

Good afternoon Rosie

Further to my earlier submissions please forward this email and attachment to the Inspector.

I attach at Appendices 1 and 2 two very recent Appeal Decisions where criticisms I have made of this and other GTAAs where similar issues have been raised. In the first dated 18th July 2018 Inspector Campbell considered the robustness of a GTAA where need had been reduced from 81 to 65 based on the revised definition:

“7. Sybil is registered disabled. She and her husband stopped travelling for work because of her disability and although it was their intention to resume, they now accept that due to her ill health and their age and infirmity, they will not be able to do so. Whilst she is a Romany Gypsy and he is an Irish Traveller, neither meet the revised definition of gypsies and travellers for planning purposes as set out at Annex 1 of the 2015 national Planning policy for traveller sites (PPTS) as it now excludes those who have ceased to travel permanently.”

From paragraph 21 onwards Inspector Campbell considers the issue of need in the context of the very recently adopted Local Plan:

“21. The national need for more gypsy and traveller sites is not in dispute. Nor was it argued at the hearing that there is not a need for more sites regionally. With regard to need within Swale, the Council’s 2013 Gypsy and Traveller Accommodation Assessment (GTAA) identified a need for 85 pitches. Following publication of the 2015 PPTS with the revised the definition of gypsies and travellers, that figure was reduced to 61. The revised figure was accepted by the Local Plan Inspector who, after taking into account sites completed and with planning permission, agreed that the very small remaining identified need could come forward as windfalls assessed against the criteria based policy DM 10.

25. In addition to this current requirement to re-assess need, the Council’s response at the hearing to concerns raised about need arising from immigration and from expiry of temporary planning permissions was far from satisfactory. With due respect, it is quite incorrect to say that these matters should not be factored in in the calculation of need. Notwithstanding the current position with regard to the five year supply, I was given no reason to reach a different conclusion to that of my colleague Inspectors in recent appeal decisions referred to me¹, that there is evidence (from caravan counts and from the expiry of temporary permissions) of unmet need for gypsy and traveller accommodation on the ground.

26. However, in the circumstances of this particular case, need and provision for gypsies and travellers who meet the PPTS definition has limited relevance since the site primarily provides for three people who do not meet that definition. ...

27. The 24 households subtracted from the 2013 GTAA assessment of need² when the definition of gypsies and travellers changed in 2015 are households no less in need of accommodation. These people will be caught by the recently introduced duty in the Housing

Act 19853 for Councils to consider the needs of people residing in or resorting to their district in respect of caravan sites and houseboats. The Local Plan Inspector indicated that those needs would be best addressed as part of the early review of the Local Plan. The principal occupiers of the appeal site fall within this group. They are ethnic gypsies and travellers who, I heard, have a cultural aversion to living in conventional bricks and mortar. As yet there appears to be no assessment of need for this group and no provision made for them.

Concluding from paragraph 32 onwards the DL found:

“...Notwithstanding the position in relation to the five year supply, a need on the ground for more gypsy and traveller sites for those who meet the PPTS definition has been identified. Perhaps of greater significance, however, is that in the main the Appellant family group do not meet the PPTS definition although they clearly are ethnic gypsies and travellers by background. Despite the duty to do so, the needs of this ethnic group who fail the PPTS definition have yet to be assessed or addressed even though there is an indication from the 2013 GTAA that there are at least 24 households in need.”

35. Whilst the Local Plan Inspector indicated that their needs would be best addressed as part of the early review of the Local Plan, the current inequality of housing opportunity for this group of people adds weight to the proposition that a temporary permission might be granted to allow for this situation to be redressed. When considered along with the personal circumstances of the occupiers of this site and the lack of any suitable alternative to which the group could go, the balance tips in favour of the grant of a temporary planning permission. I have no evidence of any substantive progress having been made on the early review of the Plan despite a year having elapsed since adoption and in these circumstances it seems to me that five years would not be an unreasonable period to enable the needs of persons who do not meet the PPTS definition but who nonetheless require caravan pitches to be assessed and addressed and so achieve equality of opportunity for all.

In the second DL, dated 16th July 2018 Inspector Preston considered my criticisms of the Winchester emerging Traveller DPD thus:

“16. The Winchester District Local Plan Part 2: Development Management and Site Allocations (LPP2) was adopted as recently as April 2017. Policy DM4, entitled “Gypsies, Travellers and Travelling Showpersons”, states the following:

Planning permission will be granted for pitches to meet the accommodation needs for the area covered by this Plan for people falling within the definition of ‘travellers’, of about 15 gypsy/ traveller pitches and about 24 travelling showperson’s plots between 2016 and 2031. Sites will be identified and consent granted as necessary to meet identified traveller needs in the Plan area which could not otherwise be met, subject to the criteria outlined in Policy CP5. Proposals for transit sites will be considered on an individual basis, following the criteria of CP5.

17. The figure of ‘about 15’ gypsy/ traveller pitches derives from the Winchester Gypsy and Traveller Accommodation Assessment – Need Summary Report which was published in October 2016 (the 2016 GTAA). That report was before the Local Plan Inspector and the Plan

would have been subject to consultation. Although I have not been provided with the Inspector's comments, it is reasonable to conclude that the evidence was properly considered as part of the plan making process.

18. As a result of that process, the figures within policy DM4 now form part of the adopted development plan and, in line with section 38(6) of the Planning and Compulsory Purchase Act 2004, the development plan remains the starting point for the assessment of planning applications.

19. The LPP2 does not allocate sites to meet the needs identified in policy DM4. That is the aim of the emerging Winchester District: Gypsy, Traveller and Travelling Showpeople Development Plan Document (the Traveller DPD). From information given at the Hearing I understand that the document has been subject to consultation and has now been submitted to the Planning Inspectorate for examination. An Inspector has been appointed but no dates for the examination have been set. As noted in the SoCG there are outstanding objections to the DPD, including an objection from Dr Murdoch, the agent for the appellant in this case, regarding the robustness of the data that underpins the assessment of need.

20. It is a moot point whether those matters would be re-examined in relation to the Traveller DPD which has a specific aim of allocating sites. However, the precise scope of that examination will be a matter for the relevant Inspector. I cannot pre-judge any of those matters and, as such, cannot draw any meaningful conclusions on the likely outcome of the examination. Accordingly, the weight that I can attach to the Traveller DPD is limited, having regard to paragraph 216 of the National Planning Policy Framework (the Framework).

21. Therefore, at the present time, no sites have been identified in the development plan to meet the need identified in policy DM4. Nonetheless, the Council maintains that it can demonstrate a five year supply of sites based on a combination of predicted windfall sites that it expects to secure planning permission within the next five years, and a site that is currently vacant. Table 8, produced in the "Local Planning Authority Response to Appellant's Hearing Statement and Landscape Statement" identifies a five year requirement of an additional 2 pitches for the five year period from September 2017 to August 2022. Whilst the appellant disagrees with the Council's conclusions on the need for sites and the methodology of the 2016 GTAA, he was satisfied that the mathematics behind the data produced at Table 8 was accurate, if based on the Council's own figures.

22. Against that requirement for 2 pitches, the Council maintains it can demonstrate a supply of 6 pitches, 1 vacant site and 5 windfall sites. In line with footnote 4 to paragraph 10 of the PPTS to be considered deliverable, sites should be available now, offer a suitable location for development and be achievable with a realistic prospect that development will be delivered on the site within the next five years.

23. No details of the vacant site have been provided. It does not necessarily follow that it is available because it is vacant and that may depend on the ownership of the site and whether any former occupants intend to re-use the site in future. Consequently, on the information before me, there is uncertainty in that regard.

24. Furthermore, reliance upon an assumed windfall of sites that may achieve planning permission in the future is not consistent with those criteria. I am not satisfied that the sites without planning permission are "available now". The three windfall sites relied upon are sites put forward by the Council within the Traveller DPD4. As stated above, that has yet to be examined and the Inspector will no doubt have to consider each site, taking account of

any representations received. Whether the sites will be considered acceptable for inclusion within the DPD is unknown.

25. At the Hearing, the Council did provide an update to state that planning permission has now been granted for three permanent pitches at 'Ourlands', which is one of the sites put forward in the Traveller DPD. I was not provided with a copy of the decision but have no reason to doubt that is the case. On the Council's assessment that permission would be sufficient to meet the five year need for 2 additional pitches, with a marginal surplus of 1.

26. However, I am mindful that the figure of 'about 15' additional pitches was considered to be the minimum of what would be required within the 2016 GTAA. A key component of the assessment of future need was based upon interviews carried out with existing gypsy and traveller households. Those interviews were used to assess whether the households fell within the definition of gypsies and travellers set out in Annex 1 of the PPTS and to assess the likely future needs of those households.

27. The subsequent analysis of need within the 2016 GTAA only related to those considered to fall within the PPTS definition. How the Council anticipates meeting the needs of those who may be ethnically gypsies or travellers but do not fall within the definition is not clear. As a result of the interviews 20 households were determined to fall within the new definition, 18 were considered to be outside the definition and 11 were 'unknown', either as a result of a refusal to take part or because the households could not be contacted⁵.

28. Of the interviews that did take place, approximately half of the households were considered to fall within the PPTS definition. However, an allowance of only 10% is made for the 11 'unknown' households within the 2016 GTAA i.e. only one in ten is considered likely to fall within the definition. The report suggests that the 10% figure is based on the national average of surveys carried out by ORS – the consultants who prepared the 2016 GTAA – but no analysis of those figures is provided. I can see no obvious reason why the proportion would be so much lower than that for other local households, or why a national figure should be preferred over more localised evidence, especially when the issue in question is one of local needs. It seems likely to me that significantly more of the 'unknown' households would fall within the PPTS definition.

29. Seven of those unknown households were living on unauthorised sites. The 2016 GTAA concludes that the overall level of need could rise by up to 11 pitches if information was made available to the Council that those 'unknown' households did meet the PPTS definition (based upon the existing seven pitches plus an additional 4 from new household formation)⁶. In other words, the figure of 'about 15' within policy DM4 may need to rise if additional evidence of unknown need comes to light.

30. Five of the 'unknown' households occupy sites that are put forward by the Council within the Traveller DPD, four at The Piggeries and one at land adjacent to Gravel Hill⁷. Clearly, the intention of the Traveller DPD is to allocate sites to meet the needs of gypsies and travellers who meet the definition. In putting forward The Piggeries and land adjacent to Gravel Hill the Traveller DPD states that "this strategy will, however, not only secure the planning status of the sites for the current occupants, contributing to the specified need (my emphasis), but also provide certainty in relation to the delivery of sites to meet the needs in Policy DM4"⁸.

31. In other words, there appears to be an acceptance within the Traveller DPD that the present occupants of those sites contribute to the need for gypsy and traveller sites within

the area. However, those occupants were not considered to contribute towards need within the 2016 GTAA because they fell into the 'unknown' household category. If those households do fall within the definition, as seems likely having regard to the Traveller DPD, the overall need would be greater than the figure of 15. Thus, the Council is putting forward those sites to meet future needs but does not appear to have factored in the needs of the present occupants in determining the overall pitch requirement.

32. If those households are added to the assessment of need, or an appropriate allowance is applied to the 'unknown' households, the need would be greater than that identified by the Council. That need would also appear to be an immediate need, given that the households are already resident in the area. Having regard to those matters, it appears to me that the five-year need is likely to be somewhat greater than the 2 additional pitches, based upon the Council's own approach and methodology. Given my comments on the limited available supply of sites, as set out above, I am not satisfied that the Council is able to demonstrate a 5 year supply of deliverable sites to meet that need.

33. As noted, my conclusions in that regard are based purely on an analysis of the Council's own data, including the 2016 GTAA and the Traveller DPD. None of those documents take account of the needs of the present occupants of the site. The families were not interviewed as part of the 2016 GTAA and their needs were not accounted for in that assessment. The Council does not explicitly dispute that the families have accommodation needs relating to the local area.

34. The planning application had been submitted in October 2016 and the surveys and interviews conducted to inform the 2016 GTAA were completed early in October 2016. Had the application been made a few weeks earlier, the Council would have been aware of the appellants' circumstances and that may well have prompted ORS, who produced the 2016 GTAA to interview them as part of the process. It strikes me that assessing local needs is not an exact science and there will be cases, particularly where travelling families are involved, when particular households may be missed in surveys. That does not dictate that their needs should not be taken into account, particularly if those families have a local connection and local need relating to their circumstances.

35. From the information provided by the Gypsy Liaison Officer (GLO) at the County Council the families have roots in the local area. The GLO also noted that there were no vacancies on sites in Hampshire which were previously owned by the County Council and that the one remaining Council owned site had six applicants on the waiting list but was also "in the wrong area to satisfy the accommodation needs of these families". Having regard to that and the other information before me I am satisfied that the needs of the families are for accommodation in the local area. Therefore, it is reasonable take account of their needs for a permanent residential base in the local area into account when assessing need more generally.

36. That approach is consistent with the recommendation in the 2016 GTAA and paragraph 11 of the PPTS, that Council's should develop criteria based policies for assessing applications in relation to unknown households who provide evidence that they meet the definition.

37. In terms of policy DM4 of the LPP2, the approval of four pitches at the appeal site may result in slightly more than 15 pitches being approved over the plan period if the currently envisaged sites in the Traveller DPD also secure permanent planning permission. However, the wording of the policy contains a built in degree of flexibility in that it states that

permission will be granted for “about 15” pitches. The evidence base behind the 2016 GTAA also acknowledges that the level of need may be greater depending on the status of the ‘unknown’ households. The policy does not expressly state that permission should be refused for any pitches over that number and, in view of the flexibility within the policy and the evidence base, an approval of four pitches at the appeal site would not be of such a scale as to increase numbers materially beyond what was envisaged in the development plan.

38. Moreover, the policy states that “sites will be identified and consent granted as necessary to meet identified traveller needs in the Plan area which could not otherwise be met, subject to the criteria outlined in policy CP5”. I have concluded that there is an unmet need for additional permanent gypsy and traveller pitches and am not satisfied that the Council is able to demonstrate a five-year supply of sites to meet that need. The Council does not allege any conflict with the criteria based policy CP5 and, on that basis, I find no conflict with the aims of policy DM4.

39. In reaching those conclusions I have based my decision on the adopted planning policy position and the evidence base that underpinned that policy. I appreciate that Dr Murdoch has raised a number of objections relating to the methodology and conclusions of that evidence base. The matters raised include, amongst other things, concern that the interview questions led to a fundamental miscalculation whether people met the gypsy and traveller definition; concerns that the surveys were carried out at the wrong time of year during the travelling season; a failure to take account of any allowance for people living in bricks and mortar; and a failure to make an allowance for families living on unauthorised sites.

Finally I attach at Appendix 3 the very recent GTAA for the Royal Borough of Windsor and Maidenhead where the assessment considered the issue of how non PPTS Gypsies and Travellers was considered in a way that I would respectfully urge in the Winchester emerging Plan in the following way:

“ ...evidence of Gypsy and Traveller pitch need over the next five years (2017/18 to 2021/22) equating to 70 pitches under the cultural definition, or 20 pitches under the PPTS 2015 definition of Gypsy/Traveller.

2.22 Chapter 5, ‘Delivering a sufficient supply of homes’, sets out the Government’s objective of significantly boosting the supply of homes including meeting the needs of groups with specific housing requirements (paragraph 60). It states that in determining the minimum number of homes needed, strategic plans should be based upon a local housing need assessment. This should be conducted using the standard method unless there are exceptional circumstances and also taking into account any needs that cannot be met within neighbouring areas (paragraph 61).

2.23 It is then set out in paragraph 62 that:

‘Within this context, policies should identify the size, type and tenure of homes required for different groups in the community (including, but not limited to, those who require affordable housing, families with children, older people, students, people

with disabilities, service families, travellers, people who rent their homes and people wishing to commission or build their own homes.'

2.24 *An additional footnote to the word 'travellers' provides further definition:*

'Travellers who do not fall under the definition of "traveller" in Annex 1 of the Planning Policy for Traveller Sites. The latter sets out how travellers' accommodation needs should be assessed for those covered by the definition in Annex 1 of that document.'

2.25 *In other words, the Draft Revised NPPF requires local planning authorities to consider the needs of Gypsy, Traveller and Travelling Showpeople households who do not fall under the PPTS 2015 definition by virtue of their travelling habits. It requires a broader, 'cultural' definition. This approach has been adopted in this study, as discussed further below.*

Planning policy context and methodological implications

2.26 *Further to the publication of updated PPTS in August 2015, the 2007 GTAA Guidance was withdrawn and there was considerable confusion regarding what accommodation needs should be assessed and the best methodological approach.*

2.27 *The Housing and Planning Act 2016 deleted Sections 225 and 226 of the Housing Act 2004, effectively removing some of local planning authorities' duties in relation to the accommodation needs assessments of Gypsies and Travellers. However, the Housing and Planning Act inserted some additional requirements into Section 8 of the Housing Act 1985, including the duty to consider the provision of sites for caravans and moorings for houseboats when undertaking housing needs assessments. As referred to above, draft Guidance was published in March 2016 to explain the interpretation of these legislative changes. However, this remains in draft form at the present time.*

2.28 *As discussed, the PPTS 2015 definitions of 'Gypsy and Traveller' and 'Travelling Showperson' now exclude those that have stopped travelling on a permanent basis. The 'clarification' in Annex 1 (paragraph 2) of PPTS 2015 refers to a 'nomadic habit of life' and whether the person in question previously led a nomadic habit of life; the reasons for ceasing their nomadic habit of life; and whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances. This suggests that persons (or households) should be assessed on an individual basis, to determine whether they meet the PPTS 2015 planning definition.*

2.29 Some people adopted the view that the revised PPTS 2015 definitions (excluding Gypsies, Travellers and Travelling Showpeople who have ceased travelling) allow local planning authorities to manage their needs numbers downwards. This approach has always been treated with caution by arc4, however, and our GTAA studies have instead adopted an approach which includes a consideration of PPTS-defined need (pitch numbers to meet the needs of those who travel) and a wider 'cultural' definition of need (pitches to meet the needs of all Gypsies, Travellers and Travelling Showpeople who are identifiable within the relevant study area).

2.30 The publication of the Draft Revised NPPF (March 2018) gives a strong policy basis to the approach that we apply, ensuring that the accommodation needs of all of the Travelling community are considered within the GTAA process.”

For these amongst other reasons, the emerging Traveller DPD is not sound as it is not justified and is not based on robust up-to-date evidence and is inconsistent with national policy.

Many thanks

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