem. It should be a locally-based decision as to whether the preparation of a DPD is the best and most cost-effective means of meeting the identified need. The determination of planning applications in accordance with a criteria-based policy may not only be cheaper but also deliver sites where they are needed more quickly than preparing a DPD which might take two years or more to produce.
- 1.2.10 Whilst obviously desirable and a laudable objective, promoting "peaceful and integrated co-existence" is generally beyond the powers of planning. Although detailed design and layout is important, this is primarily about the proper management of larger site provision.

## Sites in Rural Areas

- 1.2.11 In rural areas planning authorities should ensure that the scale of a traveller site does not dominate the nearest community. If there is a lack of affordable land to meet the needs of travellers in rural areas the planning authority should consider allocating and releasing sites solely for 'affordable traveller sites', including the use of a Rural Exception Site Policy which should ensure sites are used for this purpose in perpetuity. Traveller sites are inappropriate development in the **Green Belt** by definition and the Government proposes to change the wording of the Circular to clarify that applications from travellers in the Green Belt should be dealt with in exactly the same way as applications from members of the settled community. If a planning authority has identified a need for traveller accommodation that can only be met by a change to the Green Belt boundary this should only be done through the plan-making process and not in response to a planning application. In such cases, the land should be allocated for a traveller site only.
- 1.2.12 **Commentary** The same comments apply as above in relation to private sites. It should be clarified that a Rural Exception Site Policy is a Development Control/Management tool. It is not the basis for allocating land. The clarification in relation to the Green Belt is welcomed, but using the development plan system to change Green Belt boundaries so that small-scale sites can be allocated solely for travellers is a cumbersome and unnecessarily costly way of meeting an identified need. It would be better to make it clear that an identified need **that could not be met in any other way** could be capable of being a "very special circumstance" for allowing otherwise inappropriate development in the Green Belt.
- 1.2.13 **Mixed Use Sites**
- 1.2.14 Planning authorities should, wherever possible, include sites for mixed residential and business use, particularly for Travelling Showmen. Where this is not possible sites for residential and for business use should be identified in close proximity. Mixed use would not be acceptable on Rural Exception Sites.
- 1.2.15 **Commentary** Clearly the introduction of business uses would give rise to possible further impacts depending on the locations and characteristics of a site. Whilst the approach to achieve a greater sustainability is a good objective the practical application might be difficult to achieve in many locations and the policy should recognise this level of likely constraint.
- 1.2.16 **Development Management**
- 1.2.17 Planning authorities should consider the following issues when considering applications for traveller sites. They should determine applications from any travellers, not just those with local connections.
- The existing level of provision and local need for sites;

- The availability of alternative accommodation;
- Other personal circumstances of the applicant;
- Any locally-specific criteria in the development plan policy;
- If the planning authority has an up-to-date 5 year supply of sites but the application relates to another allocated site, it should be questioned whether to release the site early would undermine the strategy;
- Development in open countryside away from existing settlements should be strictly limited. However, it should be recognised that some rural areas may be acceptable for some forms of traveller site;
- Planning Authorities should look favourably on applications that use previously developed, untidy or derelict land, that are proposed to be well planned and landscaped, include play areas for children, and are not enclosed by high walls or fences.
- Planning conditions or obligations should be used to overcome planning objections.

1.2.18 **Commentary** It is difficult to see what this section adds to the Circular, bearing in mind the objective was to keep it short. The Government's policy objectives are clear from the rest of the document. It is for planning authorities to set out in their development plan criteria-based policies against which applications are to be judged. If they are half set out in the Circular then there is the possibility of duplication or contradiction with local planning policies which should be avoided. Some of these aspects, like the use of planning conditions to overcome problems and the use of previously developed land in sustainable locations, would apply to most applications for residential and indeed other development. The reference to determining "applications from any travellers, not just those with local connections" is not clear. Of course such applications will be "determined", but it seems that the Government is saying that they should be "determined favourably". If that is the case, then it makes a mockery of having allocated sites to meet a locally-identified need and this issue must be a critical part of the Council's submitted comments.

### **Transitional Arrangements**

1.2.19 If within six months of the Circular coming into effect a planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, it should consider favourably the grant of temporary planning permissions for traveller sites.

1.2.20 **Commentary** Six months is a totally unrealistic timescale. Depending on circumstances, it can take anything up to a year to produce an assessment of need and then up to two years beyond that to prepare a Development Plan Document simply to meet with current procedures.

## **1.3 Conclusion**

- 1.3.1 In commenting on the Government's proposed changes to the two Circulars the opportunity has been taken to draw attention to some real problems that existed in the original Circulars that could usefully be addressed at this time. Essentially, the Circulars seem to be targeted at authorities where provision for travellers is a major problem and where there are unauthorised developments of a substantial scale. There is no doubt that in such areas the need is likely to be great and a forward planning response is likely to be the most appropriate. But this is not the case throughout the country. The Circular should recognise that the planning response should be proportionate to the nature and scale of the issue and that this should be a local decision based upon the evidence of need.
- 1.3.2 The fundamental problem that is extremely difficult to understand practically is that the basis of the approach is centred on a rational allocation of sites, as if it was addressing conventional housing. Moreover the requirement for planning authorities will be to demonstrate a 5 and 15 year supply. The obvious problem in allocating sites, quite apart from issues of local acceptability, is in establishing with any confidence that such sites would ultimately be acceptable generally to travellers, and be demonstrably deliverable. It can be foreseen that there will be many arguments, having allocated sites, that they might subsequently be unacceptable or unavailable in practice to particular groups of travellers. On this point further guidance must be forthcoming to give planning authorities some assistance in these terms and avoiding the situation where, despite best efforts, we might be back in a familiar position of being unable to resist ad hoc developments.
- 1.3.3 Despite some misgivings on the way the proposed approach might emerge in practice, it seems clear that there will be a necessity for the Council to properly refresh its evidence and research base to inform decisions we will be expected to make, either on the future allocation of sites to meet a 5 and 15 year supply or in justifying decisions on individual planning applications.
- 1.3.4 As a final point, it seems premature to be revising these Circulars at this time when the National Planning Policy Framework (NPPF) is in the course of preparation and is due to be published in draft in July this year. Certainly, it would be disproportionate to include the full 8 pages of the draft Circular in the NPPF when the entire NPPF document, dealing with full gambit of planning issues, is not likely to be much more than 50 pages long.

## **1.4 Legal Implications**

- 1.4.1 None at this stage. This is a response to a Government consultation. However, if Government advice is not clear it could give rise to legal challenges at a future date.

## 1.5 Financial and Value for Money Considerations

1.5.1 None at this stage, but the Government's proposals set out in the draft Circular could be very expensive to implement if the views set out in this report are not taken into account.

## 1.6 Risk Assessment

1.6.1 See 1.4.1 above.

## 1.7 Equality Impact Assessment

1.7.1 See 'Screening for equality impacts' table at end of report.

## 1.8 Recommendations

1.8.1 The views set out in the commentary on the Government's proposed changes to Circulars 01/2006 and 04/2007 as set out in this report be transmitted to the Government in response to its consultation.

The Director of Planning Transport and Leisure confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

contact: Brian Gates  
Steve Humphrey

Nil

Steve Humphrey  
Director of Planning Transport and Leisure

<b>Screening for equality impacts:</b>		
<b>Question</b>	<b>Answer</b>	<b>Explanation of impacts</b>
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	This is a response to a Government Consultation



<b>Screening for equality impacts:</b>		
<b>Question</b>	<b>Answer</b>	<b>Explanation of impacts</b>
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	No	This is a response to a Government Consultation
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

*In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.*