

Matter M10: Policies for Travellers/Caravan Dwellers and Travelling Showpeople

Supplement to Statement by South Cambridgeshire District Council and Cambridge City Council 18 July 2017

MATTER M10 – QUESTIONS 10.3(a) and (b)

10.3 – Other Matters

- a) **Have the Councils undertaken a robust assessment of the implications of the current policy approach for the Public Sector Equality Duty and Human Rights considerations? NB The Council's own evidence (GTAA para.3.20) recognises that Romany Gypsies and Irish and Scottish Travellers may be able to claim culturally approach accommodation under the Equalities Act.**

1. The Councils have addressed this question at Matter 10 statement paras.91-92.
2. The accommodation needs of three principal groups require consideration, namely:
 - a. those who have been confirmed to be “gypsies and travellers”, conforming to the PPTS definition;
 - b. those whom, during the plan period, *may* demonstrate that they conform to the PPTS definition; and
 - c. gypsies and travellers who have ceased permanently to travel and for that, or any other reason, do not meet the definition in the PPTS. Some within this group will have a Equalities Act-recognised entitlement to culturally appropriate accommodation.
3. In respect of (a), the GTAA has confirmed that future need arising from that group are met through current provision.
4. In respect of (b), the level of any need during the plan period for those whose status viz. the PPTS definition is currently unknown – or may change during the plan period - is not determinable

reasonably or proportionately at this stage (see RD/STRAT/221 para.7.131).

5. Given that the accommodation needs of this group is “unknown” at this stage:
 - (a) a criterion-based has been adopted (see e.g. H21 of South Cambs LP and policy 49 of the Cambridge Local Plan). This approach accords with PPTS para.11; and
 - (b) provision is made through policy H20 of the South Cambridgeshire LP (as proposed to be modified) for pitches/sites for those gypsies and travellers who continue to lead a nomadic lifestyle at new settlements, should the need for such provision arise.
6. A criterion-based approach to the accommodation needs of this group has been accepted as sound very recently by the Inspector reporting to the Secretary of State¹, in respect of the Maldon Local Plan (RD/H/910) (see para.150), alongside a commitment to review the Plan if it emerges through a review of the GTAA, or through other indicators, that a different approach than use of a criterion-based policy is required. Both Councils here have committed to such a review through modified monitoring policies, as part of the on-going work requested by the Inspectors, and to be submitted at the end of July following consideration by the Planning Portfolio Holder at his meeting on 26 July 2017, and the relevant extract is attached as Appendix A.
7. The Councils have addressed the issue of the delivery of sites through the operation of the criterion-based policies under Matter 10(2)(ii),.
8. With regard to H20 (as proposed to be modified) provision of pitches/sites for gypsies and travellers at new settlements has long-standing planning policy support (see Matter 10 statement

¹ The Secretary of State directed on 8 June 2015 that the submitted Maldon Plan be submitted to him for approval as a result of his concerns as to the first Inspector’s conclusions as to the soundness of policy H6 of the Plan, concerning gypsy and travellers.

paras.78-87) and is consistent with PPTS para.13(a). As Mr Dixon confirmed on day 54 provision of gypsy/traveller pitches/sites as part of new settlement has precedent - see reports into the soundness of local plan at Teignbridge and Charnwood; planning permission has been granted for development of pitches as part of a large urban extension in Charnwood (planning application reference P/14/1832/12).

9. It is submitted that this two-strand approach in respect of the needs of those who *may* demonstrate that they meet the PPTS definition in the plan period is consistent with national policy and is sound, as well as following an approach accepted recently elsewhere, notably in Maldon.
10. With regard to group (c), the Council considers that, in accordance with national policy, the accommodation needs of gypsies and travellers who have ceased to travel permanently, and who, for that reason or other reasons, do not meet the PPTS definition, should be met through the policies and proposals of the submitted plans which will meet the housing needs of the wider settled community.
11. Some within this group may, as the Council has confirmed, have a Equalities Act-derived entitlement to culturally appropriate accommodation; some will not. Whether or not such an entitlement arises will depend on the specific circumstances of individuals or family groups. As such, the extent of those with a EA-recognised entitlement cannot be determined at this stage. The Government's Equalities Statement accompanying the publication for consultation of the revised PPTS records that between half and three quarter of gypsies and Irish travellers live in bricks and mortar housing (RD/NP/220 part 3). Proposals for development for pitches or sites for gypsies and travellers who do not meet the PPTS definition (but who may be able to demonstrate a cultural entitlement to live in a caravan, which is recognised as a "protected characteristic" through the Equalities Act 2010 s.149) are to be treated in the same way as those for other forms of housing in the application of the policies of the plan; by way of example there would be no in-

principle objection to provision of a gypsy/travellers site on a plot of land within a settlement boundary.

12. Such an approach is (i) consistent with the NPPF and PPTS, when considered together and (ii) consistent with the approach of the Inspector examining the London Borough of Newham Gypsy and Traveller Accommodation DPD (RD/H/900) at para.19 (where the Inspector concluded that the needs of the settled gypsy/traveller community would be met through the development management process and a commitment through policy H3 of its Core Strategy to meet, through development management, specialist accommodation needs in the London Borough). It is notable that the Maldon Local Plan, which was very recently found sound, did not, it seems, make any express provision for non-travelling gypsies and traveller beyond meeting the needs of the settled population.
13. The needs of this group must also be considered in the context of the discharge by the Local Housing Authority of its duties and the actions currently taken and in future proposed to be taken by that Authority in the discharge of its duties (about which see Matter 10 statement at paras.64-66).
14. The Councils have addressed the issue of compatibility of this approach with Equalities and Convention rights duties at Matter 10 statement para.17. The Local Plan policy approach conforms with National Planning Policy, which itself has been found by the Government to be compliant with equalities and convention duties (see e.g. Matters statement para.13 and documents referred to therein).
15. As discussed on day 54 should it become apparent that the needs of the non-travelling gypsy and traveller community are not being met through the current approach, then unmet need may give rise to a justification for a departure from policy through development management processes engaging s.38(6) of the P&CPA 2004. Moreover, and, as with group (b), the Councils have committed to monitoring delivery of pitches/sites and if, as a result of monitoring and/or review of the GTAA, it becomes apparent that needs are not

being met the Local Plans (or either of them) will be reviewed (see Appendix A).

16. In response to Matter 10.3(b), the Council has addresses how the Inspectors should proceed if it is not content that the approach set out above is sound.

b) If I were to conclude that the Plans do not meet the Legislative requirement and/or are not consistent with National Policy, what would be an appropriate and proportionate way forward?

17. The Councils have explained why they consider that the plans as submitted are sound, meet all relevant legal requirements and conform to national policy.
18. The response to question 10.3(b) – which raises the appropriate response if the Councils are wrong – is without prejudice to the primary case.
19. We begin with the non-travelling gypsy and travelling community who do not meet the PPTS definition and but recognising that some within this community may, through Equalities legislation, be able to demonstrate an entitlement to culturally appropriate accommodation. If the Inspector consider that, either in law or by reference to national policy, further policy provision should be made in the Local Plan, it is suggested that the following may be considered:
 - a. further modification to policy H20² to the South Cambridgeshire Local Plan to provide for sites for non-travelling gypsies and travellers to come forward within major developments, where individuals have demonstrated a need for culturally appropriate accommodation pursuant to the Equalities Act (see matter 10 statement para.98);
 - b. both Councils have committed to keeping the GTAA and the performance of the Plan in meeting the accommodation needs of travelling and non-travelling gypsies and travellers under

² Modifications are proposed to H20 – see RD/FM/010 suggested mods 156-157.

review, and to carry out a review of the LP in this respect should the need to do so arise. Modifications to the monitoring policies of the Plans to address this and other matters are presently before the relevant committees of the Council (as Appendix A);

- c. modifications to policy H8(1) of the South Cambridgeshire Local Plan may also be considered so as to add express reference, as a category of “specialist housing need”, those who are able to demonstrate an Equalities Act-derived entitlement for accommodation in a caravan or a mobile home.

20. Other options would include:

- a) finding of the entire plan unsound and thereby delaying the completion of the examination and adoption of the plan. For the reasons set out in matters statement 10 para.40-43 to do so would be disproportionate, given the level of development needs which the policies of the plans are to deliver. And given the Secretary of State’s intervention in the Maldon Local Plan following and as a result of the findings of the first Inspector as to soundness of provision for gypsy and traveller policies in that Plan, a similar outcome here cannot be ruled out thereby giving rise to further delay. If the Inspector is concerned as to soundness of provision for gypsy and travellers, then a response in the form of modifications set out in para.19 above would be proportionate, when taken together with the opportunity for unmet need to be addressed through development management processes via s.38(6);
- b) allocation of land to meet the unknown levels need which may emerge during the plan period for travelling gypsies and travellers who meet the PPTS definition and/or non-travelling gypsies and travellers (who may be able to demonstrate an Equalities Act derived entitlement to culturally appropriate accommodation). However, such an approach would not be sound for the following principal reasons:

- i. it would not be sound to allocate land on some form of contingent basis for a level of needs which is unknown and, in a practical sense, unknowable at this stage (as indeed was recognised by the Inspector in his report into the Maldon LP (see RD/H/910 para.150)). Indeed, PPTS para.11 makes clear that a criterion-based approach is the correct policy response to unidentified need;
 - ii. there are, as Caroline Hunt confirmed to on day 54, practical difficulties in identifying land which can be allocated for, and will deliver, gypsy and traveller provision. At the very least, this would inevitably lead to substantial delay in completing the examination process and arriving at adoption of the Plan.
- c) Policy H21 of the South Cambridgeshire Local Plan and policy 49 of the Cambridge City Local Plan – the criterion-based policies – could be modified to include additionally those gypsies and travellers who demonstrate an Equalities Act-derived entitlement to culturally appropriate accommodation. Policies H21 and 49 respectively (as both are proposed to be modified) apply currently to gypsies and travellers who demonstrate that they meet the PPTS definition during the plan period. These policies *could* be extended to include non-travelling gypsies and travellers who can demonstrate and EA-derived entitlement to culturally appropriate accommodation. However, to do so would, in policy terms, conflate the needs of PPTS gypsies and travellers with non-PPTS gypsies and travellers which, it is submitted, would not conform with Government policy. Moreover, such approach would result in the accommodation needs of non-travelling gypsies and travelers not being met in the same way as the wider population; the needs of that group would be treated distinctly differently from the settled population with such a policy approach It is considered that such an approach would represent a substantial departure from national policy and

would not be sound, absent any particular local circumstances which would properly justify such a departure (which the Councils consider do not arise).

18 July 2017.

Appendix A

Extract from Report to Planning Portfolio Holder 26 July 2017

Proposed Modifications to the submitted South Cambridgeshire Local Plan that relate to Policy S/12: Phasing, Delivery and Monitoring and its supporting text including Figure 4: Monitoring Indicators

Indicator Number	Indicator Description	Policy	Target	Triggers and Actions	Data Source and Frequency of Monitoring
M27	Gypsy & Traveller pitches and Travelling Showpeople plots completed	H/19, H/20, H/21	<p>To deliver permanent Gypsy & Traveller pitches, as set out in Policy H/19, which identifies that no pitches are required under the evidence base supporting the Local Plan (GTAA 2016).</p> <p>To deliver at least 11 Travelling Showpeople plots between 2011 and 2031, as set out in Policy H/19.</p>	<p><u>Trigger:</u></p> <ul style="list-style-type: none"> Inability to demonstrate delivery of permanent Gypsy & Traveller pitches between 2011 and 2031, as set out in Policy H/19, if ongoing monitoring under M27a identifies an unmet need. Inability to demonstrate delivery of permanent Travelling Showpeople plots between 2011 and 2031, as set out in Policy H/19. <p><u>Action:</u> Review the circumstances that led to the trigger being met, and then take action as</p>	<ul style="list-style-type: none"> Housing completions produced by Research & Monitoring Team at Cambridgeshire County Council. Annually.

				<p>appropriate which may include:</p> <ul style="list-style-type: none"> • Action to bring forward sites for development, wherever possible in partnership with landowners and developers. • Review Development Management processes. • Review Needs Assessment • Review of the Local Plan. • Consider undertaking co-operation with other local authorities, including through duty to co-operate. 	
M27a	Meeting the needs of those that meet the planning definition of gypsies and travellers and those that do not meet the definition but can demonstrate a cultural need for caravan accommodation.	H/19, H/20, H/21	Sufficient sites coming forward to meet identified needs of those that meet the planning definition of gypsies and travellers and those that do not meet the definition but can demonstrate a cultural need for caravan accommodation.	<p><u>Trigger:</u> Insufficient sites coming forward to meet identified needs of those that meet the planning definition of gypsies and travellers and those that do not meet the definition but can demonstrate a cultural need for caravan accommodation, assessed against the GTAA and ongoing monitoring by the local housing authority.</p> <p><u>Actions:</u> Review the circumstances that</p>	<ul style="list-style-type: none"> • Gypsy and Traveller Accommodation Assessment • National caravan count • Planning information: Planning applications, appeals, enforcement • Local Housing Authority information • Annually and on-going

				<p>led to the trigger being met, and then take action as appropriate which may include:</p> <ul style="list-style-type: none"> • Review Development Management processes. • Action to bring forward sites for development, wherever possible in partnership with landowners and developers. • Review Needs Assessment • Review of the Local Plan. • Consider undertaking co-operation with other local authorities, including through duty to co-operate. 	
M28	Number of caravans on unauthorised Gypsy & Traveller sites	H/19, H/20, H/21	Contextual indicator, to provide information for the on-going review of Gypsy and traveller accommodation needs.	<p><u>Trigger:</u></p> <ul style="list-style-type: none"> • [No specific trigger] <p><u>Action:</u></p> <ul style="list-style-type: none"> • [No specific action] 	<ul style="list-style-type: none"> • National caravan count which is carried out in January and July each year. • Annually.