

RESPONSE OF MURDOCH PLANNING LIMITED
TO NEWARK & SHERWOOD DISTRICT COUNCIL'S POST-
HEARING STATEMENT ON MATTER 14 RE THE EMERGING
GYPSY AND TRAVELLER POLICY: CP 4 & 5

1. Nothing in the LPA's February 2018 Statement has affected the submission in my first Statement that the proposed emerging Development Plan, so far as Gypsy and Traveller policy is concerned, is not robust, is not consistent with national policy and is unsound. Paragraph 1.03 of the LPA's Statement is therefore disputed for reasons that are detailed below.
2. Paragraph 2.01 is factually inaccurate: 2 of the Appeals I referred to in my first Statement post-dated both the DPD's examination (December 2012) and adoption (June 2013) as they were dated June 2014 (Green Park, Tolney Lane Appendix 2) and 5th April 2017 (Appendix 3). The reason for referring to the Gray DL (Appendix 1) was that it was issued in June 2012 at which time the LPA accepted that there was a shortfall of at least 39 pitches (which should have been 52 as my first Statement established). This demonstrates that there was not a surplus of pitches as alleged by the LPA: they claim 93 pitches had been approved against a need of 84. There was not a surplus but a deficit of at least 39 on their own case. Furthermore, as the previous GTAA required 88 pitches not 84, and by 2011 and not 2012, the LPA's position in their post-Hearing Statement is doubly incorrect (please refer to paragraphs 4 & 5 of my first Statement).
3. Paragraph 2.04 entirely misses the point I was making at paragraph 18 of my first Statement: the reason I referred to Circular 1/2006 *Planning for Gypsy and Traveller Caravan Sites* and the 2012 version of PPTS (both attached for ease of reference) was to demonstrate that the requirement for an allocations policy to meet need was not introduced in August 2015 when PPTS was revised – which may have partly explained the lack of an allocation policy to date - but had existed as national policy since February 2006 - more than 12 years ago now – and that this LPA continues to stand in breach of that requirement to this very day. 1/2006 required:

“The number of pitches set out in the RSS must be translated into specific site allocations in one of the local planning authority's DPDs that form part of the

LDF.... Local authorities must allocate sufficient sites for gypsies and travellers, in terms of the number of pitches required by the RSS, in site allocations DPDs. A requirement of the Planning Act (2004) is that DPDs must be in general conformity with the RSS. Criteria must not be used as an alternative to site allocations in DPDs where there is an identified need for pitches.”

4. This LPA failed to allocate sufficient sites for the entire period when 1/2006 was in force and thereby breached the requirement that unmet need be met by site specific allocations by February 2011 at the latest.
5. On 23rd March 2012 the first version of PPTS was issued. This required site allocations to meet identified need sufficient to provide a rolling 5 year supply of sites, annually updated. This LPA has stood in breach of that policy ever since.
6. On 31st August 2015 the current PPTS was issued and maintained the requirement for the allocation of a rolling 5 year supply of sites, again annually updated. This policy has been breached every year since it was issued as well. This means that for at least the past 12 years, this LPA has manifestly failed to comply with national policy where Traveller site provision is concerned.
7. The Council’s position at 2.06 is confused: neither CP4 nor CP5 are allocations policies. In the previous version of CP4 it stated that *“the Council will identify and where necessary **allocate 84 pitches to meet the identified need through the Allocations and Development Management DPD**”* In the Green Park Appeal (Appendix 2) the Inspector records at paragraph 70:

“Generally, the CS and DMDPD have set out planning policy and allocations for the district up to 2026 and there is a 5 year supply of housing land to meet the needs of the settled community. By contrast, the pitch requirements for gypsies and travellers have only been identified up to 2012 and the Council has not met those requirements. It has not identified the future need and cannot demonstrate an up to date 5 year supply. When asked if the Council’s policies facilitate the traditional nomadic way of life of travellers, Mrs Lockwood’s candid reply was “probably not.”

8. CP5 is not an allocation policy: it is a criteria-based development management policy. PPTS 2012 and 2015 are clear that criteria based policies alone are insufficient where there is an unmet need (as here). Paragraph 10 PPTS states:

“Local planning authorities should, in producing their Local Plan:

*a) identify and update annually, a supply of **specific deliverable sites** sufficient to provide 5 years’ worth of sites against their locally set targets*

b) identify a supply of specific, developable sites, or broad locations for growth, for years 6 to 10 and, where possible, for years 11-15.”

9. Paragraph 11 PPTS 2015 then states:

*“Criteria should be set to guide **land supply allocations** where there is identified need. Where there is no identified need, criteria-based policies should be included to provide a basis for decisions in case applications nevertheless come forward.”*

10. In this case there is an identified need (only the scale of that need is at issue) and there is a putative criteria-based policy to guide allocations but no allocations policy itself, This is in breach of the PPTS.

11. From paragraph 2.06 onwards, the LPA then relies on 3 local authorities (out of the 350 nationwide) to try to negate the need for an allocations policy in Newark. In the Adur case, the need is for just 4 pitches and the IR makes clear that the landowner is willing and able to deliver those pitches. In Newark the position could not be more different: the process of allocation has failed for 12 years and landowners (including the most recent at Quibbel’s Lane) have not wanted to develop Traveller sites on their land.

12. At paragraph 2.08 the Council refers to the London Borough of Hammersmith and Fulham having a need for 6 pitches with the IR stating that those Councils have “not been able to identify how this need will be met...which is not in accordance with national policy” to date but that they have “the intention of having a suitable land supply identified during 2018.” Given land prices in London and the extreme

difficulties in identifying suitable land for allocation in the capital, it is not surprising that Hammersmith and Fulham have failed to allocate sufficient Traveller sites. Indeed, so scarce is land in the London that the one site referred to (that at Westway) is actually located underneath the M40 flyover itself and is the most polluted Traveller site in Europe. None of those pressures arise in Newark.

13. The statement at paragraph 2.11 that “to avoid delay” Traveller sites in Newark are proposed to be met through not allocating any at this stage is risible in the context where the LPA has been informing every Inspector for the last decade that allocating such sites was (always) just a couple of years away. In fact CP4 itself envisaged such allocations being in place before 2012 !
14. Whilst the Council refers from paragraph 2.15 onwards to 6 LPAs whose Local Plans were supported by GTAAs, the issue here is whether this GTAA is robust and forms a reliable basis to render Newark’s Plan sound. Quite simply it does not for reasons that I will explain below.
15. I turn now to the GTAA itself: in my view the criticisms that I and others have made of this document are such that the only way to achieve a robust pitch target in the development plan is for the process to be re-undertaken on a thorough and comprehensive basis.
16. In my email of 2nd February 2018 I stated:

“Please see p4 table Stage 1 step 1a GTAA

The Council uses January 2013 count = 292 caravans which @ 1.7 = 172 pitches

But if we use the most recent published count for January 2017 there were 354 caravans which @ 1.7 = 208 pitches

*Then the Council use the 2011 census: of the 253 Traveller responses 55 is made up from Travellers on sites and 198 from Bricks and Mortar [B&M]. The GTAA discounts **all** the B&M [Stage a step 1a Action Column] so they say $55/3.3 = 17$ households*

[On the Council’s figures this makes a] Grand total of 172 + 17 = 189 baseline

I say on the same census figures accepting the 55 on site purely for sake of argument:

At stage 3 step 8 of the GTAA it says 33% of B&M want a site so 33% of the 198 B&M = 65

$$65 + 55 = 120$$

$$120/3.3 = 36$$

Grand total: 208 + 36 = 244 Baseline

17. In their post-Hearing Statement, the Council asserts that they have not discounted Travellers in bricks and mortar but it is clear from the Action column at Stage 1a of the GTAA that this is incorrect: “*assumptions made from 2011 census that 55 G&T residents live on site and remainder live in bricks and mortar accommodation which = 198. For planning purposes this proportion of the community are considered to have ceased traveling permanently. The Tribal study (para 3.6 pg 33) assumes that the average household size for the G&T population in the district is 3.3 [therefore] 55/3.3 = 17 households. [Therefore] the total G&T household population for area is 172 + 17 = 189*” **From that it is clear that the 198 living in bricks and mortar have in fact been discounted from the baseline figures in clear contradiction of the Council’s statement to the EIP.** Discounting such a large section of the population on its own renders the resulting data unsound.
18. Turning to Stage 1, step 4 in relation to concealed households, the Council states that there were 232 caravans in the 2013 count but in fact there were 292 (see first page of GTAA Stage 1).
19. Stage 4 in terms of supply is hugely problematical: in my first Statement I already asked the Council to be put to proof on the assertion at step 12 that there are “*300 pitches available.*” From 2.37 onwards the Council tries to address the concerns I raised as to whether these pitches were a) permanent b) temporary or c) whether they even have a Condition restricting them to Travellers. Whilst Tolney Lane does of course have a long association with Travellers, pitches that are not restricted by way of occupancy

Conditions to Travellers cannot be guaranteed to be available to them. In that regard, the Council assert at 2.40 that “*most significantly 34 pitches at Church View*” have come back into use. The Council’s example makes the case for me: there is no occupancy condition on Church View and the site is not occupied by Travellers. This is probably because the sign at the front of the site states that **plots were available for the retired and semi-retired**. None of those plots have Gypsy caravans on them or Travellers living in them; they are all the type of single unit mobile home once finds on summer holiday parks, not year-round caravans for Travellers’ homes.

20. At paragraph 2.39 the Council addresses ‘turnover.’ We can see from Stage 5 of the GTAA that “*turnover*” accounts for 86 pitches as part of the alleged supply over 5 years (10% turnover = 86 divided by 5 = 17.2 that being 10% of the [wrongly] estimated population of 172). I stand by my criticisms of the use of ‘turnover’ where there are no public sites. All of the examples put forward by the Council of LPA’s who have relied on ‘turnover’ as part of supply had public sites, unlike Newark, where there are none.
21. The **only** other element of alleged ‘supply’ (Stage 5, step 16) is “*transfers to housing from sites*” which relies on the “*assumptions*” made back in 2007 by Tribal rather than on any kind of up to date, empirical data. This too is fanciful – 39 pitches becoming available over 5 years from people leaving sites and going into housing has no basis in fact whatsoever, as it does not derive from face-to-face interviews with Travellers across Newark.
22. Therefore, the only 2 sources of alleged supply in the GTAA turn out to be based on nothing of substance, having not been derived from empirical data robustly analysed. Thus, rather than total supply being 86 (‘turnover’) and 39 (transfers to housing) = 125, supply is in fact zero. Absent those 2 sources of ‘supply’ then, and the need is not 169.8 (Stage 3, step 11) minus 125 supply = 44.8 (Stage 6 Total Pitch Requirements) but rather 169.8 – 0 = 169.8 or 170 rounded up. Without the smoke and mirrors of ‘turnover’ and unsubstantiated transfers from sites to housing, a far more realistic assessment of need emerges. **It is for reasons such as this that as an absolute minimum the entire GTAA needs to be undertaken afresh.**
23. Stage 6 ends by reminding readers that only 16 face-to-face interviews took place and then only in the west of the district. At 2.14 of the Council’s Statement, they consider

my criticisms of these shortcomings to be “*unfair*” and go on to assert that using the bi-annual count is utilised elsewhere. In fact, the Council goes so far as to state that reliance on the bi-annual count is likely to result in an over-estimation of need (paragraph 2.19). This is simply wrong and should be afforded no weight. In the same way that the Council refers us at paragraph 2.33 to the withdrawn CLG document *Designing Gypsy and Traveller Sites: Good Practice Guide* (2008) as it remains “*a useful guide in the absence of other information*” so I would refer the parties to the CLG publication *Gypsy and Traveller Accommodation Needs Assessments* (2007) :

“63. However, for some groups there is likely to be very little secondary data. Although more than half of the Gypsy and Traveller communities are thought to be residing in bricks and mortar accommodation, housing records are unlikely to identify who or where they are. Ethnic monitoring categories often do not identify Gypsies and Travellers separately, and where they do, Gypsies and Travellers in housing may be reluctant to identify themselves as such for fear of reprisals. Similarly, housing waiting lists are unlikely to identify Gypsies and Travellers as a BME category. The records held by other service providers cannot be assumed to be comprehensive either, as they will only record those accessing the service, and it is known that Gypsies and Travellers frequently do not take up available services, for a variety of reasons.

*64. It is unlikely that existing data alone will be sufficient in carrying out a Gypsy and Traveller Accommodation Needs Assessment, as such data is not likely to be comprehensive or detailed. For example, **while the caravan count data can provide a proxy for the amount of unmet need for authorised pitches, it will be a crude proxy, as it says nothing about the number of households or individuals in those caravans, the adequacy of their accommodation, their needs, their preferences, their travelling patterns or their reasons for living where they do. It will not establish the need for pitches among those housed in bricks and mortar, or whether some of those on unauthorised sites would prefer to live in bricks and mortar if they could access it.***

65. Fuller information is needed to ensure that Gypsy and Traveller accommodation need is adequately identified and plans put in place to address

it. It is therefore recommended that the local authority or partnership conduct a specialist survey and/or qualitative research to obtain further more detailed information.”

24. Relying on the census, the bi-annual count, Council Tax records and assumptions from the Tribal study undertaken some 11 years ago does not make up for only interviewing 16 individuals in only part of the District of Newark. This is a fundamental flaw in the current assessment and reinforces the need for the assessment to be carried out again in a thorough and meaningful way.

25. At paragraph 2.25 the Council states that Opinion Research Services [ORS] are “*a reputable consultancy heavily involved in the production of GTAAs nationwide.*” ORS caution against using the bi-annual count figures in their latest GTAA (attached to this Statement) on the following grounds:

“4.8 As this count is of caravans and not households, it makes it more difficult to interpret for a study such as this because it does not count pitches or resident households. The count is merely a ‘snapshot in time’ conducted by the Local Authority on a specific day, and any unauthorised sites or encampments which occur on other dates will not be recorded. Likewise, any caravans that are away from sites on the day of the count will not be included. As such it is not considered appropriate to use the outcomes from the Traveller Caravan Count in the calculation of current and future need as the information collected during the site visits is seen as more robust and fit-for-purpose...”

26. ORS also caution against the use of ‘turnover’ as part of supply too:

“3.40 Some assessments of need make use of pitch turnover as an ongoing component of supply. ORS do not agree with this approach or about making any assumptions about annual turnover rates. This approach frequently ends up significantly under-estimating need as, in the majority of cases, vacant pitches on sites are not available to meet any additional need. The use of pitch turnover has been the subject of a number of Inspectors Decisions, for example APP/J3720/A/13/2208767 found a GTAA to be unsound when using pitch turnover and concluded:

West Oxfordshire Council relies on a GTAA published in 2013. This identifies an immediate need for 6 additional pitches. However, the GTAA methodology treats pitch turnover as a component of supply. This is only the case if there is net outward migration yet no such scenario is apparent in West Oxfordshire. Based on the evidence before me I consider the underlying criticism of the GTAA to be justified and that unmet need is likely to be higher than that in the findings in the GTAA.

3.41 In addition, a recent GTAA Best Practice Guide produced jointly by organisations including Friends, Families and Travellers, the London Gypsy and Traveller Unit, the York Travellers Trust, the Derbyshire Gypsy Liaison Group, Garden Court Chambers and Leeds GATE concluded that:

Assessments involving any form of pitch turnover in their supply relies upon making assumptions; a practice best avoided. Turnover is naturally very difficult to assess accurately and in practice does not contribute meaningfully to additional supply so should be very carefully assessed in line with local trends. Mainstream housing assessments are not based on the assumption that turnover within the existing stock can provide for general housing needs.”

27. The LPA’s argument that the revised definition of Traveller in PPTS is likely to result in a reduction in the population of Travellers in Newark is based on nothing but speculation. Indeed, in the Runnymede GTAA above, the figure of need actually increased from the 2014 GTAA when the 2018 GTAA was published.

28. ORS also stress the need for assessments to try to reach all the Travellers living in the area:

“3.7 Through the desk-based research and the stakeholder interviews, ORS sought to identify all authorised and unauthorised sites/yards and encampments in the study area and attempted to complete an interview with the residents on

all occupied pitches and plots. In order to gather the robust information needed to assess households against the planning definition of a Traveller, up to 3 visits were made to households where it was not initially possible to conduct an interview because they were not available at the time.

3.8 Our experience suggests that an attempt to interview households on all pitches is more robust. A sample based approach often leads to an underestimate of need – and is an approach which is regularly challenged by the Planning Inspectorate at planning appeals.”

29. I agree with ORS that it is necessary to interview the entire Traveller population if a robust assessment is to be completed; that the bi-annual counts under-record need; and that turnover is an unreliable source of ‘supply.’ As the Newark GTAA has failed all of those tests – and more – the inescapable conclusion to draw is that the GTAA is not robust, is not based on sound data and should be undertaken again.

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