C1/2006, Gypsies and Planning

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Overview of C1/2006

Establishes a plan making regime designed to ensure that local planning authorities will allocate enough land to meet assessed need in district.

Where sites come forward before allocations or which are unallocated (windfall sites) provides guidance as to policy approach that ought to be applied – for this purpose allows you to have criteria based policy.

Gives clear instructions on policy approach that should be applied when considering whether sites are acceptable for use as gypsy site.

Has important guidance on grant of temporary planning permission in the period before allocations are made – some interesting assumptions about what position ought to be after allocations are made.

Widens the definition of gypsy.

Historical background

There was no law or policy until 1960. According to Sedley J in R v Wealden DC ex p Stratford …, gypsies travelled around country stopping on commons quite contendedly.

Caravan Sites and Control of Development Act 1960 gave power to local authorities to prohibit use of commons by caravans. S24 gave local authority power to provide caravan sites (for anyone). When enacted did not mention gypsies.

Caravan Sites Act 1968 imposed on County Councils the duty to exercise s24 powers so as to provide adequate accommodation for gypsies residing in or resorting to their area. That meant acquiring land and developing it as a public gypsy site.

Areas where adequate provision was made were ‘designated’ – in designated areas it was an offence to station caravans on highway, unoccupied land or without consent of occupier. So enhanced enforcement powers if adequate provision made. The current public sites date from this statutory duty.

Defined gypsies for first time - as persons of nomadic habit of life whatever their race or origin (but excluding TSP).

Provision of gypsy sites extremely unpopular and was recognised that insufficient provision was made. Was also expensive – public sites were funded by Government grant. Most areas had not achieved designation despite fact that duty had existed for 26 years.

Criminal Justice and Public Order Act 1994 abolished the statutory duty to provide sites and enacted a series of provisions designed to make removal of caravans from highway land or from land on which the caravans trespassing – these replaced the enforcement powers under the 1968 Act.

1960 Act remained. 1994 Act moved the definition of gypsies from 1968 Act which it repealed to 1960 Act which it amended.

1994 Act did not deal with how sites were to be provided for gypsies. This was done in a planning Circular C1/1994. Essentially said that the market would provide – gypsies would be expected to buy their own land, get planning permission just like everyone else.

In one sentence said that local planning authorities should carry out a quantitative assessment of need in district. In another sentence said should make adequate provision in development plan through appropriate use of locational and/or criteria based policies. In another sentence said that development plans should ‘where ever possible’ identify locations and only where this was not possible should set out clear and realistic criteria.

Locational policies means allocations.

An amazingly large number of authorities found that it was not possible to make allocations, including Wokingham.

About the same number (nearly all of them) also missed the sentence requiring quantitative assessments, including Wokingham.

Establishes a plan making regime designed to ensure that local planning authorities will allocate enough land to meet assessed need in district

This is the main point about C1/2006. System is (i) GTAA; (ii) consideration at regional level, leading to imposition of pitch requirement on each district; (iii) an obligation to make sufficient number of allocations in DPD.

Nothing about 'where ever possible'. Makes it clear that a … will not be sound if does not have an adequate number of allocations.

Gives clear instructions on policy approach that should be applied when considering whether sites are acceptable for use as gypsy site

For purpose of deciding what land to allocate and for dealing with 'windfall' sites, Circular provides guidance as to policy criteria that ought to be applied (or more precisely which cannot be applied).

You will notice that the Circular adopts a rather touchy tone re 'criteria based policies' – there is no choice but to have them for the above two purposes but makes it absolutely clear that cannot be used in substitution for allocations – because of the historic reliance on criteria based policy instead of locational policies under C1/94.

Countryside locations that not subject to special planning constraints in principle acceptable (paragraph 54); cannot have a criteria which says refuse planning permission if site involves encroachment into open countryside (annex C)

Sustainability reduced to nothingness – effectively says that the very fact of providing a site with planning permission is a sustainability benefit (64). Have to be realistic about availability of alternatives to the private car.

Local authorities warned off highways objections – should not refuse if only modest additional traffic and or impact on minor roads not significant (66)

Green Belt – draft Circular had said that should not have criteria which banned gypsy sites in Green Belt because it was always possible to grant planning permission in Green Belt if very special circumstances shown to exist. That does not appear in the Circular which has the conventional line – gypsy sites are inappropriate development; criteria based policies should not depart form PPGs. If there is to be a gypsy site in Green Belt you have to take the site out of the Green Belt first – through the DPD process (51)

Flooding – government policy on flooding has always been quite unequivocal – C1/2006 says that gypsy sites should not be located in areas of high risk of flooding, given the particular vulnerability of caravans (64e)

Has important guidance on grant of temporary planning permission in the period before allocations are made – implicit are some assumptions about what position ought to be after allocations are made

There is nothing to stop Inspector granting a permanent planning permission. I see that this is what Inspectors have done in the two cases you have had since C1/2006. Normally only considers temporary planning permission if considers that permanent planning permission not appropriate.

Paragraphs 45 and 46.

Preconditions –

unmet need [almost always]
no available alternative [almost always]
reasonable expectation that new sites likely to become available at end of period suggested for temporary planning permission [paragraph 46 gives example – Council is preparing allocation DPD – ought to be doing this in all cases]

In such cases give substantial weight to unmet need; grant of temporary planning permission should not set a precedent

Very many temporary planning permissions have been granted by Secretary of State on appeal. If the pre conditions are met the only basis for not granting temporary planning permission is if site exceptionally harmful – harm cannot be tolerated even for a temp period.

Difficulty in enforcement

In theory these paragraphs apply whether or not land is already occupied by gypsies. It very often is. 12(i) says that one of aims of Circular is to prevent gypsies becoming homeless through eviction with no alternative site to go to.

So if you have the typical situation of gypsies on land; the 3 preconditions satisfied, you are being instructed to grant temporary planning permission – ie allow them to remain where they are. Any enforcement notice will be quashed. Gypsies will challenge any attempt to use a stop notice against them.

You wont get an injunction to evict the gypsies pending the outcome of planning appeal because they will say that they have a reasonable prospect of planning permission and it would be disproportionate to throw them off site before this matter resolved. In several cases court has refused to make eviction injunction

The only way you can retrieve effective enforcement powers is to get yourselves out of situation in which paragraphs 45 and 46 apply – ie make the allocations DPD.

So we are back to something like designation – if adequate provision is made, enhanced enforcement powers. Not an exact analogy – if you can avoid having to grant a temporary planning permission you can use planning enforcement powers – this is not what 1968 was talking about.

Reasonable expectation that sites will come forward

Third has caused difficulty.

Usually reason why there is no reasonable expectation is because local planning authority is not getting on with allocation DPD.

In Doncaster was said to be OK for Inspector to grant a permanent planning permission

In other cases Inspectors have taken logical approach and said that

1. only consider temporary planning permission because permanent planning permission not appropriate;
2. if there is no reasonable expectation … a temporary planning permission cannot be granted – even if the lack of reasonable expectation is the fault of the local planning authority

In a number of challenges has been said that this is OK.

The future

What exactly are you supposed to do (eg to avoid paragraphs 45 and 46). What are Councils actually doing.

The theory is so simple. But no one has defininitive pitch requirement yet – SW not finished; SE not finished; E finished but being challenged; WM barely started.

Have not actually come across an adopted allocation DPD; have not actually come across the identification of any land.

What is happening? Circular only talks in meeting pitch requirement by allocating land for pitches. But must be the case that actually granting planning permission for pitches also counts. Pitch requirement will have same base date as RSS – 2006. There will be a requirement 2006-2011 and 2011 – 2016. Many authorities will meet what it likely to be their pitch requirement by actual grants of planning permission after 2006.

In terms of planning permissions granted by local planning authorities I have noticed two types in particular – 1. Existing temporary planning permission made permanent; 2 extensions to existing sites

These are the easy options. You aren't going to be upsetting a new parish Council with either of these. With temporary planning permission made permanent you are helping those who already have a site. I suspect that those with temporary planning permission probably not counted as part of need by many GTAAs. With extensions you will be helping those on the original site who need more space.

Both types need sites. But neither type of planning permission helps the gypsy with no site.

Sites 'available'

At least if you do either of the above you don't have any issue about availability.

What about land that you have allocated - paragraphs 45 and 46 talk of new sites becoming available. Merely preparing an allocation DPD will not make anything available. Paragraph … says you should only allocate land which has a 'realistic likelihood' of becoming available – indeed DPD must explain how the land will be made available (paragraph 33). Site is only available in any meaningful sense if it is possible to put caravans on it lawfully. This means that planning permission must have been granted and implemented.

Normally don't have this problem with land allocated for housing; do with employment. Sites must be deliverable so no point in allocating land where landowner not willing to sell etc. Circular clearly contemplates that Councils will allocate their own land or make CPOs (paragraph 35). Are they supposed to sell such land to gypsies? Or are they supposed to run public sites?

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Reasons for lacuna

The idea that there might be allocation DPDs which allocated enough land to meet the assessed need for gypsies in a district was such a remarkable and unfamiliar idea when C1/2006 was drafted that perhaps not surprising that authors did not address their minds to these details – background was of virtually no assessment and virtually no allocations.

Widens the definition of gypsy or traveller

There are 3 definitions –

> Circular - defines 'gypsies and travellers'. This is the definition that you use for development control purposes.
>
> S24 of 1960 Act – only defines 'gypsies' and is narrower than Circular. Only relevant if you want to exercise a power to provide a site [ie of no significance]
>
> Regulations dealing with housing needs assessments – defines gypsies and travellers and is wider than Circular – is the definition that is used for purposes of GTAA. See McCann v Secretary of State.

The Circular definition has four elements but in fact everything turns on 'nomadic habit of life'. Came from 1968 Act. That was dealing with public sites – we are providing a gypsy caravan site for gypsies resorting to our area; who are we going to allow on it. Resorting to my mind has notion of nomadism/transit site. Issue under 1968 Act was not who should be given a privileged position in the planning system because he cant be expected to live in a house.

Has been quite a lot of caselaw. I will summarise

Actual travelling [or retirement from actual travelling]

There must be an element of actual travelling;

Must be a 'substantial proportion of year' (Burton J in Clarke v Secretary of State). Existence of settled base not fatal (Wrexham CBC v NAW) - 2 months a year sufficient (Maidstone DC v Secretary of State)

The travelling must be for purposes of earning a living (R v S Hams DC ex p Gibb, some doubt expressed in Wrexham). Travelling for pleasure not sufficient – (Massey v Secretary of State - NATs)

Travelling in a group not essential (Maidstone)

Temporary cessation not fatal (Wrexham)

Cultural identity as a gypsy?

Clarke, 2003, says yes, but this was before C1/2006 and addition of 'travellers' Massay says that it is not necessary to be following a traditional way of life (so the definition could cover NATs)

> 'the habit of life was a manner of living so established as to have become customary. [The Inspector] took the view that the definition did not exclude those who were not following a traditional way of life and thus ... could cover new travellers ...' (24).

The reason the NATs were not GTs was that travelling was not for an economic purpose.

Aversion to bricks and mortar – but does it have to be cultural?

There must be aversion to bricks and mortar – if there is no aversion then decision maker is entitled to say that bricks and mortar would be adequate accommodation.

See Clarke v SSE, where it was held that to hold against a gypsy in the planning balance the fact that she had been offered, but had refused, conventional housing could be contrary to his A8 and A14 rights. Where this issue arose the Inspector had to make a specific finding

about whether the gypsy in fact had a cultural aversion to conventional housing, the onus being on the gypsy to prove this.

In decision letter Inspector had appeared to say that gypsy should be refused planning permission for a caravan because she had been offered permanent accommodation nearby and had refused it. Issue before Burton J was whether the passages actually meant that this is what the Inspector was saying. Burton J held that for purpose of assessing the relevance of an offer of conventional housing, the appellant had to satisfy the Inspector that -

> 'he and/or his family do indeed subscribe to the relevant tenet or feature of gypsy life in question here, namely that he or she genuinely has, and abides by, a proscription of, and/or an aversion to, conventional housing: to bricks and mortar. Many gypsies, certainly many Romanies … do not and are not prepared to live in bricks and mortar, but many, perhaps even many Romanies, may well do or are prepared to do so and ***and each particular person or family must establish the position to the satisfaction of the Inspector'*** (paragraph 33).

The decision letter was quashed because it was unclear what conclusion Inspector had reached on this. A new decision was needed in which the Inspector would have to decide 'afresh on the issue of Gypsy status, *then* on the question of conventional housing, and whether reference to its availability would, on the facts, be a breach of Articles 8 and 14 …' (paragraph 44).

Supporting indications - actually living in a caravan; actual travelling; cultural identity as a gypsy.

The Court of Appeal dismissed appeal by local planning authority.

> 'What the judge seems… to be … rightly directing the Inspector to is a careful examination of the objections of the Clarke family to living in conventional housing in order to determine the extent to which A8 is truly engaged, and the nature of the engagement by the combination of their gypsy status and their opposition to conventional housing.' (paragraph 15)

Court of Appeal says aversion must be cultural, not personal (6). Massey seems to accept that NATs can be gypsies – nature of aversion to bricks and mortar not expressly considered there – Collins J merely records that the NATs 'for various reasons has not wished to have a permanent base in the sense of somewhere to live with bricks and mortar ...' (3)

Note definition in draft Circular 'persons who have a traditional cultural ***preference*** for living in caravans and who either pursue a nomadic habit of life or have pursued such a habit but have ceased ...'. You might think that this would have been a more helpful definition, although it would be hard to apply to NATs.

Is this an additional requirement?

Clarke - Burton J says that many gypsies/Romanies are prepared to live in bricks and mortar – each particular person must establish that he is not. And Court of Appeal talks about combination of gypsy status and cultural aversion to bricks and mortar (15).

An academic problem in terms of applications for planning permission – you should only be granting planning permissions under C1/2006 to people who cannot be accommodated in a house. If someone can be accommodated in a house you are entitled to say that he should not enjoy the privileged position of C1/2006. But if you have grant planning permission for a site with a condition saying that only gypsies can use it, do you allow someone who appears to be a gypsy but who has no cultural aversion to bricks and mortar to live on site?

Proof of gypsy status

[More]
Proof of gypsy status [DCLG letter] – form of evidence

Personal circumstances, human rights and discrimination

The gypsy's caravan is his home. Interfering with his enjoyment of his caravan involves interference with his A8 right (to respect for his home). It does not matter that the present site does not have planning permission and so the stationing of the caravan is unlawful

(Buckley v UK). Further the gypsy's A8 rights are engaged even if he is not actually on the site (eg is waiting in a layby) – see ...

Making an enforcement notice or refusing planning permission involves an interference. Human rights will not be in issue where no resident is identified or he is already on a lawful site.

The A8 right is qualified. An interference is acceptable (ie not a violation) if it falls within A8(2) and is proportionate. The protection of the environment and the upholding of planning policy (eg in the Green Belt) are aspects of the 'rights and freedoms of others'. On the other hand the strength of such justification is undermined if the local planning authority has itself failed to comply with planning policy on the provision of gypsy sites (Chichester DC v Secretary of State).

A8 is engaged simply by reason of the fact of the caravan. Personal circumstances are relevant if the consequence of a refusal of planning permission etc will be homelessness. If the gypsy is ill/pregnant/has children, homelessness will involve extra hardship. The obligation to consider personal circumstances was first articulated in R v Wealden DC ex p Wales ..., not a case dealing with human rights at all. Quite apart from A8 in this kind of situation personal circumstances are a material consideration of the ordinary kind. If you made a stop notice which required cessation of use for the stationing of caravans and you had not taken into account material considerations of this kind, your decision would be quashed.

Interference with human rights and the avoidance of hardship are relevant as reasons why planning permission should be granted. They are normally in issue in cases where there are countervailing reasons why planning permission should be refused. But if a site is in ordinary countryside and there are no site specific objections (visual, highways) development as a gypsy site ought to be acceptable – meaning that there is no need to do any balancing.

If human rights and personal circumstances are relied on the planning permission ought to be personal.

Where human rights and personal circumstances are in issue you have to ascertain what the particular circumstances are. The best practice is an interview utilising a pro forma questionnaire.

Race equality duty

English Romanies and Irish Travellers are (separate) racial groups for the purposes of the RRA.

See s71 RRA 1976 as amended and the rather unhelpful guidance in paragraph ... of C1/2006. This duty is relevant to planning decisions, especially enforcement decisions. If you breach it in a decision to serve stop notice, or take direct action, your decision could be challenged. See however R (Smith) v South Norfolk DC and R (McCarthy) v Basildon DC [**FIND Court of Appeal**]. A proper planning decision takes into account the particular vulnerability of gypsies and so has due regard to the relevant objectives.

MISC
C1/2006, **good practice criteria, conditions**
Case law

GTAA suggested 2 pitches for Wo – this was based on 59 coming fwd from other sources of supply
'South East Partnership Board' is recommending 21 net addl pitches 2006-2016
5 unauthorised sites
SIR – no outcome
Core Strat still emerging
Local plan pol allows gypsy sites in cside – is pre C1/2006 – no quantitative assessment
GTDPD programmed for adoption July 2011

6 monthly counts
Perhaps less important once a GTAA has been done
You prepare the 6 monthly counts. You have to count caravans; you will inevitably have to idify sites [cant count caravans otherwise]. You have to compete the return in the way the Govt wants – I'm not exactly sure what you are required to tell Govt.

The 6 monthly counts that are published are less detailed – merely state total number of caravans that are on public sites, lawful and unlawful private sites. Do not identify how many sites or how many caravans on each site.

Certainly in the past Inspectors were given the more detailed breakdown – rather unsatisfactory.

If you are appearing at inquiry make sure you have the more detailed information. A but embarrassing when Inspector knows more about your figures than you do.

They are usually wrong. Not unknown for an inquiry to be considering an unlawful site which has had x caravans for last 18 months – 6 monthly counts over relevant period show no unlawful caravans in district.

Do find out about the unlawful caravans. If on GOL should be quite easy – likely to be quasi permanent; trespass – likely to be transitory, and not indicateive of anything

Conditions – make it clear how many pitches and how many caravans per pitch. Inspector will allow one capable of being towed and one not capable of being towed. Legally there is no difference between a caravan and a mobile home. A twin unit mobile home is a caravan. 'Touring' is not a technical term. It has been held that 'static' is OK.

Enforcement notice – make sure it requires removal of fencing and hard standing (ancillary operational development). If you have a separate operational development enforcement notice harder to say that it is subject to 10 year immunity period.

Report to committee – more important to get this right if seeking authority for an injunction.