



The Planning Inspectorate

Report to Winchester City Council

by Louise Crosby

an Inspector appointed by the Secretary of State

Date: 28 January 2019

Planning and Compulsory Purchase Act 2004
(as amended)
Section 20

Report on the Examination of the Winchester District Gypsy, Traveller and Travelling Showpeople Development Plan Document

The Plan was submitted for examination on 9 May 2018

The examination hearings were held on 3 and 4 September 2018

File Ref: PINS/L1765/429/8

Abbreviations used in this report

DtC	Duty to Co-operate
GTAA	Gypsy and Traveller Accommodation Assessment
LDS	Local Development Scheme
LPP1	Local Plan Part 1
LPP2	Local Plan Part 2
MM	Main Modification
NPPF	National Planning Policy Framework
PPTS	Planning Policy for Traveller Sites
SA	Sustainability Appraisal
SCI	Statement of Community Involvement
SDNP	South Downs National Park

Non-Technical Summary

This report concludes that the Winchester District Gypsy, Traveller and Travelling Showpeople Development Plan Document [the Plan] provides an appropriate basis for the planning of the District, provided that a number of main modifications [MMs] are made to it. Winchester City Council has specifically requested me to recommend any MMs necessary to enable the Plan to be adopted.

The MMs all concern matters that were discussed at the examination hearings. Following the hearings, the Council prepared a schedule of the proposed modifications and carried out sustainability appraisal of them. The MMs were subject to public consultation over a six-week period. In some cases I have amended their detailed wording where necessary. I have recommended their inclusion in the Plan after considering all the representations made in response to consultation on them.

The Main Modifications can be summarised as follows:

- Updating to reflect the latest position with regards to sites;
- Additional criteria added to some site specific policies;
- Some re-wording to improve clarity;
- A new criteria based policy and corresponding text;
- Changes to the monitoring framework to cover the new policy;
- Commitment to review the need for sites for travelling showpeople when undertaking a review of Local Plans part 1 and 2.

Introduction

1. This report contains my assessment of the Winchester District Gypsy, Traveller and Travelling Showpeople Development Plan Document in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan's preparation has complied with the duty to co-operate. It then considers whether the Plan is sound and whether it is compliant with the legal requirements. The National Planning Policy Framework 2012 (paragraph 182) makes it clear that in order to be sound, a Local Plan should be positively prepared, justified, effective and consistent with national policy. The revised National Planning Policy Framework was published in July 2018. It includes a transitional arrangement in paragraph 214 whereby, for the purpose of examining this Plan, the policies in the 2012 Framework will apply. Unless stated otherwise, references in this report are to the 2012 Framework.
2. The starting point for the examination is the assumption that the local planning authority has submitted what it considers to be a sound plan. The Winchester District Gypsy, Traveller and Travelling Showpeople Development Plan Document, submitted in May 2018 is the basis for my examination. It is the same document as was published for consultation in January 2018.

Main Modifications

3. In accordance with section 20(7C) of the 2004 Act the Council requested that I should recommend any main modifications [MMs] necessary to rectify matters that make the Plan unsound and /or not legally compliant and thus incapable of being adopted. My report explains why the recommended MMs, all of which relate to matters that were discussed at the examination hearing(s), are necessary. The MMs are referenced in bold in the report in the form **MM1**, **MM2**, **MM3** etc, and are set out in full in the Appendix.
4. Following the examination hearings, the Council prepared a schedule of proposed MMs and carried out sustainability appraisal of them. The MM schedule was subject to public consultation for six weeks. I have taken account of the consultation responses in coming to my conclusions in this report and in this light I have made some amendments to the detailed wording of the main modifications. None of the amendments significantly alters the content of the modifications as published for consultation or undermines the participatory processes and sustainability appraisal that has been undertaken. Where necessary I have highlighted these amendments in the report.

Assessment of Duty to Co-operate

5. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on it by section 33A in respect of the Plan's preparation.
6. The Council has consulted and actively engaged with neighbouring authorities and other DtC bodies in the preparation of the Plan. As part of the evidence base for the Winchester Gypsy and Traveller Accommodation Assessment (GTAA) October 2016, interviews were held with planning officers from the neighbouring planning authorities, including Basingstoke and Deane, East

Hampshire, Eastleigh, Fareham, Havant, Portsmouth, South Downs National Park and Test Valley.

7. The GTAA covered the whole area of the District as a housing authority, this however differs to the planning authority area which excludes an area covered by South Downs National Park (SDNP). The identified needs within the SDNP area are being planned for by the South Downs National Park Authority in their emerging plan.
8. Winchester has focused on trying to meet its own needs and is not relying on neighbouring authorities to assist, neither has it been asked to assist in meeting the gypsy and traveller accommodation needs of any neighbouring authorities. The Plan is based on a strategy that seeks to meet the needs of the District (outside of the SDNP).
9. The Council prepared a Consultation Statement and a Duty to Cooperate Statement and based on what is set out in these documents, I am satisfied that where necessary, the Council has engaged constructively, actively and on an on-going basis in the preparation of the Plan and that the duty to co-operate has therefore been met.

Assessment of Soundness

Background

10. The purpose of the Plan is to identify and allocate sites for gypsies and travellers and travelling showpeople to meet the pitch targets set out in policy DM4 of the adopted Local Plan Part 2 (LPP2). These targets are defined as being "about 15 gypsy/traveller pitches and about 24 travelling showpeople's plots between 2016 and 2031". The pitch targets are based on the 2016 GTAA. It is not the purpose of the examination of this Plan to decide whether the pitch targets in policy DM4 are correct. That took place as part of the examination of LPP2. LPP2 was adopted in April 2017 and also contains development management policies and allocates sites for bricks and mortar housing. Local Plan Part 1 (LPP1) contains strategic policies and Policy CP5 of that Plan is a criteria based policy to guide the selection of sites for gypsies, travellers and travelling showpeople.

Main Issues

11. Taking account of all the representations, the written evidence and the discussions that took place at the examination hearings I have identified a number of main issues upon which the soundness of the Plan depends. Under these headings my report deals with the main matters of soundness rather than responding to every point raised by representors.

Issue 1 – Whether the Council's strategy for meeting the needs of the gypsy and traveller and travelling showpeople community in Winchester is justified and whether it is consistent with Winchester Local Plans Parts 1 and 2.

12. Despite a number of attempts by the Council to identify adequate travelling showpeople's sites, through 'call for sites' exercises, no new sites came forward. In addition, the Council investigated whether any sites within the Council's ownership would be suitable or if they could acquire land for the development of travelling showpeople plots. The Council have also made requests under the Duty to Cooperate to neighbouring authorities at each stage of the Plan process, to no avail. Consequently the Council have adopted an approach which involves the safeguarding of existing permitted and lawful sites, whether occupied or vacant. They have committed in the Plan to regularising suitable existing sites that do not benefit from permanent planning permission. These are set out in policy TR2. Naturally, the table of safeguarded sites in policy TR1 has become a little out of date, but this is remedied though **MMO1**. An update to the table in policy TR1 is necessary to ensure the policy is effective.
13. Policy TR2 deals with sites with temporary planning permission and says that planning permission will be granted for those listed. These sites are small scale and the policy includes site specific criteria for these. However, it does not take account of the latest information and this is remedied by **MMO2** which will make the policy effective.
14. Additionally, policy TR3 deals with a large complex site. This is subject to enforcement action and outstanding appeals, but the policy seeks to ensure that the site is only occupied by travelling showpeople. Similarly, policy TR4 deals with another large site where the aim is to secure occupation by showpeople and if possible intensification. The Plan rightly includes policies to ensure that these sites are retained to provide accommodation for travelling showpeople.
15. The Council have also recognised that some of the existing sites could house more pitches/plots than they currently do. To this end policy TR5 identifies this as one possible means to meeting pitch targets, depending upon the suitability of the site. The policy wording needs to be made clearer however by referring to 'intensification'. This omission is remedied by **MMO3** which is required to make the policy effective.
16. Overall I find that the Council's strategy for meeting the needs of gypsy and traveller and travelling showpeople community in Winchester is justified and consistent with LPP1 and LPP2.

Issue 2 – Whether the Plan identifies a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against the target set out in Winchester Local Plan Part 2

17. The Plan identifies 5 years' worth of gypsy and traveller sites, against the target set out in Policy DM4 and a surplus over the Plan period. These relate to existing sites and so there is greater certainty about their deliverability, compared to allocated unoccupied sites. Therefore I am confident that the

targets set out in Policy DM4 for gypsies and travellers will be met and most likely exceeded.

18. However, the Council have been unable to allocate sufficient travelling showpeople sites/plots, despite extensive efforts to do so, as set out above. Policy DM4 sets a requirement, based on the GTAA, of 24 plots over the Plan period (2016-2031). The Plan identifies 3 plots that have been granted planning permission since September 2016 and around 13 to be delivered through the Plan, leaving a shortfall over the Plan period of 8. Moreover, this Plan identifies the need for 18 plots in the first 5 years (2016-2021). The Council acknowledge that it does not have a 5 year supply of travelling showpeople sites. Also, the Council have recently granted planning permission for the change of use of a vacant travelling showpeople site (2 plots) for use as a garden, on the basis that they were not available for such use. As a consequence, I have deleted the listing for this site (WO27) from Policy TR1.
19. I am content that the Council has done all it can to identify and allocate sites. Since there is a shortfall in travelling showpeople sites the Council may receive planning applications for new sites to meet this need as well as planning applications for additional gypsy and traveller sites. Therefore, an additional criteria based policy is needed which would permit sites outside settlement limits under certain circumstances. This would enable the outstanding needs of travelling showpeople to be met fairly, should they arise. This is dealt with through **MMO4** which introduces an additional policy and associated text. This will be named Policy TR6 with consequent renumbering of following policy. This new policy also needs to be referred to in the Plan's monitoring framework and this is resolved through **MMO7**.
20. A main modification (**MMO5**) to old policy TR6 criteria is also required to take account of comments from the Environment Agency. The modification introduces the requirement for a foul drainage assessment and is required for effectiveness.
21. The Council are also in the process of reviewing LPP2. This provides an opportunity to look again at the allocation of travelling showpeople sites. A commitment to this needs to be incorporating into the Plan. This is dealt with by **MMO6** and is necessary for the plan to be effective.
22. Whilst the Plan does not identify a 5 year supply of travelling showpeople sites, I am satisfied that the Council has done all it can to identify and allocate sites. Given the limited success in this regard they have subsequently, through a modification, introduced a criteria based policy in order to try to overcome this shortcoming. In addition they have committed to reassessing the situation as part of the review of LPP2. So, while the Council cannot identify 5 years' worth of sites for travelling showpeople, I am satisfied that with these other provisions in place the benefits of having an adopted Plan in place far outweighs this issue. The Plan does however identify a 5 years supply of gypsy and traveller sites.

Issue 3 - Whether the proposed criteria based policy is necessary, justified, effective and consistent with national policy.

23. For the reasons set out above, a criteria based policy is necessary. This will be important when determining planning applications for gypsy and traveller and travelling showpeople sites, both in situations where the Plan fails to identify sufficient sites to meet the identified need or where sites are identified but additional demand arises.
24. Planning policy for traveller sites (PPTS) seeks to "very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan" (para 25), but it also requires that Council's determine applications for sites from any travellers and not just those with local connections (para 24e). It is important that the criteria based policy accords with the PPTS.
25. The new policy seeks to ensure that sites in open countryside are strictly controlled by ensuring that the occupants meet the PPTS annex 1 definition. It also requires an exceptional personal or cultural need to be located in the area. I have removed the word 'exceptional' as this is a very high hurdle and conflicts with the thrust of PPTS para 24e. Finally, it requires the applicant to provide evidence of a lack of other suitable accommodation. I have amended the policy to remove the requirement for the appellant to provide evidence as the Court of Appeal judgment in *S Cambs v SSCLG & Brown* [2008] stated:
- "In seeking to determine the availability of alternative sites for residential gypsy use, there is no requirement in planning policy, or case law, for an applicant to prove that no other sites are available or that particular needs could not be met from another site. Indeed such a level of proof would be practically impossible....."*
26. Subject to these amendments I find that this new policy and explanatory text introduced by **MM04** is necessary, justified, effective and accords with national policy.

Public Sector Equality Duty

27. In arriving at my conclusions on the issues I have had regard to the Public Sector Equality Duty contained in the Equality Act 2010 and the Council's Equality Impact Assessment.
28. There are positive effects on the travelling community as a result of the proposed policies in this Plan. Other positive effects may also occur on characteristics related to poverty and low income where these may be evident within the traveller community. The Plan also addresses the need of particular age groups within the travelling community by taking account of issues such as concealed households and future household formation. In addition, the Plan makes positive references for those who have ceased to travel temporarily due to their own or their family's or dependants' educational or health needs or of age.

Assessment of Legal Compliance

29. My examination of the legal compliance of the Plan is summarised below. The Plan complies with all relevant legal requirements, including in the 2004 Act (as amended) and the 2012 Regulations.

Sustainability Appraisal

30. Sustainability Appraisal has been carried out and is adequate.

Habitat Regulations Assessment

31. The Habitats Regulations Assessment Report of the Plan (November 2017) did not identify any likely significant effects on European sites and their designated features. Only one small, established traveller site was identified within close proximity to a European site and it was not considered likely to result in any of the identified threats to a Special Area of Conservation. Such a conclusion was supported by Natural England. Appropriate assessment was not necessary.

Local Development Scheme

32. The Plan has been prepared in accordance with the Council's Local Development Scheme.

Statement of Community Involvement

33. Consultation on the Local Plan and the MMs was carried out in compliance with the Council's Statement of Community Involvement.

Overall Conclusion and Recommendation

34. The Plan has a number of deficiencies in respect of soundness for the reasons set out above, which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the 2004 Act. These deficiencies have been explored in the main issues set out above.
35. The Council has requested that I recommend MMs to make the Plan sound and capable of adoption. I conclude that with the recommended main modifications set out in the Appendix to the Winchester District Gypsy, Traveller and Travelling Showpeople Development Plan Document satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.

Louise Crosby

Inspector

This report is accompanied by an Appendix containing the Main Modifications.