

## **Scrutinising the assessment of need – requirements of the PPTS vs reality**

Richard Langham, Landmark Chambers

1. It is a feature of gypsy planning policy that the Government says one thing and local planning authorities do another. C1/1994 required quantitative assessments of need and the identification of sites 'wherever possible'. C1/2006 required 'allocations' (and nothing else) to meet the RSS pitch requirement and had an entire section on how Inspectors would examine gypsy sites allocations DPDs. I wonder how often that policy was applied. It seemed to contemplate emergency allocations DPDs, in advance of Core Strategies. I wonder how many of those there were. Now the PPTS says that local planning authorities are free to make their own assessments of need but that the assessment, which will be the basis for the computation of the 5 year supply, should be the subject of examination. In this talk I consider whether these aspects of the PPTS are likely to be reflected in reality.

### **Making the assessment**

2. Freedom to assess need in some way other than by a GTAA was a major feature of the Mr Pickles' new approach, being a clear example of localism as opposed to top-down dictat. It was highlighted in the August 2010 letter which accompanied the purported revocation of RSS – and not a few authorities immediately leapt on the freedom to depart from single issue review figures. This aspect of the proposed policy was commented on at length in the Introduction to the draft PPTS in April 2011. The PPTS itself says that local planning authorities should make their own assessment of need (4) which must have a 'robust evidence base' (6(c)). GTAAs are not mentioned in the PPTS at all. The freedom of authorities to make their own assessment of need is emphasised in the Impact Assessment. But is this freedom more apparent than real?

3. 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.
4. 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. Also the 2007 Guidance on GTAAs (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-PPTS 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.
5. I should add in passing that, despite this, 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 PPTS definition.
6. But authorities are now told that they do not have to rely on the GTAA for the purpose of their planning policies. Of course they 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 purpose of their planning policies, 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 an authority is not obliged to use the GTAA for the purpose of plan making, what is the point of the continuing obligation to do a GTAA?
7. 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 should 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.

8. Authorities which assess need in some non-GTAA way for the purpose of their planning target will still presumably have their GTAA pitch requirement, which will have addressed these points. If the non-GTAA planning exercise says 10 but the GTAA says 12, the GTAA will provide a basis for attacking the planning exercise – ie for saying that it does not have a robust evidence base. Surely departing from the GTAA is asking for trouble.
9. I should add that there is not a word in the PPTS or the Impact Assessment about how the planning assessment can properly differ from the GTAA assessment, still less about what elements of the GTAA Guidance can be ignored. I have not come across a needs assessment which does not purport to be a GTAA. Quite a few depart from the instructions in the Guidance in quite egregious ways, something I touch on below. Perhaps this is how the freedom in the PPTS will be enjoyed.

### Scrutinising the assessment

10. What is of central importance to the PPTS, especially now that we are in March 2013, is the 5 year supply. To compute this an authority needs a numerical pitch requirement. The PPTS says this must ‘inform the preparation of Local Plans’ and be founded on a robust evidence base (6(c)). I would have thought that this made it fairly clear that the pitch requirement has to be scrutinised at a Local Plan examination: how else do you ascertain whether the evidence base is robust? The point is made clear beyond any doubt in the Impact Assessment which states on six separate occasions that this is indeed so. It is this requirement for scrutiny that I want to consider now.

11. I start with three obvious points. First, the assessments need scrutinising. There is often scope for suggesting that GTAA's (or whatever) underestimate the need for pitches. Scrutiny at EIPs certainly highlighted short comings. In a real case a GTAA said that, in a district with 20 pitches on an existing public site, there would be a 'turnover' of 3 of these each year. This was assumed to amount to a supply of 21 pitches over the 7 years of the assessment - with the result that the authority was told that it has no need to make any allocations. The GTAA ran from 2008 to 2015. Looked at in 2013 the assumed turnover means that three quarters of the actual 2008 gypsy population of the public site should already have vanished (died/left/ceased to be gypsies). Indeed the 21 assumes that there will be one existing pitch will have mopped up the need for two new pitches in the seven year period. The 2007 Guidance has a worked example which assumes an annual turnover of 5 pitches out of 500 existing pitches. I would have said that this GTAA was asking for scrutiny. Irrational turnover figures were mentioned in the highly critical unfinished report of the East of England single issue review Panel which was extracted by a FOI request.
  
12. Second, the question of scrutiny was never really an issue under C1/2006. Under C1/2006 it was axiomatic that the assessments of need would be scrutinised – at the single issue review EIP. Indeed there were usually only two issues at the EIP – the adequacy of the GTAA's and the distribution of the pitch requirement.
  
13. Third however, under the PPTS the requirement for the next 5 year has to be met with a supply of 'specific deliverable sites'. A site with planning permission is presumed to be a specific deliverable site. This presumption does not apply to allocations, although if an authority does not have enough sites with planning permission, its only option is to make allocations. (This approach is in notable contrast with that under C1/2006.) Allocations obviously require a DPD – but just granting planning permissions does not. If an authority has an allocations DPD it will be creating an opportunity for scrutiny of the underlying assessment of need. In fact there has always been a distinct reluctance to promote allocations DPDs – especially when you bear in mind that under C1/2006 every authority was supposed to have one. You quite often hear about allocations DPD which are at the issues and options stage, but I have not actually come across one that has got as far as an examination (I am not suggesting that this has not happened, just that it is not common). And now, as I have said, authorities have an alternative to making allocations.

14. How else might the examination take place? A development management DPD (or equivalent) which sets out the mandatory criteria based policy will not provide the forum for debating the assessment of need. On the other hand, a Core Strategy (or equivalent) certainly ought to address the requirement to make adequate provision for gypsies and ought to state what number of pitches are required over the life of the strategy. You would certainly think that a Core Strategy (or equivalent) *being examined now* would have to do this. But Core Strategies first became a requirement in 2004 and many were adopted long ago. As we will see very little scrutiny of the need for gypsy pitches may in fact have taken place.
15. Core Strategies adopted before May 2010 If the Core Strategy was adopted before 2010 it will merely recite that it is proposed to comply with the single issue review. If the Core Strategy followed the completion of the single issue review the Core Strategy will presumably recite the single issue review numbers which will have been scrutinised. But there are plenty of pre-2010 Core Strategies where this will not be the case. In the South East, the West and the West Midlands the single issue review was never completed. In Humber and Yorkshire (for reason which I cannot fathom) no single issue review was even started. These four ex-Regions must account for about half the country: no pre-2010 Core Strategy in these areas could refer to any single issue review figures. Pre-2010 Core Strategies in other ex-Regions which were adopted before the relevant single issue review was completed will also have no numbers.
16. If the Core Strategy has single issue review numbers, and the authority is not proposing to depart from them, I suppose you can say that the requirement for scrutiny has been complied with, after a fashion. But if the Core Strategy has no numbers, and the RSS are now being abolished, to what is the authority committed?
17. Core Strategies adopted since May 2010 Since the election there has been no automatic assumption about the approach to be taken to ascertaining the pitch requirement. So Inspectors at examinations have required some express provision in relation to gypsy sites. But in fact they have taken varied approaches where a post-election Core Strategy does not clearly state a numerical target, such as could be the basis for the computation of a 5 year supply. In particular there is a preparedness to allow the question to be addressed in an allocations DPD or a later local plan.

18. By way of a straw poll designed to give some idea of how much assessment is actually taking place, I have looked at the position of four authorities which I have had some involvement with, in different ex-Regions. I am not suggesting any scientific basis for the selection, but I suspect that they actually give quite a good impression of what is going on.

19. Authority 1 in South East The Core Strategy was adopted in 2007. The RSS was never completed. The Council has been thinking about having an allocations DPD for a number of years (presumably about seven) and is now promoting a DPD specifically for gypsy sites which has reached the preferred options stage. This recites that the Council had been waiting for the RSS pitch requirement, that a GTAA in 2007 had suggested a need for 39 pitches for 2006 – 2011, that the RPB's submission RSS had suggested 50 pitches for 2006 – 2016 and that the Council has now carried out a further study. It turns out that the 'further study' has merely accepted the 2007 GTAA figure of 39 without any elaboration. Consistently with this the preferred options document identifies land for 41 pitches, which I suppose is something. The document says that -

This document, therefore, seeks to identify specific sites through a plan-led process which would *fulfil those needs previously identified, that to date have not been met*, as well as providing some flexibility, in terms of numbers and timing, to allow the Council to carry out an up-to-date needs survey, set formal targets and develop a new strategic policy through the ... District Planning Framework.

20. The need to 2011 was for 39 pitches. So I suppose the two extra is the 'flexibility' while the Council assesses need post-2011.

21. When the DPD gets to an examination there will, at long last, be some scrutiny of something – an assessment made in 2007 fixing a requirement that should have been met by 2011. How can that be the basis of the computation of a 5 year supply – ie the supply required for 2013-2018? There has not been any scrutiny of anything thus far.

22. Authority 2 in the East of England A Local Plan was adopted in 2005, before C1/2006. The RSS was completed and imposed a requirement of 18 pitches 2006-2011. Within a few weeks of the election the Council promoted a Core Strategy which recited that the RSS had been abolished and made no provision for any particular number of extra sites. It merely allowed for expansion and relocation of existing sites. The only need acknowledged was 'to cater for household formation within the existing gypsy community ...'. The fate of a large unauthorised site (which might be thought to have implied a need for a specific number of additional pitches) was 'to be considered as part of a Site Allocations DPD (on the basis that a new site may be needed for relocating gypsies) ...'. The Inspector, writing in September 2011, stated that the Core Strategy failed to comply with C1/2006 in that it failed to translate the RSS pitch requirement into allocations 'nor delegates their allocation to a lower level DPD ... In the absence of any contrary evidence about need, the Core Strategy should set out a commitment to meeting the EEP requirement in a Site Allocations DPD'. He made a few similar choice comments about other bits of the Core Strategy. The Council expressed itself to be 'deeply disappointed' with his report and 'decided in July 2012 not to adopt the Core Strategy and to instead prepare a new Local Plan that combines strategic policies and site allocations'. A draft will be published in May 2013. Local policy remains the saved policies of the 2005 Local Plan.

23. I suppose there may have been some scrutiny of something at the Core Strategy examination, although this is not reflected in the Inspector's report. But what scrutinised assessment is going to be the basis of the computation of the 5 year supply? You will note the preparedness to allow the matter to be 'delegated to a lower level DPD'.

24. Authority 3 in the South West The RSS was completed; it imposed a requirement for 2006-2011. The Council more or less satisfied this. The Council carried out a fresh GTAA in autumn 2010 which recommended 25 pitches for 2010-15 and 19 for 2015-2020. The post-election Core Strategy accepted these figures, with a commitment to carry out a further assessment (in relation to these periods) and to promote an allocations DPD. The Inspector's report was June 2012. The Inspector stated that 'the Council have acknowledged that the plan is not consistent with the [PPTS] in that it does not demonstrate a 5 year supply or identify longer term needs. It is accepted that this is a matter which will need to be addressed in a subsequent

Local Plan and that it would not be appropriate to delay adoption of this Core Strategy while further work is undertaken.’ The Core Strategy has been adopted.

25. I suppose that there could have been scrutiny of the figures at the examination, but this is not suggested in the Inspector’s report and the stance of the Council rather suggests that the issue has simply been deferred.
26. Authority 4 in Yorks and Humber There was never a single issue review. The pre-C1/2006 RSS just had indicative figures. The Core Strategy was adopted in 2007 and a Development Policies DPD was adopted in 2008. The only policy on gypsies is a criteria based policy. Text in both plans states that an allocations DPD will address the particular needs of gypsies, although without suggesting any numbers. The Council and other authorities commissioned a joint GTAA which was published after the adoption of the two plans. This is the GTAA which I mentioned earlier, which assumes that gypsies just vanish, and which only requires a handful of additional sites. The Council now says that it expects grants of planning permission to satisfy the small GTAA requirement and has abandoned any intention to have an allocations DPD.
27. It seems to me that in this case the Council is attempting to plan for gypsies entirely outside the development plan system. This cannot be lawful, but since the unlawfulness flows from the absence of action, it would be very difficult to mount a direct legal challenge. An advocate for a gypsy at a planning inquiry against that authority ought to enjoy himself, however.
28. In none of the above cases can it be said that the numbers which will be the basis for the supply required for 2013-2018 have been scrutinised.

*This seminar paper is made available for educational purposes only. The views expressed in it are those of the author. The contents of this paper do not constitute legal advice and should not be relied on as such advice. The author and Landmark Chambers accept no responsibility for the continuing accuracy of the contents.*