C1/2006 – Achievements and Aftermath

Richard Langham, Landmark Chambers

1. On 26 July, in a Parliamentary answer, the Secretary of State announced that C1/2006 was to be replaced. This paper considers what C1/2006 has achieved in the four and a half years since it was published, and what can be expected to replace it.

Achievements?

Assessment of need

2. Veterans will remember the requirement of C1/94 that local planning authorities should carry out a quantitative assessment of the need for gypsy pitches. As far as I can make out, this requirement was more or less completely ignored.

3. Need has now been assessed; all regions got some way in identifying a pitch requirement for each district in England before RSS were revoked.

4. The EHRC did research published in December 2009, catchily entitled 'Assessing local housing authorities' progress in meeting the accommodation needs of gypsy and traveller communities in England' (EHRC Research Report 13 - Philip Brown and Pat Niner, Universities of Salford and Birmingham). This found that there were GTAAs for 329 out of 354 English local authorities.

5. Where there was no proper GTAA for a district, RPBs usually relied on something derived from the 6 monthly counts.

Definitive pitch requirements – Single Issue Reviews

6. C1/2006 requires pitch requirements to be imposed on districts by RSS. Most RPBs had a single issue review to address this. This process had not been completed by the time of revocation: to

my knowledge the West Midlands and the West of England policies were not complete and the East of England policy was complete but was being challenged.

What the need was found?

7. EHRC say that the GTAAs for the above-mentioned 329 authorities suggest a requirement for 5733 pitches 2006-2011.

8. The overall pitch requirements in the (mostly emerging) RSS policies at the time of revocation were -

East – 1237 (2006-11)
South West – 1634 (2006-11)
West Midlands - 938 (2007-12)
South East – 1064 (2006-2016)
East Midlands – 486 (2007-2012)
North West – 825 (2007-2016)
Yorks and Humber - 255 (by 2010)
North East - ??

Total – 6439 pitches

Meeting the pitch requirement - planning permissions

9. Short of asking each of the 354 local planning authorities in England how many pitches have been permitted since 2006, there is no way of assessing this. EHRC actually tried asking, but only 185 of the 354 authorities responded. From the information that these 185 provided EHRC worked out that 511 pitches had been granted permanent planning permission and 282 pitches temporary planning permission between February 2006 and autumn 2008.

10. To get some idea of the *overall* position EHRC looked at the Jan 2006 – Jan 2008 6 monthly counts for the whole of England and deduced that 925 new authorised pitches might have been provided between these dates. Using the 6 monthly counts for this purpose is highly

problematic, but that has not stopped me from trying, using the Jan 2007 and the Jan 2010 counts and some odd figures from the January 2006 counts (I cannot find complete 6 monthly counts before Jan 2007; the July 2010 count is not published yet). The results are as follows -

England

	Jan 06	Jan 2007	Jan 2010	Change
Total authorised	12474	13073	14736	+2262 (18%) since 06 +1663 (12.7%) since 07
Total unauthorised		3538	3619	+81 (2%)
Total		16611	18355	+1744 (10.5%)
Authorised				
Public		6564	6870	+306 (4.6%)
Private		6509	7866	+1357 (21%)
Unauthorised				
Gypsy land		2252	2395	+143 (6.3%)
Trespassing		1286	1224	- 62 (4.8%)

East of England

Total authorised	3045	3169	3648	
Total unauthorised		914	877	
Total		4163	4525	
Authorised				
Public		1419	1447	
Private		1750	2201	
Unauthorised				
Gypsy land		799	660	
Trespassing		195	217	

Notes
Unauthorised is tolerated + not tolerated
The East of England has the largest number of everything apart from trespassing caravans.

11. This comparison shows 2262 more caravans on authorised sites 2006-2010, a 18% increase. The vast majority of these must be on authorised private sites, judging by the 2007/2009 comparison. This, of course, is a measure of caravans, not pitches. It could be that the figures do not indicate *any* new pitches, merely extra crowding on existing sites. If you think that it is safe to equate more caravans on authorised sites with more pitches with planning permission, you might deduce that there are about 1330 new pitches 2006-9, using the recognised average of 1.7 caravans per pitch.

12. Even if you can assume that the figures are a measure of newly permitted pitches, you cannot deduce how many only have temporary planning permission. A pitch with temporary planning permission should not count towards the supply/provision of sites.

13. I therefore do not think it is safe to say anything more than that there appears to have been a material increase in pitches which nevertheless falls well short of the assessed need. Bear in mind that C1/2006 anticipated a significant increase to address under-provision 'over the next 3-5 years' – ie by Feb 2009/Feb 2011 (paragraph 12(c)).

Appeal decisions

14. Of the 511 permanent and 282 temporary newly permitted pitches found by EHRC and mentioned above, 126 and 117 respectively had been granted on appeal – ie 31% of the total. This high percentage will not come as much of a surprise. You might say that a Circular which has produced so many local authority decisions which are overturned on appeal has not been a success.

15. To get an idea of the overall contribution made by Inspectors I have looked at all the appeal decisions mentioning the word 'gypsy' in one year, 2007. These decisions show permission (both temporary and permanent) being granted for perhaps about 160 pitches. Perhaps about 130 pitches were refused.

Unauthorised sites

16. The above table shows that there has been an *increase* in caravans on unauthorised sites, albeit much smaller than the increase in caravans on authorised sites (+81 caravans (2%), 2007 - 2009). One aim of the Circular was 'to *reduce* the number of unauthorised encampments ...' (paragraph 12(b)).

Meeting the pitch requirement - allocations?

17. C1/2006 in fact requires that the pitch requirement should be met by making allocations. Note the following passages -

a. The RSS pitch requirement 'must be translated into specific site allocations …' (paragraph 30, plus see 33).
b. C1/2006 actually contemplated allocations DPDs in advance of regional consideration of pitch numbers, and even in conjunction with or in advance of core strategies (paragraph 43).

c. To emphasise the point, there are instructions to DPD Inspectors on how they should assess allocations DPDs (paragraphs 37 and 38).

d. The Circular does not even mention satisfying the pitch requirement by just granting planning permissions. Permissible sites which are not allocated are regarded as 'windfall' sites.

18. I strongly suspect that the vast majority of the pitches which have been permitted since February 2006 are in fact on windfall sites. I do not think that there are many approved allocation DPDs (I have not come across any). Indeed, I do not think that there are many *emerging* allocation DPDs which publicly identify land which is thought to be suitable for allocation. Most authorities that I know of say that they have started work on their DPD, that they worked out some criteria and have perhaps done a call for sites and that they expect the document to be adopted in about 2 years' time. The 2 years never changes. EHRC found that only 6 of 185 local authority respondents had an approved allocation DPD and that only a further 67 authorities had an allocation DPD 'in preparation'. EHRC did not seem to grasp that at some stage an authority promoting an allocation DPD has to identify potential gypsy sites publicly (and suffer the ensuing outrage) and did not ask how many of the 67 had done this.

19. The Circular does not address what happens when an authority can show that its pitch requirement is met by planning permissions for windfall sites, but everyone assumes that this will obviate the need to make allocations. This is likely to occur in many cases. There are a number of points about meeting the pitch requirement by windfalls -

a. The advantage of allocations is that provision is planned – the local planning authority can pick the least worst sites. There is no sieving process if the authority merely responds to applications.

b. Most applications are not speculative. This means that the land will have been acquired by the likely/actual gypsy occupier. To the extent that the supply of lawful sites is the result of a proportion of these sites getting planning permission, the pattern of provision will be entirely a matter of what land gypsies have managed to acquire – another way of saying that provision is not planned.

c. In my experience most planning permissions are of one of three kinds – a permanent planning permission to replace a temporary planning permission, an extension to an existing site to accommodate an expanded family and a retrospective planning permission. In each case the permission merely meets the needs of existing occupants. Such permissions will not provide a supply of vacant land to which gypsies without a site can be directed. I think that this is what the Circular contemplated (it talks about the sequential release of sites).

Paragraphs 33 and 35

20. Because so few allocations have been made/implemented, the problems inherent in paragraphs 33 and 35 of the Circular have not been confronted. Paragraph 33 says that there must be a realistic likelihood that allocated sites will be made available. Paragraph 35 assumes that the land will be owned by/acquired by the local planning authority. It even contemplates compulsory purchase and disposal of land for less than the best consideration. Does this mean selling land at an undervalue to a gypsy? The obligation to meet identified demand is surely a continuing obligation, rather than a obligation which somehow ceases after a cut-off date. This is certainly how RPBs construed it. Was it therefore intended that local authorities should be providing a constant supply of their own land for gypsies? And if the land is not sold to gypsies, it will remain in public ownership and the site will be a public site. Is this what the ODPM had in mind – a return to something like the 1968 Act, driven by regional planning policy?

The aftermath

21. We only have about 7 sentences' worth of guidance as to what the approach in the future will be.

    Local planning authorities now determine the right level of site provision, reflecting local need and historic demand, in line with current policy. If local planning authorities decide to review the levels of provision, GTAAs are a good starting point – but local planning authorities are not bound by them (Q/A accompanying revocation of RSS).

22. 'Current policy' presumably means C1/2006.

23. The answer does not actually say that provision should be made to meet need thus determined, but this can be understood. Inspector's decision letters since July have certainly proceeded on this basis.

    C1/2006 will be replaced by light touch guidance outlining Councils' statutory obligations (website).

24. There is not much point issuing a Circular which simply tells Councils what their statutory obligations are. And what are the statutory obligations anyway? HNA. RED. Article 8. S38(6) PCPA 2004.

25. I assume that local planning authorities will be told that they have to make provision for locally assessed need. The normal complaint about the RSS-based approach was about the distribution of the pitch requirement assessed in the GTAAs, rather than about the actual assessments. It involved an authority saying that someone else should be meeting part of the requirement that had been imposed on it, either because it was unfair that it should have to meet all the need arising in its area (honeypot effect etc) or that it was unfair that it should have to meet some of the need arising elsewhere. Presumably a honey pot authority will now be able to say that it

should be excused from having to meet all the need arising in its area and all the surrounding authorities will be able to say that they should not have to do this either.

26. What will a local planning authority have to do to make provision? Will criteria based policies once again be acceptable? What will happen when the locally assessed need has been met by permitting windfall sites? C1/94 said that planning permission should not be refused just because there was already adequate provision. Will a different approach be permissible?

Action will be taken against speculative, unscrupulous private developers (announcement). The Government will introduce stronger enforcement powers to help local planning authorities deal with breaches of planning control and will limit the opportunities for retrospective planning applications (website).

27. This will be interesting. Since 1992 it has been possible to use an ordinary stop notice against the stationing of caravans – and there is very little danger of having to pay compensation in the normal situation. So it is already possible to stop the offending development from continuing while any s174/78 appeal seeking retrospective planning permission is being pursued.

28. Limiting the opportunities to make a retrospective planning application will presumably involve removing/qualifying the right to appeal against an enforcement notice on ground (a). This might well involve discrimination issues.

The Government will encourage local authorities to provide the appropriate number of sites 'in consultation with the local community' (website). The New Homes Bonus will be applied to gypsy sites (announcement).

29. I cannot see that consultation with the local community is likely to lead to pressure for the provision of additional sites.

30. The New Homes Bonus is equivalent to the Council tax for the pitch for 6 years. Given the small numbers of pitches likely to be involved in any particular proposal, I wonder how much of an inducement this will be.

Final thoughts

Policy criteria

31. At present rural sites are said to be acceptable in principle. The requirement for a sustainable location has been emasculated to nothingness. It seems to me that the only real *policy* objections to a gypsy site are Green Belt and flooding (I am assuming that gypsy sites in built up areas are rare). Elsewhere gypsies can expect planning permission on any site without site specific objections, certainly if there is an unmet need. This might be said to make it particularly unsatisfactory that provision continues to be largely unplanned.

32. If guidance is to become 'light touch', are local planning authorities going to be able to create new *policy* restrictions?

Definition of gypsy

33. It has always struck me as odd that a Circular entitled 'Planning for Gypsy and Traveller Caravan Sites' nowhere explains why gypsies need *caravans* on their settled bases - as well as on transit sites. The definition, based on nomadic habit of life, only explains why there might be a need for caravans on transit sites. The draft Circular was different – 'gypsies' were defined as 'persons who have a traditional cultural preference for living in a caravan and who either pursue a nomadic habit of life or have pursued such a habit but who have ceased travelling …'

34. Frankly the nomadic habit of life should be irrelevant – it should be the traditional cultural preference for living in a caravan that should count. And I would say that a mere preference should not be enough – there should be a positive aversion to bricks and mortar. It is more than arguable that the law requires this already – see *Clarke v Secretary of State* [2002] EWCA Civ 819. *Clarke* says it would be wrong to hold against a gypsy the fact that he had refused an offer of conventional housing if he had a cultural aversion to bricks and mortar. The implication is

that it would not be wrong if there was no such aversion. If so, a local planning authority could say to a homeless gypsy that he should live in bricks and mortar and he has no special claim to a planning permission for a caravan site.

35. There would be problems with changing the definition: it originates in the 1968 Act and the statutory definition survives in relation to public sites. Many planning permissions will have conditions based on the existing definition.