The new Planning Policy – reassessing need and suitable locations for sites

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Introduction

There are 6 main points in the new Planning Policy.

1. First, local planning authorities still have to have a development plan policy for gypsy sites. This has to be based on an assessment of need. Local planning authorities are free to assess need however they wish, but the assessment must have a robust evidence base capable of withstanding scrutiny at an examination. The need should be assessed over a 10-15 year period.

2. Second, if the assessment reveals a need for more pitches, the authority has to find a five year supply of 'specific deliverable sites'. This will need to be recalculated each year. By way of imposing a sanction if this advice is ignored, paragraph 28 states that if, at any time after March 2013, there is no 5 year supply, this fact should be a 'significant material consideration' in favour of the grant of temporary planning permission.

3. Third, the new Planning Policy says that for years 6-10 there must be a supply of 'specific developable sites' or 'broad locations for growth'.

4. Fourth, authorities have to have a criteria based policy to guide any allocations which they may need to make and also to provide a basis for determining what are no longer called 'windfall' applications.

5. Fifth, the new Planning Policy is supposed to make it harder to get planning permission for gypsy sites in the Green Belt. Protecting the Green Belt from inappropriate development is one of the aims of the Planning Policy.

6. And finally, dealing with ordinary countryside, paragraph 23 says that 'local planning authorities should strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan'.
7. There are a few other odds and ends dealing with particular types of land.

8. In this paper I concentrate on -

    a. the first aspect, specifically the invitation to reassess need; and

    b. the fifth and sixth aspects, with a view to explaining where acceptable specific sites and broad locations for growth might be found.

Reassessing need

9. At first sight a significant feature of the new Planning Policy is the freedom given to local planning authorities as to how need should be assessed. The manner of assessment is not addressed at all in the Planning Policy: the Introduction and the Impact Assessment state that the absence of prescription means that a local planning authority is not required to base its assessment of need on the GTAA. It is free to adopt some alternative assessment, provided this constitutes a robust evidence base which can withstand scrutiny at an examination.

10. This freedom is in conspicuous contrast with C1/2006. It is consistent with localism. But is it an illusion?

The GTAA and its purpose

11. The GTAA is the assessment of the accommodation needs of gypsies and travellers required under s225 of the HA 2004, and is an aspect of the general obligation to review housing need under s8 of the HA 1985. These legal obligations remain. They come from the Housing Acts and bind housing authorities and so clearly relate to matters beyond planning, although what matters exactly are unclear to me.

12. There is 2007 guidance on how a GTAA should be conducted.

13. The GTAA will, among other things, assess the number of extra pitches which are required. Under C1/2006 this was treated as the requirement to be identified in planning policies. Certainly the Guidance (which remains current) assumes that the GTAA pitch requirement will be the one used in DPDs (see paragraphs 10 (new planning system), 11 (RPBs and Inspectors), 12 (accommodation needs of gypsies and travellers should be addressed through the planning framework and housing strategy), 21 (GTAA will enable local authority to produce one combined strategy for addressing accommodation needs), 36 (GTAAs should provide data to inform allocations in DPDs and pitch requirements in RSSs), 100 (part of evidence base underpinning LDF), 101 (will be component of RSS)). In addition there are two pre-2012 cases which have considered the purpose of GTAAs (*McCann v Secretary of State* [2009] EWHC 917, *Wingrove v Secretary of State* [2009] EWHC 1476). These confirm that the purpose is to inform development plan making.

14. (I should add that there is a different, wider definition of 'gypsy or traveller' for the purposes of a GTAA. It includes those with a cultural tradition of nomadism or of living in a caravan. This produces the bizarre result that someone might be assessed as needing a pitch under the GTAA but then banned from living on it, when provided, by a condition based on the policy definition.)

So where are we now?

15. Authorities are now being told that they do not have to rely on the GTAA for the purpose of their LDFs. But authorities still have to do a GTAA and to come up with a pitch requirement in it. If they are free to adopt a different approach for the purposes of the LDF, what are they supposed to do with the GTAA pitch requirement? It will be part of the housing strategy, but how is the LHA supposed to achieve it if planning policy does not accept it? In short if, you are not obliged to use the GTAA for the purpose of plan making, what is the point of the continuing obligation to do a GTAA?

16. Also there are clear instructions in the Guidance about how the pitch requirement is to be assessed for the purpose of a GTAA. It is said that it is unlikely that existing data will be sufficient (64) and that a specialist survey and or qualitative research must be carried out (65). The Guidance explains how the number should be calculated – you look at the number on the waiting list, the number on unauthorised encampments and existing pitches which are overcrowded; you assume that the entire gypsy population will increase at a rate of 3% pa; you are supposed to be able to work out how many gypsies in housing have a 'need' for a pitch; you are expected to assess 'new households expected to arrive from elsewhere' (!). The Guidance is not prescriptive, but the GTAA will inevitably address these points in one way or another.

17. Authorities which assess need in some non-GTAA way for the purposes of their DPD target will still have the GTAA pitch requirement, which will have addressed these points. If the non-GTAA DPD exercise says 10 but the GTAA says 12, the GTAA will provide a basis for attacking the DPD exercise – ie for saying that it does not have a robust evidence base. Surely departing from the GTAA is asking for trouble.

18. I should add that there is not a word in the Planning Policy or the Impact Assessment about how the DPD assessment can properly differ from the GTAA assessment, still less about what elements of the GTAA guidance can be ignored.

Timing

19. Then there is a point about timing. I do wonder whether the DCLG is actually familiar with the LDF system which it is supposed to be responsible for. It doesn't even call things by their proper names. We seem to have gone back to 'local plans'.

20. Where is an authority going to state its pitch requirement? In the days of RSS this question did not really arise. The RSS stated the requirement. It seems obvious to me that now the pitch requirement needs to be stated in an *adopted* DPD. I think that the Government accepts this. It keeps saying that the pitch requirement must be based on a 'robust evidence base'. A robust evidence base is needed when an authority is getting a DPD adopted.

21. Existing adopted local policy will be in Core Strategies. Core Strategies will have assumed/accepted the RSS pitch requirement. Some will have quoted final figures. Replacing this obviously requires a new *adopted* DPD. Presumably until the new DPD is adopted the Core Strategy remains.

Suitable locations for sites

A different approach to the Green Belt?

22. 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 normally inappropriate development'. The suggestion in the Introduction and the Impact Assessment 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.

23. 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). Permitting a gypsy site in the Green Belt will now be in conflict with one of the aims of national gypsy policy. This was not the case with C1/2006.

24. Where there is a 5 year supply a windfall site in the Green Belt will not have much prospect of success. The real issue will be the attitude towards temporary planning permissions in the Green Belt if there is no 5 year supply.

Temporary planning permissions in the Green Belt

25. The NPPF says that harm to the Green Belt will be given 'substantial weight'. The absence of a 5 year supply is said to be a 'significant material consideration' in favour of a grant of temporary planning permission. Paragraph 46 of C1/2006 said that 'substantial weight' should be given to unmet need. You might think that there is something of a reduction here and you might wonder how a balance between harm of 'substantial weight' and a 'significant material consideration' in favour of planning permission would come down. Also protecting the Green Belt from inappropriate development is now one of the *aims* of the Planning Policy. I am sure that the 60% success rate which Mr Pickles wants to reverse included many temporary planning

permissions. Granting a Green Belt site a temporary planning permission because there is no 5 year supply is frankly not protecting the Green Belt from inappropriate development.

AONBs and locally designated areas

26. There is nothing in the Planning Policy about protecting these from gypsy sites. But the NPPF makes it clear that 'great' weight should be given to conserving the landscape of AONBs (115).

27. 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').

28. Paragraph 53 of C1/2006 said that local landscape designations should not be used to refuse planning permission for gypsy sites. This has gone.

Sites 'in the open countryside' away from settlements

29. 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).

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

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

32. I am unclear what 'areas allocated in the development plan' is supposed to mean in this context. If it simply means allocated sites, you might think that it was hardly worth saying that you should strictly limit new traveller sites in the open countryside unless the land has been allocated. Actually I think that this may be a rather clever

way of saying that a local planning authority should not feel constrained about making *allocations* in remote open countryside: what it should not do is grant planning permission for windfall sites in such locations. Paragraph 23 is in that section of the Planning Policy headed 'decision-taking', not the section headed 'plan-making'. You might think that it is rather odd that an authority should be free to allocate land in the open countryside for gypsy sites but must strictly limit the grant of windfall applications there. But there will undoubtedly be occasions when an authority can only achieve its 5 year supply by making allocations. Every one knows that if there are going to *have* to be new gypsy sites, they will invariably be in the countryside, and preferably not right next to settlements.

33. Despite these quibbles 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. Also Annex C provided that criteria based policies should not say that sites should not encroach into the countryside. It seems to me that paragraph 23 is saying the opposite. 'Strictly limit' presumably contemplates a few permissions – but we all know that *most* windfall applications relate to sites in the open countryside away from settlements.

Unsustainable locations and sites with highway problems

34. Paragraph 64 of C1/2006 emasculated any requirement that the location of a gypsy site should be sustainable in any real sense – it meant that a lawful gypsy anywhere had sustainability benefits. This has gone.

35. Paragraph 66 of C1/2006 said that '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'. This was clearly designed to discourage highway objections to gypsy applications and was relied on extensively at gypsy inquiries when highway objections were raised. This has also gone. Authorities should treat the highway implications of gypsy sites in the same way as the highway implications of any other kind of development.

Previously developed land

36. I think that there is a preference for previously developed land. Paragraph 24(a) says that when considering applications authorities should attach weight to the effective use of brown field or untidy or derelict sites. Also paragraph 111 of the NPPF says that polices and decisions should 'encourage the effective use of land' by re-using brownfield sites. I think that this is supposed to signify protection for greenfield sites and therefore ordinary countryside: this is certainly what many lobby groups seem to believe. C1/2006 paragraph 55 said simply that the establishment of a gypsy site on previously developed land could positively enhance the environment: I regard this as a truism of no real significance.

37. So I think that there is a change in policy – but I doubt whether it will be of much significance. I have never come across a case where a local planning authority is able to identify an alternative *previously developed* site for a gypsy to use.

Criteria based policies

38. The Planning Policy requires authorities to have a criteria based policy to provide guidance for allocations and windfall applications. Criteria based policies were invented by C1/94 and not a few of the policies formulated *before* C1/2006 still survive. A good many of these were in conflict with C1/2006, especially in relation to development in the countryside and in unsustainable locations, and in the period between February 2006 and March 2012 were out of date. But these old policies have once again become up to date – which is of course important for the presumption in the NPPF.

'Broad locations for growth' for years 6-10

39. As an alternative to specific developable sites for years 6-10, authorities 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.

40. Broad locations for growth are a feature of general housing policy (NPPF paragraph 47 and 157).

41. What is supposed to happen in a broad location for growth? Are you supposed to make allocations here - you might think so, but allocations would require another adopted DPD – so you would have one DPD identifying the broad locations for growth and another actually identifying the sites. 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.

42. 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? Fixing on locations like this strikes me as capricious.

43. The only existing policies I have come across which identify areas rather than specific sites for new gypsy pitches are ones saying that the authority will look favourably on extensions to existing sites or sites (usually for transit pitches) along a particular road corridor: these do not involve very broad locations and so are not useful precedents.

Publicly owned land

44. C1/2006 said that a pitch requirement had to be met by making allocations – it did not suggest that actual grants of planning permission would satisfy the requirement – even though this is what most authorities actually relied on. The emphasis in the Planning Policy is on specific deliverable sites, specific developable sites and broad locations for growth. A site with planning permission is presumed to be deliverable (and therefore developable). A site which is merely allocated site may or may not be deliverable or even developable.

45. Sites with planning permission will be either publicly or privately owned. Most land in a broad location for growth will be privately owned. I doubt whether much privately owned land ever was or will be allocated. One of the mysteries of C1/2006 was how allocations were going to produce places where gypsies could live – unless local authorities used their own land (and paragraph 35 more or less said as much,

although the matter was never really tested because so few allocations were actually made). And if the allocated land was publicly owned, was it really imagined that it would be sold off to the gypsies? If it remained in the ownership of the public authority, presumably you would be talking about a new public site. So maybe C1/2006 was really an attempt to achieve something like the old statutory duty to provide an adequate number of *public* sites.

46. I am certain that the new Planning Policy is not trying to achieve this. Most planning permissions which have been granted in the last 18 years have been on private land. I suspect that the majority of sites which will make up 5 year supplies will not be allocations and will be privately owned.