Implications of the new Planning Policy for hearings

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Overview

1. The interesting questions are how the Planning Policy will operate in various different situations – in the first year (ie before paragraph 25 applies) and then in subsequent years if you have or have not got a 5 year supply.

2. Before considering these I want to summarise what the Planning Policy says, beyond requiring you to assess and meet need.

Allocations, specific deliverable sites and broad locations for growth

3. C1/2006 said that a local planning authority had to meet the RSS pitch requirement by making allocations (paragraph 30) – it did not actually contemplate that grants of planning permission for 'windfall' sites would count against the requirement. The Planning Policy does rather the opposite: although it contemplates allocations, it does not actually say that you have to make them, even if there is an identified need. What it says is that there must be a supply of 'specific deliverable sites' for years 1-5 and 'specific developable sites' for years 6-10 and beyond. Specific deliverable sites and specific developable sites are defined, but not by reference to being allocated. A site which is allocated may or may not qualify as either. A site with planning permission is presumed to be deliverable (fn7). Your scoping exercise will produce specific deliverable sites.

4. Both kinds of site have to be specific. But as an alternative to specific developable sites for years 6-10, you can have 'broad locations for growth'. There has never been anything like this in gypsy policy before and I think that there are quite a few unanswered

questions here. It is a feature of general housing policy (NPPF paragraph 47 and 157). Are you supposed to make allocations here (you might think so, but allocations would require another adopted DPD). Maybe the idea is that the authority is just more relaxed about granting planning permission in such areas. After all, provided that the local planning authority has granted enough planning permissions at any particular time, it will probably have its 5 year supply of specific deliverable sites. Identifying a broad location for growth and then hoping that landowners make applications might be an attractive alternative to making allocations.

5. I have tried to imagine how a broad location for growth would be defined. The area between 2 settlements? The west of the borough? The area beyond the Green Belt? The only comparable policy I have come across is one saying that the authority will look favourably on extensions to existing sites: this means in total a very small area of land.

6. There is a final point to make about the difference with C1/2006. While specific sites which are deliverable or developable because they have or are likely to get planning permission can obviously be privately owned, I doubt whether much privately owned land ever was or will be allocated. Indeed one of the mysteries of C1/2006 was how allocations were going to produce places where gypsies could live – unless the land was publicly owned. (The matter was never really tested because so few allocations were actually made.) The assumption in C1/2006 was, frankly, that authorities would be using their own land to meet the RSS pitch requirement. Indeed paragraph 35, on how local planning authorities could identify specific sites and make land available, more or less said as much. This, of course, is exactly what GBC is doing. It may be that the current emphasis on sites with planning permission and broad locations for growth reflects a change.

A criteria based policy

7. A local planning authority must have a criteria based policy to guide allocations and to deal with what are no longer called ‘windfall’ sites.

8. The prohibition on certain criteria in Annex C of C1/2006 has gone. The criteria will obviously have to be consistent with what the Planning Policy says about the open countryside and the Green Belt (see below).

Open countryside

9. A local planning authority should 'strictly limit' sites 'in the open countryside' that is (i) away from settlements or (ii) 'outside areas allocated in the development plan' (paragraph 23).

10. I don't think much of the drafting. The 'or' must mean 'and'. These are not alternatives.

11. If we are talking about countryside away from settlements I do not think that 'open' adds anything.

12. What does 'outside areas allocated in the development plan' mean? If it simply means allocated sites, this is hardly worth saying. Does it cover the broad locations for growth? These aren't allocated, but it would make sense not to apply paragraph 23 here. Will a broad location have a precise boundary?

13. I think that paragraph 23 could be one of the most important changes effected by the Planning Policy. C1/2006 said that gypsy sites were in principle acceptable in rural areas (paragraph 54) and in Annex C one of the banned criteria was that site should not encroach into the countryside. It seems to me that paragraph 23 is saying the opposite. I suppose that 'strictly limit' contemplates a few permissions – but we all know that most sites which are likely to be the subject of planning applications will be in the open countryside away from settlements.

Preference for previously developed land?

14. When considering applications authorities should attach weight to the effective use of brown field or untidy or derelict sites (paragraph 24a). The NPPF says that polices and decisions should 'encourage the effective use of land' by re-using brownfield sites (paragraph 111). I think that this is supposed to signify protection for ordinary countryside. C1/2006 paragraph 55 said simply that the establishment of a gypsy site on previously developed land could positively enhance the environment. There is a change here, but I doubt if it will count for much.

Green Belt

15. We all know that the Government declared that it wanted to apply the Green Belt policy more strictly to gypsy sites – the Introduction to the draft PPS made the point that 60% of gypsy appeals in the Green Belt were successful as against 19% of minor housing appeals (paragraph 3.15). This was one of the reasons why C1/2006 was seen as being unfair. The only actual change is the removal of 'normally' from 'traveller sites … are inappropriate development'. The suggestion in the Introduction that this change makes any difference is completely disingenuous – gypsy sites are permitted in the Green Belt not because they are appropriate development but because Inspectors consider that very special circumstances are shown.

16. But I think that we can expect a change. It is significant that protecting the Green Belt from inappropriate development is now one of the aims of the Planning Policy (4). If you have a 5 year supply I don't think that a windfall site in the Green Belt should have much prospect of success. The real issue will be the attitude towards temporary planning permissions in the Green Belt.

AONB and local landscape designations

17. There is nothing in the Planning Policy about protecting these from gypsy sites. But the NPPF makes it clear that 'great' (not 'significant') weight should be given to conserving the landscape of AONBs (115). Also I think that, once again, authorities can have local landscape designations (109 – enhance 'valued landscapes', 113, 157 - 'identify land

where development would be inappropriate for instance because of its environmental ... significance'; 'contain a clear strategy for enhancing the natural ... environment'). Paragraph 53 of C1/2006 said that local landscape designations should not be used to refuse planning permission for gypsy sites.

18. I see that you regard 'countryside beyond the Green Belt' as a 'local land designation' (Ash Bridge report paragraph 18.21). This is not a landscape designation and so does not count for the purposes of NPPF paragraph 113. But any countryside counts for the purposes of paragraph 23 (see above).

Highways

19. I have no doubt that paragraph 66 of C1/2006 ('proposals should not be rejected if they would only give rise to modest additional daily vehicle movements and/or the impact on minor roads would not be significant') was designed to discourage highway objections to gypsy applications. This has gone.

Rural exception sites

20. This is continued from C1/2006. I have never really understood the policy about rural exception sites in the context of gypsies. I thought that the point about a rural exception site for housing was that the authority found a site outside the built up area of a village (where it would not normally permit housing) and allowed housing as an exception to the countryside policy so that it could provide affordable housing to meet a specific local need. To what would a gypsy site be an exception? Is the provision supposed to be limited to public sites? If not, in what sense will the pitches be affordable? How is a public site going to meet a specific local need? I see that you contemplate using your rural exception sites policy to allow you to treat an application for a site in the Green Belt as not being in conflict with the Local Plan (Oct 2011 report paragraph 3.36). So maybe the policy does have some usefulness.

21. I now turn to consider how these policies will interact with paragraph 25.

March 2012 – March 2013

22. Paragraph 25 does not apply. In theory authorities can operate their policies according to their terms. In your case you have your old criteria based policy H13 (which may suddenly have become fairly up to date) and the policies on the Green Belt/the countryside beyond the Green Belt.

23. The problem is that you know that paragraph 25 is coming. If an authority is certain that it will have a 5 year supply (or that it will not need any supply) it will obviously disregard the imminent operation of paragraph 25. But if it knows that it is not going to have a 5 year supply after March 2013, it will know that a particular site is likely to get temporary planning permission thereafter. Suppose that site comes forward before March 2013. It seems obvious to me that the certainty of paragraph 25 taking effect is itself a material consideration (like the abolition of RSS in *Cala Homes* no2). There will come a time fairly soon when it is inevitable that any appeal against a refusal will be heard after March 2013.

24. The reality is that paragraph 25 is already casting its shadow. Logically this should mean the grant of all the kinds of temporary planning permission which seem likely after March 2013.

Post March 2013 – if you have a 5 year supply

25. The position is in theory perfectly straightforward. You apply your criteria based policy to any applications which happen to be made. There is no general unmet need to be taken into account because this has been assessed and the first 5 years' worth is being met. The personal needs of the applicant will be a consideration, but (in theory) the authority may be able to say that alternative sites are available to him – ie one of the specific deliverable sites.

26. Presumably the authority has to strictly limit new sites in the open countryside away from settlements etc and avoid inappropriate development in the Green Belt. This suggests to me that, where authorities have a 5 year supply, they will win in relation to many sites which are currently lost on appeal. This is not saying a great deal: authorities would probably have won a good many appeals under C1/2006 if they had met the RSS pitch requirement.

Post March 2013 - if you don't have a 5 year supply

27. I start with a word about what is required for a 5 year supply. It obviously requires a definitive assessment of need over a period of time. I would have thought that nothing less than an adopted DPD will really do – but what will really count is the supply of sites. If an authority has more specific deliverable sites than the figure for the next 5 years is likely to be, when some figures are adopted, I would have thought that it was obvious that it had a 5 year supply.

28. What about an allocation in an emerging policy? What matters is whether the site is 'deliverable'. The definition suggests a site specific assessment. Depending on the stage that has been reached, I would have thought that an allocation in an emerging DPD could signify that, as far as the authority is concerned, if an application were to be made in relation to it, planning permission would be granted.

29. Apparently a Local Plan 'can be reviewed in whole or in part to respond flexibly to changing circumstances' (NPPF paragraph 153).

30. Where there is no 5 year supply the material consideration in favour of temporary planning permission is going to be weighty, see above. Logically it should be capable of outweighing other objections – eg to the fact that the site is in the open countryside away from settlements. It should also be capable of contributing to very special circumstances in relation to a Green Belt site. But I wonder about this. Protecting the Green Belt from inappropriate development is now said to be one of the aims of the Planning Policy (see above). I am sure that the 60% includes temporary planning permissions. Granting every Green Belt site a temporary planning permission because there is no 5 year

supply is not protecting the Green Belt from inappropriate development. Paragraph 88 of the NPPF says that 'substantial' (not 'significant') weight should be given to 'any' harm to the Green Belt – which can include harm by reason of inappropriateness.

31. There is another point. The invariable reality is that temporary planning permissions allow gypsies who has already moved onto land – in breach of planning control - to stay put until need is addressed, ie temporary planning permissions are granted in response to retrospective applications. I have certainly not come across a temporary planning permission granted under C1/2006 for an empty site on a prospective, speculative application. Paragraph 2.16 of the Introduction said that the Government 'will not tolerate abuse of the planning system by the small minority of travellers who set up unauthorised developments which create … resentments against the overwhelming majority of law-abiding travellers who do not live on unauthorized sites.' The draft PPS was presumably intended to give effect to this: it did not differ materially from the Planning Policy (there was an equivalent of paragraph 25). Won't almost all of those who seek the benefit of paragraph 25 be part of this 'small minority'? Was this just rhetoric?