

Decision Maker: DEVELOPMENT CONTROL COMMITTEE

Date: Tuesday 25 November 2014

Decision Type: Non-Urgent Non-Executive Non-Key

Title: RESPONSE TO DCLG CONSULTATION : "PLANNING AND TRAVELLERS"

Contact Officer: Gill Slater, Planner (Planning Strategy Team)
Tel: 020 8313 4492 E-mail: Gill.Slater@bromley.gov.uk

Chief Officer: Chief Planner

Ward: (All Wards);

1. Reason for report

The Department for Communities and Local Government (DCLG) published a consultation in September 2014 on changes to the Planning Policy for Traveller Sites (PPTS) issued in March 2012 alongside the National Planning Policy Framework (NPPF). This report sets out issues that are raised by the proposed amendments and recommended responses to the DCLG consultation are included in Appendix 1.

2. **RECOMMENDATION(S)**

That Members endorse the proposed responses set out in Appendix 1 as the Council's response to DCLG.

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Excellent Council Quality Environment:
-

Financial

1. Cost of proposal: Not Applicable:
 2. Ongoing costs::
 3. Budget head/performance centre:
 4. Total current budget for this head: £
 5. Source of funding:
-

Staff

1. Number of staff (current and additional):
 2. If from existing staff resources, number of staff hours:
-

Legal

1. Legal Requirement: Statutory Requirement:
 2. Call-in: Not Applicable:
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments:

3. COMMENTARY

3.1 The Consultation advises that the Government remains committed to increasing the level of authorised traveller site provision in appropriate locations to address historic undersupply as well as to meet current and future needs but is concerned that it is not providing sufficient protection for sensitive areas and the Green Belt. The consultation also seeks views on the approach to be taken where travellers have ceased to travel and on the unauthorised occupation of land. Additionally further draft guidance is provided in respect of assessing traveller accommodation needs.

Bromley

3.2 The Bromley “Gypsies & Travellers and Travelling Showpeople Accommodation Evidence Base” was produced in-house in 2013. It was published to support the “Local Plan :“Options and Preferred Strategy” consultation in March 2013 and updated Feb 2014 to support the “Local Plan :Draft Policies and Designations”. The proposed approach to assessing travellers needs set out in the DCLG consultation endorses the approach taken by Bromley.

3.3 In response to national guidance and the local evidence base the Council has set out its approach in the two public consultations – “Options and Preferred Strategy” March 2013 and “Draft Policies and Designations” Feb 2014.. The Council’s emerging Local Plan seeks to address need through the allocation, as “Traveller Sites” (in line with the Government’s Planning Policy for Traveller Sites [PPTS]) of existing sites within the Borough, including a number of private sites which have been occupied, with the benefit of a series of temporary permissions, for a decade or more.

3.4 Whilst some elements of the DCLG consultation are welcomed there are concerns that the alteration may result in a range of unintended consequences, weakening the Councils ability to address need as it has proposed, and having resources implications for the Council.

3.5 The suggested responses are set out in Appendix 1 and Members are asked to endorse these for submission to DCLG.

Non-Applicable Sections:	Policy, Financial, Legal and Personnel implications
Background Documents: (Access via Contact Officer)	“Planning Policy for Traveller Sites” “ Bromley - Gypsies & Travellers and Travelling Showpeople Accommodation Evidence Base”

2. Ensuring fairness in the planning system

Q1 – Do you agree that the planning definition of travellers should be amended to remove the words or permanently to limit it to those who have a nomadic habit of life? If not, why not?

Comment No

Given the limitations of the change, set out in the consultation, its useful application in Bromley will be negligible, whilst adding additional resource burdens.

The consultation documentation advises that

- *“Where cases involve families in which some members do not travel, it may continue to be appropriate to grant permission for traveller sites on the grounds that it is proportionate to do so, and would be an interference with the family’s Human Rights to limit the permission to particular family members only.”* To break up the accommodation of family groups on grounds of definition may increase the demand for separate accommodation and care. The advice on this point is welcomed.
- the proposed change in guidance does not affect those who have ceased to travel temporarily, however, there is no clarity about the definition of “temporary cessation”. The Planning Officers Society have highlighted that this distinction will be very difficult to apply in practice. Determining that a traveller family has permanently ceased to travel would be resource intensive and likely to be challenged. The Council would have concerns about such an additional burden on resources.

Q2 – Are there any additional measures which would support those travellers who maintain a nomadic habit of life to have their needs met? If so, what are they?

Comment

The Government wishes to support those who travel and is seek views on further measures to facilitate their nomadic habit of life. For example, through the use of conditions which ensure that transit sites are available at certain times of the year for travellers to occupy on a temporary basis. Although it acknowledges that this would be a matter for the local authority.

In London individual travelling families will pass through several boroughs. Whilst Bromley’s emerging Local Plan seeks to meet the needs of travellers for residential pitches, it proposes a sub-regional approach to the provision of transit pitches. Draft Policy 5.12 Traveller’s Accommodation” (Local Plan : Draft Policies and Designations document Feb 2014) advises *“With regard to the need for transit pitches the Council will work with the sub-region to secure their provision in an appropriate location within the sub-region”*

During the development of the London Plan 2011, it was recognised that relatively few plots for travelling show people and transit sites were likely to be required and therefore a sub regional approach to the provision of both was advanced by the GLA. Bromley has a significant travelling showpersons site and hence suggested that the provision of both these sub regional requirements should not rest with one borough.

The consultation asks about the potential effects on the traveller community but neglects to ask about the impact on the settled community. The provision of appropriate transit sites would benefit both communities by reducing unauthorised encampments which are unsatisfactory for both the travelling and settled community and result in costs to the Council.

Q3 – Do you consider that a) we should amend the 2006 regulations to bring the definition of “gypsies and travellers” into line with the proposed definition of “travellers” for planning purposes, and b) we should also amend primary legislation to ensure that those who have given up travelling permanently have their needs assessed? If not, why not?

Comment

The question relates to the Housing(Assessment of Accommodation Needs) (Meaning of Gypsies and Travellers) (England) Regulations 2006

See response to Qu1 which outlines the resource and possible legal implications for negligible benefit. However, if the amendment to the planning definition is made it is assumed that the needs of those who fall outside that definition be assessed in the same way as the settled community, through the Housing Needs Assessment.

3. Protecting sensitive areas and the Green Belt

Q4 – Do you agree that Planning Policy for Traveller Sites be amended to reflect the provisions in the National Planning Policy Framework that provide protection to these sensitive sites? If not, why not?

Comment No

Bromley has proposed, through two periods of public consultation, to address the traveller need through the designation of existing Traveller Sites within the Green Belt, in line with para 15 of the PPTS as currently set out, changes to para 15 would affect Bromley’s plans to address the existing need within the Borough as it sees fit, in line with existing policy. It is not clear from the initial draft list of bullets how the final guidance will look.

Bromley’s approach has been taken to assist the Council in addressing the existing need from established sites and to enable it to robustly defend the Green Belt against further traveller development. The emerging Local Plan policy has been the subject of public consultation with no local objection and makes it clear that new traveller sites, beyond those proposed to be allocated through the Local Plan to address existing need, will not be acceptable within areas of constraint, including Green Belt.

The Council is concerned that the deletion of para 15 of the PPTS will undermine its locally endorsed approach to addressing the needs of existing established travellers within the Borough who are established on their own private land.

Whilst the Council has put out a call for sites no new non-Green Belt sites have been suggested to meet traveller needs. The Council is currently undertaking a full assessment of the potential of all sites submitted to meet a range of needs but any new allocation on alternative non Green Belt sites elsewhere in the borough would involve the relocation of the traveller families disrupting primary education and would minimise the potential of those sites to meet the needs of the settled community.

Q5 – Do you agree that paragraph 23 of Planning Policy for Traveller Sites should be amended to “local authorities should very strictly limit new traveller sites in the open countryside”? If not, why not?

Comment Yes

Para 23 deals with planning applications. Open countryside in Bromley is designated Green Belt and therefore as indicated in response to Qu 4 following the allocation of the existing sites to meet the need of established families the emerging Local Plan policy resists new traveller sites in areas of constraint.

Q6 – Do you agree that the absence of an up-to-date five year supply of deliverable sites should be removed from Planning Policy for Traveller Sites as a significant material consideration in the grant of temporary permission for traveller sites in the areas mentioned above? If not, why not?

Comment No

The consultation is clear that it does not remove the need to demonstrate an up-to-date five year supply of deliverable sites per se. The consultation proposes that, whilst the absence of a 5 year supply would not be a significant material consideration in respect of Green Belt and other sensitive areas – the consultation advises that *“It would remain a material consideration, but its weight would be a matter for the decision taker”*.

Importantly for Bromley, whilst the absence of an up-to-date five year supply of deliverable sites will still be a “material consideration in respect of Green Belt” the consultation proposes that it remains a “**significant** material consideration” when considering temporary permissions in other locations. In consequence applications may be encouraged to come forward in non-Green Belt locations eg private UOS or employment land which may be less suitable in other respects, but where the absence of a 5 year supply remains a **significant** material consideration.

Q7 – Do you agree with the policy proposal that, subject to the best interests of the child, unmet need and personal circumstances are unlikely to outweigh harm to the Green Belt and any other harm so as to establish very special circumstances? If not, why not?

Comment Yes

4. Addressing unauthorised occupation of land

Q8 – Do you agree that intentional unauthorised occupation should be regarded by decision takers as a material consideration that weighs against the grant of permission? If not, why not?

Comment No

Retrospective applications can be submitted by the settled community without sanction. A different approach may be challengeable.

Q9 – Do you agree that unauthorised occupation causes harm to the planning system and community relations? If not, why not?

Comment Yes

Particularly harmful are unauthorised encampments on public land, notably parks, which limit the availability of these facilities to the settled community. Bromley deals speedily and robustly with such encampments. Whilst these encampments cannot be addressed through the planning system the public look to planning to address the issue. Unauthorised occupation of private land can also cause concern amongst neighbouring residents, although the recent draft policies and designations Local Plan consultation, which proposed the designation of long established sites as Traveller Sites in the Green Belt drew no local objections.

Q10 – Do you have evidence of the impact of harm caused by intentional unauthorised occupation? (And if so, could you submit them with your response.)

The evidence base prepared to support Bromley's emerging Local Plan - "Gypsies and Travellers and Travelling Showpeople Accommodation Evidence Base" (2014) makes reference to the costs associated with unauthorised developments and encampments

http://www.bromley.gov.uk/downloads/file/1599/gypsies_and_travellers_and_travelling_showpeople_2014

Costs associated with Unauthorised Developments

The costs for hearings and inquiries range upwards from £4,000 – 5,000 to in excess of £10,000. Those costs significantly increase with evictions and considerable delays can occur if a legal challenge to the eviction is mounted. Evictions tend not to be a one off cost if there is no alternative provision

Costs associated with Unauthorised Encampments

There are a range of costs associated with the enforcement process, both financial (staffing and legal costs) and in terms of community cohesion. On average it takes one and half days of staff time to undertake all the appropriate checks, liaise with Legal and the police and carry out the required paper work. Whilst the encampments are in place and until necessary clean up works are undertaken the usability of the parks by local residents is adversely affected. There are social costs in terms of community cohesion / confrontation with the local settled community and the actual confrontation with Council officials.

Site protection measures could also be considered in locations which are particularly vulnerable to unauthorised camping, for instance by creating earth bunds, or embankments, around the site, or by introducing height restrictions to entrances. However in addition to the environmental costs of such physical barriers which are visually unattractive the financial costs of defensive barriers at potential locations would be significant. The costs of physical works to parks vary from under £3,000 to up to £20,000 or more where there are a number of entrances. Additionally there would be ongoing maintenance costs, as existing barriers have been subject to vandalism requiring repair.

Q11 – Would amending Planning Policy for Traveller Sites in line with the proposal set out in paragraph 4.16 above help that small number of local authorities in these exceptional circumstances? If not, why not? What other measures can Government take to help local authorities in this situation?

Comment Yes

The consultation proposes that in exceptional cases, where a local authority is burdened by a large-scale unauthorised site which has significantly increased their need, and their area is subject to strict and special planning constraints, then there is no assumption that the local authority is required to plan to meet their traveller site needs in full.

The consultation notes that large-scale unauthorised sites can distort the level of need in an area making it difficult for those local authorities to plan to meet their traveller needs, particularly where they are subject to strict or special planning constraints.

Bromley commented on the unequal distribution in respect of London and, whilst not ultimately reflected in the London Plan 2011, Bromley welcomed the proposals by the Examination in Public (EIP) panel to even out the pitch distribution across London and significantly reducing the need from

the figure set out in the London GTANA 2008 (Gypsy and Traveller Accommodation Needs Assessment)

Bromley welcomes the recognition that needs figures can be distorted. This recognition would support the position of Bromley Council which has produced its Local Plan evidence paper and determined a lower need figure than the London GTANA 2008.

Q12 – Are there any other points that you wish to make in response to this consultation, in particular to inform the Government’s consideration of the potential impacts that the proposals in this paper may have on either the traveller community or the settled community?

Q13 – Do you have any comments on the draft planning guidance for travellers (see Annex A below)

Annex A deals with assessing traveller needs and Temporary Stop Notices.

The proposed approach to assessing travellers needs endorses the approach taken by Bromley Council in the production of its in house assessment.

Point 5 Temporary Stop Notices states that

“It may be appropriate in some circumstances for the local planning authority to issue a Temporary Stop Notice where the breach of planning control has occurred on land owned by a third party, including the local authority or another public authority”

DCLG undertook consultation into the use of Temporary Stop Notices in December 2012 and concluded that regulations (Statutory Instrument 2005/206) should be revoked to give local authorities greater freedom to determine whether to use Temporary Stop Notices in respect of caravans that are used as main residences. However, DCLG note that whilst national prescription is removed it remains for local authorities to consider whether taking enforcement action is necessary and proportionate in the circumstances, having due regard to the requirements of the Human Rights Act 1998 and Equality Act 2010. Specifically it highlighted that Local Authorities will need to consider whether taking such action could simply lead to displacing the occupants to other unauthorised sites which could potentially be less suitable, and noted that the Judicial Review process would continue to provide a check, as any decision by a local council to issue a Temporary Stop Notice could be subject to legal challenge.

When considering the changes to the regulations DCLG indicated the intention was to publish guidance to assist local councils use Temporary Stop Notices effectively and with due consideration, in line with the government’s guidance review process in summer 2013. To enable the Council to make effective use of the change in regulations Point 5 should be expanded as indicated in the earlier DCLG consultation response

“to assist councils to exercise these new powers effectively and with due consideration as well as mitigating the risk of legal challenge to local authorities’ decisions to issue Temporary Stop Notices. Any such guidance should be light-touch; careful to avoid central prescription and support authorities to make decisions about whether to use Temporary Stop Notices which respond to their local context and best meet the needs of their communities. The aim of the guidance will be to assist councils in:

- taking account of human rights and equalities considerations;

- balancing these considerations against the impact of the unauthorised development on the local area;
- determining whether action is proportionate and appropriate;
- understanding the procedure for issuing a Temporary Stop Notice.”

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/185760/Changes_to_Temporary_Stop_Notices_-_Summary_of_responses_and_government_response.pdf

Annex A - Draft planning guidance for travellers

1. Why assess traveller accommodation needs?

Travellers are members of our communities and have particular accommodation needs. Planning Policy for Traveller Sites requires that local authorities use a robust evidence base to establish accommodation needs to inform the preparation of Local Plans and make planning decisions. Robust evidence on traveller accommodation needs will be important in securing a sound Local Plan.

When undertaking a review of housing needs in their district under Section 8 of the Housing Act 1985, Section 225 of the Housing Act 2004 requires that local housing authorities carry out an assessment of the accommodation needs of Gypsies and Travellers (as defined in Statutory Instrument 2006/3190) residing in or resorting to their district.

2. How should local authorities assess current traveller accommodation needs?

Local authorities should take account of travellers specific accommodation needs which relates to:

- their nomadic lifestyle
- their preference for caravan-dwelling
- movement between housing and caravans
- their preference for mixed use caravan sites
- the absence of a market for sites owing to lack of site provision or local hostility

And, consider their type of accommodation need in relation to:

- private sites
- sites owned by a Registered Provider
- affordable housing occupied by travellers
- other housing occupied by travellers
- different types of site e.g. transit sites

Local authorities should assess needs for different types of travellers, whatever their race or origin, taking account of their different traveller lifestyles and cultures.

Local authorities should engage both the local traveller and settled communities and involve other local authorities to assess their traveller needs as part of the Duty to Cooperate. The area to be covered by the assessment will largely depend on travel and movement patterns.

3. How should local authorities assess future traveller accommodation needs?

Local authorities should establish:

- The change in the number of traveller households that have or are likely to have accommodation needs to be addressed over the Local Plan period
- Broad locations where there is a demand for additional pitches
- The level, quality and types of accommodation and facilities needed (eg sites; housing)
- The demographic profile of the traveller community obtained from working directly with them
- Caravan count data at the local level
- Whether there are different needs at different times of the year – travelling is usually concentrated during the summer

4. What sources of information could local authorities use in assessing traveller accommodation needs?

- Caravan count data maintained by the Department for Communities and Local Government – eg number of caravans and the types of site on which they are located
- Site management information – eg site waiting lists; pitch turnover; length of licenses; transfer applications
- Information on private authorised sites – number of caravans permitted on each site; type of planning permission; restrictions on occupancy
- Information from recent applications, whether successful or unsuccessful, or enforcement action
- Data from other service providers – eg health and education
- Information gathered by traveller groups or representative bodies eg the Showmen's Guild
- Data from surveys of traveller accommodation needs

5. Can a Temporary Stop Notice be used on land not owned by travellers?

Yes. It may be appropriate in some circumstances for the local planning authority to issue a Temporary Stop Notice where the breach of planning control has occurred on land owned by a third party, including the local authority or another public authority.