

By: Mike Austerberry, Corporate Director, Enterprise and Environment

To: Gypsy and Traveller Advisory Board – 19 July 2011

Subject: **“PLANNING FOR TRAVELLER SITES” – PROPOSED KCC RESPONSE TO DCLG CONSULTATION**

Classification: Unrestricted.

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Summary: The background to, and KCC response to, the above consultation.

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## **Background**

1. The Coalition Government announced on 29 August last year that they would bring forward plans for “fair play in the planning system” for Gypsy and Traveller sites.
2. On 13 April 2011, they launched a consultation on their proposed policy changes, which lasts until 6 July 2011.
3. Their main proposals include the scrapping of the previous Circulars 01/2006 which applies to Gypsy and Traveller sites and 04/2007 which applies to Travelling Showpeople sites, the removal of references to “Gypsy and Traveller Accommodation Assessments” (GTAAAs), and their replacement with a requirement on planning authorities to plan for “local need in the context of historic demand”, using a “robust evidence base”, the requirement for planning authorities to have a “five-year supply of traveller pitches/plots”, a tightening of the rules around sites in Green Belts, and the alignment of planning policies for sites more closely with those for housing.
4. The longer and shorter versions of the consultation are available at <http://www.communities.gov.uk/publications/planningandbuilding/travellersitesconsultation>
5. There are 13 consultation questions, and the draft KCC response is attached as Appendix A.
6. Although KCC, not being a plan-making authority, does not have any direct responsibilities for the formulation of Local Development Framework policies, KCC is involved as a promoter of, and partner in, new site developments, and the Gypsy and Traveller Unit work closely with a number of plan-making authorities in Kent, as advisers and consultees, including over the content of LDFs.
7. KCC also, through the then Planning Policy Manager and the Head of the Gypsy and Traveller Unit, played a leading role in co-ordinating the Kent and Medway response to the Regional Spatial Strategy discussions 2006-2010, and a leading role in the Examination in Public in Reading in February 2010.

## **Recommendation**

5. I recommend that GTAB consider the draft response, and make any suggestions, comments or proposed amendments to it, before it is finalised for submission to DCLG by 3 August 2011.

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*Background papers: The DCLG consultation paper and response form.*



# Planning for traveller sites

## Consultation response form

**(KCC DRAFT RESPONSE – DEADLINE IS NOW 3 AUGUST 2011)**

When complete please email to: [travellerspps@communities.gsi.gov.uk](mailto:travellerspps@communities.gsi.gov.uk)

Alternatively, we would be happy to receive responses by post. Please send to:

Paul Williams  
Planning – Economy and Society Division  
Department for Communities and Local Government  
1/G6 Eland House  
Bressenden Place  
London SW1E 5DU

**The deadline for submissions is Wednesday 6 July 2011.**

## (a) About you

### (i) Your details

Name:	Mike Austerberry
Position:	Corporate Director, Enterprise and Environment Directorate
Name of organisation (if applicable):	Kent County Council
Address:	County Hall, County Road, Maidstone ME14 1XX
Email:	to add
Telephone number:	to add

### (ii) Are the views expressed on this consultation an official response

**from the organisation you represent or your own personal views?**

Organisational response

Personal views

**(iii) Please tick the *one* box which best describes you or your organisation:**

Voluntary sector or charitable organisation

Relevant authority (i.e. district, London borough, county council)

Parish council

Business

Other public body (please state)

Other (please state)

**(iv) Do your views or experiences mainly relate to a particular type of geographical location?**

City

London

Urban

Suburban

Rural

Other (please comment)

**(vi) Would you be happy for us to contact you again in relation to this consultation?**

Yes

No

## (b) Consultation questions

**Q1.** Do you agree that the current definitions of “gypsies and travellers” and “travelling showpeople” should be retained in the new policy?

Yes

No

Comment:

The definition, though lengthy, is appropriate and should be retained

**Q2.** Do you support the proposal to remove specific reference to *Gypsy and Traveller Accommodation Needs Assessments* in the new policy and instead refer to a “robust evidence base”?

Yes

No

Comment:

No, the requirement for GTAAs should remain in place. The link with the previous GTAAs, which were based on extensive information and data, is too important to lose. Renaming the information or the process is pointless, even if improvements are being sought. To do otherwise will simply provoke confusion from the public and let the whole issue become more political again, rather than evidence-based, as housing needs assessment should be.

Later GTAAs were fit for purpose, and some of them excellent, including the one for North Kent.

"Robust evidence base" is vague and open to varying interpretation, whereas a clear standard of assessment is needed.

**Q3.** Do you agree that where need has been identified, local planning authorities should set targets for the provision of sites in their local planning policies?

Yes

No

Comment:

The crucial point is "where need has been identified". Some authorities, over many years, have used various measures to resist their being Gypsies and Travellers in their areas, evade any responsibilities for assessing needs, or meeting them. There must be some process which is equitable to all parties, including other authorities and Gypsies and Travellers. Even though local views are important, it should not allow continued evasion of such responsibility and fair distribution of sites. Then targets can allow fair distribution of responsibility for accommodation and allocation of sites in LDFs

If "targets", there must be some teeth to the requirement to allocate land in plans.

Kent has a number of GTAAs which were judged robust, but are now going out of date. However, they include some very useful information and data. These need updating with a common methodology and approach, as for other authorities. Otherwise, the system will be open to abuse, and need will be neither identified nor met.

**Q4.** Do you think that local planning authorities should plan for "local need in the context of historical demand"?

Yes

No

Comment:

If that expression can be successfully defined, so it can be shown to cater for all needs, YES. Otherwise, NO.

Whilst 'historical demand' can be an important factor in determining needs, there will be changes that emerge to reflect current or changing circumstances. Similarly some historic demand may be atypical owing to local circumstance/non provision by neighbouring authorities/inconsistent approaches across boundaries etc and this might also skew figures and show a greater demand than actually exists. The phrase historical demand would benefit from clarification as it is capable of wide interpretation - particularly to assist the planning inspectorate. This question links closely with the duty to cooperate.

Kent would have benefited from the SE Plan redistribution under the previous

system. Now each district and borough has to provide for all the accommodation need it generates. This has a harsh effect on a DC like Sevenoaks, which is all in Green Belt and has relatively large numbers of public site pitches and Gypsy and Traveller populations. The “duty to co-operate” proposed in the Localism and Decentralisation Bill is unlikely to allow the same redistribution as the RSS would have been able to engineer, taking into account not just local needs, but planning issues, too..

**Q5.** Do you agree with the proposal to require local planning authorities to plan for a five-year supply of traveller pitches/plots?

Yes

No

Comment:

Providing 2, 3 and 4 can produce reliable need figures, YES. Otherwise, NO.

We believe this can only work if "need" for sites is not just locally determined, and there is some consistency of assessment process, and some acceptance by previously-intransigent authorities of the responsibility for assessing need properly, and setting realistic targets for meeting it. Otherwise, the overall need for sites (especially in certain regions like the old Eastern, South Eastern and Southwestern) and a nomadic population, will mean that those authorities that work to a five-year land supply will simply find that land being purchased by all-comers, perhaps not meeting local need at all. This is quite different from the housing market, and the influence of national housing developers. This is about a network of mobile private developers, going wherever the land and planning consent is.

**Q6.** Do you agree that the proposed wording of Policy E (in the draft policy) should be included to ensure consistency with Planning Policy Guidance 2: *Green Belts*?

Yes

No

Comment:

Yes, this would help to provide some comfort to councils that Traveller sites really are recognised as inappropriate development in the Green Belt. Applications from Travellers for development in the Green Belt should be dealt with in exactly the same way as applications from members of the settled community. Retrospective applications should not be treated any differently.

**Q7.** Do you agree with the general principle of aligning planning policy on traveller sites more closely with that on other forms of housing?

Yes

No

Comment:

**In principle, we agree.**

**This may work in some respects, such as Green Belt policy, but the evidence and delivery mechanisms required successfully to provide Traveller sites differ markedly from market and affordable housing, and it is difficult to see how uniformity could be achieved.**

**In practical terms, does this question mean housing land can be used for sites, and vice versa? If so, how do authorities prevent all the land being used for housing? The land need for Traveller pitches, across England, is tiny in area (one square mile of land) compared with the land need for housing. But local preferences are always going to be for housing land rather than site land.**

**Additional caution is needed here as (historically at least) some Traveller provision or applications have been allowed, including sometimes on appeal in areas that would simply never be acceptable for other forms of housing. The implications of this might therefore be considerable. Whilst other landowners readily bring land forward for other types of residential use/housing, the land coming forward for Traveller sites is often very much more limited.**

**However, it needs to be borne in mind that the provision of affordable homes on rural exception sites is dependent upon local need, and the occupiers of such units are required to demonstrate a local connection. For as long as Traveller sites are allowed to establish as exceptions to normal planning policy restrictions, without the need for a local connection to be demonstrated, planning policy on traveller sites will not be accepted as being aligned with that for other forms of housing, ie you cannot have an exception policy if LPAs cannot determine local need as a consideration.**

**Local need should be relevant, or at least very good reasons for requiring accommodation in the area. It should not be enough that the applicants or appellants have left other accommodation elsewhere, or have a tenuous connection with the area within which they are seeking development consent. This would be a bold and necessary change, challenging the connection with past nomadic movement as being not relevant in the specific case.**

**Q8.** Do you agree with the new emphasis on local planning authorities consulting with settled communities as well as traveller communities when formulating their plans and determining individual planning applications to help improve relations between the communities?

Yes

No

Comment:

**Swale BC is an example of excellent local consultation and practice, as they have carried out public meetings discussing site needs and locations, with audiences including Gypsies, Travellers, people living in houses, and other community representatives.**

**It should be managed skilfully, carried out respectfully (with proper regard for the feelings of those taking part), including if there are large public meetings, and it should promote community cohesion and allay the fears from all sides about others.**

**Government should assist by supporting local authorities (and rewarding them) for positive and brave and new approaches, to send a message to those negative local authorities who are still on the journey to better community relations.**

**Q9.** Do you agree with the proposal in the transitional arrangements policy (paragraph 26 in the draft policy) for local planning authorities to “consider favourably” planning applications for the grant of temporary permission if they cannot demonstrate an up-to-date five-year supply of deliverable traveller sites, to ensure consistency with Planning Policy Statement 3: *Housing*?

Yes

No

Comment:

**Temporary consents may sometimes be appropriate, but it is very important that temporary consents are not seen as the answer to permanent accommodation needs, any more than temporary dwellings of prefabs. are the answer to permanent bricks and mortar housing needs. Local authorities need to get on the front foot, consult and discuss openly and widely, and allocate suitable locations for sites.**

**Gypsies and Travellers need to discuss planning options for sites before they move to land, and give undertakings about numbers of caravans that they are seeking development for, instead of simply muscling in and using legal aid and the courts to achieve development which would not be allowed for any other group.**

**Temporary permissions granted in places where no-one else would get development consent, even temporary, runs counter to the stated idea in this Government announcement/consultation of putting all on an even footing.**

**Further, the resulting temporary permission is often either extended or leads to expensive enforcement and court action when the period of the temporary permission expires and little or nothing has been done to clear the site/find an acceptable and authorised alternative.**

**The message sent to some in Gypsy and Traveller communities is that, if you play it cleverly, you can develop land that no-one else could and get away with it. The message sent to recalcitrant authorities is that the planning inspectorate will prevent you having to allocate sites in proper places, and be responsible for your local planning policy. Neither of these messages is helpful, positive or promoting good changes.**

**Local planning authorities need to seize the initiative, call for sites, and allocate suitable land. Gypsies and Travellers need to discuss planning options for sites before they move to land, and give undertakings about numbers of caravans that they are seeking development for, instead of simply muscling in and using legal aid and the courts to achieve development which would not be allowed for any other group.**

**In addition, there need to be tightening up of procedures around planning appeals and the way they are conducted, to ensure fairness to all parties, and the ability to verify information presented by any parties. At present, the process lacks credibility in many cases.**

**Q10.** Under the transitional arrangements, do you think that six months is the right time local planning authorities should be given to put in place their five-year land supply before the consequences of not having done so come into force?

Yes

No

Comment:

No - This seems to run in the wrong direction, if the government is seeking to send different messages from what has gone before (see answer to last question). If the Government continues to grant special status to Traveller sites by requiring a specific five-year supply of traveller sites, six months is a wholly unacceptable timescale. The allocation of traveller sites has to be through the development plan system, in parallel with the allocation of sites for other forms of housing. There will be an expectation to engage locally. Not all LPAs will be in a position to adopt core strategies or Development Plan

Documents allocating sites within six months of the PPS coming into force.

There are differences between the approach in the draft PPS and the approach to housing in 'PPS3' which it purports to reflect. PPS3 does require the Council to consider applications favourably when a five year land supply cannot be demonstrated, but it cross references to a paragraph referring to other considerations (paragraph 69) which are important considerations, such as considering the 'suitability of a site for housing, including its environmental sustainability'. For a Traveller site to warrant temporary consent, a site would have to be suitable in planning terms. For example, it would be inappropriate to grant consent if it would cause harm to the environment even if it was temporary, or it would not provide a safe residential environment. This should be highlighted in the PPS, in a similar way to how the requirement to consider favourably is caveated in PPS3.

Rather than six months, which will not be achievable, a period of a year or even two years should be allowed, because the benefits of planned arrangements in an area outweigh the risks associated with unplanned development allowed on appeal.

**Q11.** Do you have any other comments on the transitional arrangements?

Yes

No

Comment:

**More use should be made of all of the evidence that was put forward in the regional planning process, for example for the partial review of the South East Plan in respect of Gypsy and Traveller provision - evidence which though never published as an Inspector's report, was made public via an FOI request. If LPAs have to again spend time gathering this information, then this is likely to cause unnecessary delay and a further waste of resources.**

**Q12.** Are there any other ways in which the policy can be made clearer, shorter or more accessible?

Yes

No

Comment:

**Yes. A clear and brief statement that the same planning policies and principles will apply to all - including a reference to the fact that (irrespective of 5 year supply) if the site is simply not suitable it will not**

be permitted - as is the case with all other forms of housing.

There is nothing wrong with something lengthy, providing it is clear and understandable. Perhaps the new guidance should contain all the relevant policy, as Circulars 01/06 and 04/07 do. That makes it much easier and user-friendly for planning officers and all other interested parties.

The long version of this consultation document was very overwritten and repetitive, and not clear. The fact that a short version was then produced reflects that, and shows what can be done.

Policy F states that where possible Local Planning Authorities should plan for traveller sites suitable for mixed residential and business uses. However, this approach is not consistent with the existing Government guidance (if it still applies?) regarding Design of Gypsy and Traveller Sites, which states at paragraph 49, 'Gypsy and Traveller sites are essentially residential and those living there are entitled to a peaceful and enjoyable environment'. It also does not reflect the experience of South Cambridgeshire, where the vast majority of sites are residential in nature, with occupants working off site. Whilst some sites may have business elements that are specifically consented, sites can be planned with a residential in character and impact. There is a danger that the draft PPS could be presenting all Traveller sites as pseudo-employment sites, and there should be flexibility to plan according to local circumstances and actual needs.

Policy G Major Development projects – The current policy acknowledges some major development proposals could require temporary or permanent relocation of Traveller sites. It is disappointing that the policy does not acknowledge the opportunities provided by major development sites to deliver new site provision, and that this may be a route available to Local Planning Authorities.

Policy H paragraph 20e states that Local Planning Authorities '...should determine applications for sites from any Travellers, not just those with local connections.' The statement is not necessary, as Local Planning Authorities are required to determine valid planning applications.

Policy H (paragraph 21) is specific that phasing the delivery of the identified allocated sites could be a material consideration when determining a planning application for an allocated site that has come forward early. However, sites coming forward as windfalls could equally undermine plan objectives, or mean that sites in a development plan are no longer required. Circular 01/2006 states that 'Local planning authorities should be able to release sites for development sequentially, with sites identified in DPDs being used before windfall sites'. The need to consider the impact on the development plan strategy should be highlighted as a material consideration when considering windfall site applications.

**Q13.** Do you think that the proposals in this draft statement will have a differential impact, either positive or negative, on people because of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation? If so, how in your view should we respond? We are particularly interested in any impacts on (Romany) Gypsies and (Irish) Travellers and welcome the views of organisations and individuals with specific relevant expertise. (A draft Equalities Impact Assessment can be found at Annex C.)

Yes

No

Comment:

**There must be wider education and awareness made of the basis for a fair and level playing field for all - and that includes for the due process of seeking permission prior to commencement of works and/or changes of use. This needs to come from central government and the courts if necessary - combined with better provision including continuing grants to LPAs to establish authorised sites if necessary.**

**The danger from a practical view point is that the document will serve to perpetuate the perception that it is the settled population's rights that are adversely affected by the policy approach.**

**The consultation draft PPS contains a number of questions on a cost/benefit and impact analysis of the withdrawal and replacement of the existing circulars relating to Gypsies and Travellers and Travelling Show People. As many of these relate to monetary benefits, and the proposed policy changes are considered to be negligible and unquantifiable, no response is suggested to these.**

## (c) Consultation questions on the impact assessment

The impact assessment is annexed to the consultation document. It is a consultation stage impact assessment, which analyses the costs and benefits of the policy options alongside the 'do nothing' baseline.

### General questions about the impact assessment

**Q1.** Do you think that the impact assessment broadly captures the types and levels of *costs* associated with the policy options? If not, why not?

Yes

No

Comment:

**Experience of as number of our councils in Kent and Medway suggests that there will always be very high costs and risks associated with any enforcement process, including in particular, with any court actions (prosecutions and injunctions etc) and that these will not be wholly eradicated even where an LPA can show a 5 year supply. Reference in the consultation to raising fines will have little effect unless the magistracy are closely aligned and the higher levels of fines are ever levied - or even collected. This problem persists and further dissuades compliances and results in a loss of confidence in the system.**

**Q2.** Do you think that the impact assessment broadly captures the types and levels of *benefits* associated with the policy options? If not, why not?

Yes

No

Comment:

**A much more rigorous assessment is needed.**

**Q3.** Are there any significant costs and benefits that we have omitted? If so, please describe including the groups in society affected and your view on the extent of the impact.

Yes

No

Comment:

**The costs to settled communities and LPA of unauthorised developments - both in terms of Council resources on enforcement and in terms of the impact of such development (HRA) on the rights and freedoms of others, ie the settled community.**

**Q4.** Do you agree that the impact assessment reflects the main impacts that particular sectors and groups are likely to experience as a result of the policy options? If not, why not?

Yes

No

Comment:

**There seems to be expectation that assessment of needs will automatically result in suitable land being put forward for allocation purposes. Very few landowners are likely to put their land forward for Gypsy and Traveller sites - even where it may meet a set of clearly agreed criteria. The consultation does not address what is evidently a market failure.**

**Q5.** Are the key assumptions used in the analysis in the impact assessment realistic? If not, what do you think would be more appropriate and do you have any evidence to support your view?

Yes

No

Comment:

See answers to Q2, 3 and 4.

**Q6.** Are there any other relevant key sources of evidence relating to the policy or the effectiveness of the suggested options that have been omitted? If so, please provide details.

Yes

No

Comment:

Detailed evidence from court cases, injunctions, appeals (including outcomes and costs to LPA) and from LPA officers involved at the sharp end

**Q7.** Are there any significant risks or unintended consequences we have not identified? If so, please describe.

Yes

No

Comment:

If the aim is to make a fair playing field for all, it seems that a number of Travellers who now benefit from temporary permissions and maybe even some permanent ones - would not be likely to do so in the future if planning policy is truly applied fairly to all. A shortage of suitable land coming forward is likely to remain a problem.

**Specific questions about the proposed policies in the impact assessment**

**Q8.** Do you think there are any other benefits to retaining the existing policy (Option 1, do nothing), and whether these can be quantified?

Yes

No

Comment:

N/A - this has needed reviewing since the 1994 Act when similar concerns were raised.

**Q9.** Can you identify – in quantitative terms if possible – whether you think there would be any benefits to Option 2 (withdraw circulars 01/2006 and 04/2007 and do not replace them)?

Yes

No

Comment:

Until the issue of "Gypsy Status" as a material consideration in planning appeals is tackled, and the issue of whether formerly nomadic people need special priority in the planning system, there will not be benefits to Option 2. It is the lack of availability of land,

allocated for site use, which is the obstacle. All Option 2 would do is rearrange the deckchairs on the Titanic.

**Q10.** Please comment on whether you envisage any extra costs to local planning authorities associated with the assessment of need for traveller sites in their areas, over and above those which they experience at present.

Comment:

**See also answer to Q11 to main questionnaire above. There will be costs in assessing and reviewing/updating evidence base and consultation - this is likely to increase if the issue of a 5 year supply comes into effect (and where comments as to shortage of land coming forward have also been made) and where no real solution to this problem has been offered.**

**Q11.** Please give your view on the scale of the time and money benefits which will accrue to local planning authorities as a result of being able to set traveller site targets locally.

Comment:

There may well be no time or money benefits of doing so. If the authority is determined to meet needs, then the system of doing so is likely to make little difference. If it is determined not to, it will continue to use up time and money defending appeals and being on the back foot.

**Q12.** Please give your view on whether the transitional period envisaged will lead to any extra costs – and what those might be in monetised terms.

Comment:

**There should be fewer costs if there is a more realistic transitional period.**

**Q13.** Please give your view on the extent to which, and rate at which, you consider new sites will come forward as a result of the new approach.

Comment:

Without expedited CPO powers, district councils do not hold land banks of sites awaiting development. The prospect of suitable land coming forward through a proper planning process seems slim.

But some calls for sites, in Kent, have resulted in numbers of suggested sites coming forward, and this is something that can be developed, but is very difficult to quantify and depends on the speed of LDF processes and the production of DPDs.

**Q14.** Is the draft policy likely to have any significant monetary benefit in terms of protection of the Green Belt, and, if so, what this is likely to be?

Yes

No

Comment:

No. There is no reaffirmation given to Policy approach in AONBs, National Parks etc. This should be clearly mentioned in para 22 of the draft PPS - a presumption against. Government assessments of the costs/benefits of impact on the landscape/assessment are notoriously weak and lacking in an evidence base.

**Q15.** Do the familiarisation costs estimated for local planning authorities appear reasonable? Please give your view on the assumptions made in this calculation.

Yes

No

Comment:

One officer will not be able to disseminate the detail of this to all colleagues to any point where they are then able to produce evidence, DPDs, face appeals, court cases etc, assess needs for enforcement action, social needs of Travellers as part of this process etc.

**Q16.** Do the estimated administrative savings for local planning authorities, as a result of streamlining national planning policy, seem reasonable? Please give your view on the assumptions made in this calculation.

Yes

No

Comment:

See above replies to a number of questions. The savings will be made most by those planning authorities who are or get on the front foot with this issue, and successfully allocate sites and successfully defend appeals.

**Q17.** Are there any significant costs and benefits that we have omitted? If so, please describe including the groups in society affected and your view on the extent of the impact.

Yes

No

Comment:

Landscape, environment, settled community.

**Q18.** Do you think that the draft policy is likely to have any impact, positive or negative, on travelling showpeople as an economic group?

Yes

No

Comment:

Of itself no - this will need further and wider work on engagement, testing of evidence, attitude and experience of the courts and the inspectorate decisions on appeals before any of this hoped for change may emerge in any quantifiable form.

**Q19.** Are there any significant risks or unintended consequences we have not identified? If so, please describe.

Yes

No

Comment:

Within the draft Policy at para 23, the suggestion that "untidy" land should be looked upon favourably is likely to lead to landowners allowing land to become so in order to gain permission - a not unknown phenomenon. This suggested criteria has no regard to normal planning criteria and should be removed from the draft Policy.

**Q20.** Do you think there are any groups disproportionately affected?

Yes

No

Comment:

There is a particular issue around Irish Travellers in areas, like Kent, where there are much greater numbers of Romany, English and other non-Irish Travellers. There is a reluctance for Irish Travellers to seek places on public sites where they are in the minority, and then a desire to use this as a reason why they should be granted a private site consent.

This is not an issue where the proposed planning policy produces the disproportionate impact, but an issue onto which any new planning policy is overlaid.

There should not be disproportionate effects if the aim of equality is consistently pursued.