

**TONBRIDGE & MALLING BOROUGH COUNCIL**  
**PLANNING and TRANSPORTATION ADVISORY BOARD**

**18 November 2014**

**Report of the Director of Planning, Housing and Environmental Health**

**Part 1- Public**

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

**1 PROPOSED RESPONSE TO THE PLANNING AND TRAVELLERS CONSULTATION BY THE DEPARTMENT OF COMMUNITIES AND LOCAL GOVERNMENT (SEPT 2014)**

**Summary: This report summarises the DCLG consultation document, the potential implications for Tonbridge and Malling Borough Council and proposes a response for approval.**

**1.1 Introduction**

- 1.1.1 The consultation document is seeking views on proposals by the Government to make changes to the definitions used for planning for Travellers and also to strengthen protection for sensitive areas, including Green Belt and new measures for dealing with unauthorised encampments.
- 1.1.2 Subject to the outcome of this consultation the Government intends to amend the Planning Policy for Traveller Sites (published separately to the National Planning Policy Framework in March 2012) and publish new Planning Practice Guidance to accompany it.
- 1.1.3 Comments are invited on the consultation document by 23<sup>rd</sup> November 2014.

**1.2 Summary of the Proposals**

- 1.2.1 While the Government remains committed to increasing the level of authorised provision in appropriate locations to meet the needs of Travellers, it wishes to ensure that the planning system applies equally and fairly to both the settled and Traveller communities. Currently there is a perception that it does not and this can lead to tensions between the communities.
- 1.2.2 The Government is therefore proposing that Travellers who have given up travelling permanently should be treated in the same way as the settled community when it comes to planning, especially regarding sites in sensitive locations such as the Green Belt. This is a distinct change in policy towards the Gypsy and Traveller community, no longer recognising that there are often

considered to be reasons other than demonstrable travelling that might justify the need for particular accommodation. It also proposes stronger measures for addressing the small number of Travellers who continually ignore planning rules and occupy land in an unauthorised way. There are further proposals that provide some flexibility for Local Authorities that are dealing with large scale unauthorised encampments when it comes to need assessments. This will form the basis of new Planning Practice Guidance on assessing Traveller accommodation needs.

- 1.2.3 For the time being there is no intention to amalgamate the Traveller Policy with the NPPF, although the consultation paper notes that this will be considered as part of any wider review of the Framework.
- 1.2.4 Ensuring Fairness in the Planning System
- 1.2.5 The current definitions of gypsies and travellers and travelling showpeople in the Planning Policy for Traveller Sites (PPTS) for the purposes of planning policy include those who for whatever reason have permanently ceased to travel. The Government proposes that where a member of the Travelling community applies for a permanent site then that application should be treated no differently than an application from the settled community (i.e. not within the context of the PPTS).
- 1.2.6 The consultation document stresses that this is not about ethnic or racial identity. It is simply that for planning purposes the Government believes a Traveller should be someone who travels.
- 1.2.7 The proposal is to remove the words relating to Travellers who have permanently ceased to travel from the definition in Annex 1 to the PPTS.
- 1.2.8 Views are also sought on complementary proposals to support those who do have a nomadic lifestyle, for example, by ensuring that transit sites are available at certain times of the year.
- 1.2.9 If the changes to the definition of Travellers are implemented in the PPTS the Government would consider making similar amendments to primary and secondary legislation to bring the Housing Act 2004 and the Housing (Assessment of Accommodation Needs) (Meaning of Gypsies and Travellers) (England) Regulations 2006. This legislation requires Local Housing Authorities to carry out assessments of the accommodation needs of gypsies and travellers residing or resorting to their district.
- 1.2.10 This could have a potentially significant effect on the way needs assessments are currently carried out and the resultant needs to be met.
- 1.2.11 Protecting Sensitive Areas and the Green Belt
- 1.2.12 The Government notes that significant protection for certain designations already exists in the NPPF, but wishes to replicate them in the PPTS to clarify that relevant parts of the Framework apply to the provision of Traveller sites.

- 1.2.13 The section in the PPTS addressing sites in open countryside is proposed to be strengthened by adding the word 'very' to 'LPAs should **very** strictly limit new traveller site development in open countryside'.
- 1.2.14 It is also proposed to reiterate Ministerial statements in 2013 and 2014 that unmet need for Traveller sites (or conventional housing) should not outweigh harm to the Green Belt and not constitute 'very special circumstances' to justify inappropriate development.
- 1.2.15 The Government wishes to retain the significant material consideration in determining temporary planning permissions for Travellers, where a Local Planning Authority cannot demonstrate a five year supply. However, in a new change, the PPTS will be amended to make clear that this does not apply to Green Belt or other sensitive sites such as SSSIs and AONBs. It would remain a material consideration, but it would carry less weight and it would be for the decision taker to determine how much weight should be given.
- 1.2.16 Personal circumstances have also been used in conjunction with unmet need arguments to justify inappropriate developments in the Green Belt. While recognising the case law from the United Nations Convention on the Rights of the Child, the Government considers that those interests are capable of being outweighed by the harm to the Green Belt and any other harm depending on the circumstances of the specific case. Changes to the NPPF and PPTS are proposed to address this.
- 1.2.17 Addressing Unauthorised Occupation of Land
- 1.2.18 Changes to the NPPF and PPTS are proposed to make clear that intentional unauthorised occupation, whether by Travellers or members of the settled community should be regarded by decision takers as a material consideration that weighs against the grant of permission. Retrospective applications should not be automatically refused, but failure to seek permission in advance will count against the application. This is an additional factor that has been introduced in this consultation that moves away from generally applied principles. The Government hopes it will encourage the proper use of the planning processes. It is, however, entirely unclear how much weight local planning authorities should give to such circumstances.
- 1.2.19 In cases of large scale unauthorised occupations, which can inflate local need assessments and place an unfair burden on Local Planning Authorities to meet that need, particularly where the area is subject to special planning constraints, the Government is considering amending the PPTS so that an exception can be made to the effect that the LPA would not have to meet all of their needs in full.

### **1.3 The Implications for Tonbridge and Malling**

- 1.3.1 The proposed changes set out in the Consultation document would have some significant implications for the Borough Council.

- 1.3.2 The changes to the definition of Traveller for planning purposes and assessing future need would reduce the assessment for future provision because currently an allowance is made for those parts of the Travelling community living in bricks and mortar (for example, if children of those families later decide that they would like to adopt a more nomadic lifestyle, there may be a suppressed need for pitches).
- 1.3.3 Of the current authorised, tolerated and unauthorised sites in the borough most occupants do not travel in the way suggested by the new definition, so it is unclear how many of these sites would be included in a new needs assessment. Guidance on what constitutes 'nomadic' ( i.e. number of times travelling in a given time period and length of time away) would be useful.
- 1.3.4 Travelling Showpeople would be more likely to demonstrate the nomadic lifestyle implied by the changes, but due to the catchment areas covered by Showpeople families travelling to fairs and events it can be difficult to assess needs on a Local Authority basis. Ideally a sub-regional or regional approach would be more effective in assessing needs and identifying sites, but to date there is no such mechanism for such study.
- 1.3.5 One implication for all Local Planning Authorities will be the need to consider more transit sites. If these measures are introduced and implemented some Travellers will respond by travelling more to justify the new definition and this will increase the need for temporary accommodation.
- 1.3.6 If adopted, it is likely that all Local Authority Gypsy and Traveller Accommodation Assessments (GTAAs) would need to be revised. This would represent a cost implication.
- 1.3.7 The proposals for increasing the protection for sensitive areas and the Green Belt will have implications for Tonbridge and Malling as over 70% of the land area is designated Metropolitan Green Belt and there are also two Areas of Outstanding Natural Beauty. The clarification is useful and reflects other recent Government statements about Green Belt policy, but there will be resource implications for Local Planning Authorities particularly in planning enforcement.
- 1.3.8 There are some outstanding appeals on unauthorised developments in the Green Belt in the Borough, which may be affected by these proposals. The implication is that they may be dismissed and require new 'authorised' sites.
- 1.3.9 In Sevenoaks District, which is 93% Green Belt there are many more Traveller sites in the Green Belt. The Gypsy and Traveller Accommodation Assessment completed in 2012 identifies a need for 72 new pitches to 2026. While this target may reduce in the light of the definitional changes proposed, the reassertion of the Green Belt policy and lack of viable alternatives for sites in Sevenoaks District may result in sites being sought beyond the District boundary.

The changes proposed in relation to unauthorised encampments again may have implications for Tonbridge and Malling. There is a clear steer in respect of the weight attributable to retrospective applications and together with the other measures proposed has the potential to encourage pre-application discussions, planning applications and approvals before occupying sites. Whether this is observed in practice remains to be seen.

## **1.4 Suggested Response**

- 1.4.1 The changes to the definitions for Travellers will no doubt generate a significant response and as is often the case with such proposals the devil will be in the detail. How often a Traveller needs to travel to justify a nomadic lifestyle and whether moving from a site for any length of time constitutes having left the site where there are planning conditions attached to a personal permission, will no doubt be key to these proposals.
- 1.4.2 Those Travellers wishing to demonstrate a nomadic lifestyle under the new definitions will require more transit accommodation and these will have to be carefully planned over a wider area than single Local Planning Authorities. They will have to be carefully managed to ensure they do not become more permanent options in the absence of suitable sites. This lends itself to a sub-regional or regional approach, particularly in respect of Travelling Showpeople.
- 1.4.3 For those who do not wish to be nomadic and wish to settle there may be additional pressures on local Housing Registers to find suitable accommodation.
- 1.4.4 As need assessments will be reduced under the new definitions, GTAA's will have to be revised, which will have cost implications for Local Authorities. The most recent GTAA for TMBC cost in the region of £14,000.
- 1.4.5 The policy clarifications regarding inappropriate development in Green Belt and other sensitive designations are welcomed, although in areas of the country like west Kent this will have implications for finding sufficient sites to meet objectively assessed needs.
- 1.4.6 In Kent most Local Authorities have been trying to meet their needs within their own boundaries, but the strong messages about the Green Belt raise important questions about how Local Authorities like Sevenoaks and Tonbridge and Malling with 93% and over 70% respectively will be able to meet future needs. Maidstone to the east has very little Green Belt, but also has a very high need of its own (157 pitches 2012-26). This could be a real test for the Duty to Cooperate.
- 1.4.7 Some clarification on how these changes will effect current unauthorised encampments and appeals would also be welcomed.

## **1.5 Legal Implications**

- 1.5.1 There are no legal implications arising from this report, although the Government's proposed changes to primary and secondary legislation relating to the definition of and planning for Travellers could have significant legal implications.

## **1.6 Financial and Value for Money Considerations**

- 1.6.1 If the proposed changes are implemented there would be financial implications in respect of revising the GTAA and also in conducting current and future planning appeals.

## **1.7 Risk Assessment**

- 1.7.1 There is a risk in not responding to the consultation in so far as the Council's comments will not be taken into consideration.

## **1.8 Equality Impact Assessment**

- 1.8.1 Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to (i) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010, (ii) advance equality of opportunity between people from different groups, and (iii) foster good relations between people from different groups. The decisions recommended through this paper directly impact on end users. The impact has been analysed and varies between groups of people. The results of this analysis are set out immediately below.

- 1.8.2 The proposals set out in the Government's consultation could have direct impacts on members of the gypsy and traveller community living in Tonbridge and Malling if they are implemented. The responses set out in section 1.4 of this report raise a number of issues and seek clarification of how the proposals might work in order to better understand these impacts.

## **1.9 Policy Considerations**

- 1.9.1 If the Government's proposals result in changes to National Planning Policy and Guidance the Local Plan will have to reflect those changes in its local policies.

## **1.10 Recommendations**

- 1.10.1 That the content and summary of the DCLG Consultation on Planning and Travellers is noted and the comments in Section 1.4 of this report form the basis of a response by the deadline of 23<sup>rd</sup> November 2014.

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

Background papers:

contact: Ian Bailey

Nil

Steve Humphrey  
Director of Planning, Housing and Environmental Health