

SUBMISSIONS OF MURDOCH PLANNING LTD
IN RESPECT OF NEWARK & SHERWOOD DISTRICT COUNCIL'S
EMERGING GYPSY AND TRAVELLER POLICY: CP 4 & 5

1. Put shortly: 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. I will explain why I have reached these conclusions below.
2. I have been working for Travellers in this LPA's area since 2009 and in that time have had 3 Appeals allowed for Traveller sites, the most recent of which was issued last year. Due to this long period of planning work I have data that goes back many years and which undermines the evidence now being presented to the EIP.
3. If we look at the actual wording of the extant version of policy CP4 that states:

"..The Council will identify and, where necessary, allocate 84 pitches to meet identified need through the Allocations & Development Management DPD.

*Taking into account the 32 pitches granted planning permission since the Needs Assessment was published in 2007 **a further 52 pitches are required**....*

The District Council will keep under review the levels of need beyond 2012 as required in the Regional Plan. If such a review requires further pitch provision the District Council will seek to address such demand by the identification and, where necessary, allocation of additional pitches through a further DPD."

4. So far as the issue of need up to 2012 in concerned, I was the Agent in the Gray Appeal (Appendix 1) issued in June 2012. In the Consultation response of the Community Housing Officer in that case it states:

*"The [2007] GTAA concluded that there is a need for **88 additional permanent pitches between 2007-2011**. This figure was revised in by the Regional Spatial Strategy (RSS) to 84, but due to recent deletion of the RSS this evidently no longer is applicable and the figure of 88 would appear to be again the current target."*

5. Thus 88 rather than 84 further permanent residential pitches were required, and by 2011 rather than 2012. The LPA therefore stood in breach of the requirement identified in its own GTAA. In the Housing Consultation response in the Report to Committee in the Gray Appeal:

*“Recent permissions in Newark and Ollerton have seen the Council deliver through planning [permissions rather than site allocations] an additional 32 pitches, **meaning there is still and outstanding need for 56 pitches within the District.** The GTAA does not specify exactly where these additional pitches should be directed.”*

6. Whether the residual level of unmet need was 52 when considered in the light of the RS or 56 as indicated by the GTAA, it is clear that a substantial level of unmet need existed right up to and including 2012. Given that the GTAA only covered the period up to 2011, that residual figure needed to be carried across in the next GTAA in terms of the unmet need for further sites which the Development Plan failed to provide for during the previous 5 year period.
7. The Officer in the Gray Appeal dealt with need in the context of the Development Plan as follows:

*“... In total, planning permission has been granted for 32 new pitches over this period which is around 40% of the total requirement. Three have been approved within the Newark Urban Area and 32 have been approved within Ollerton and Boughton. **In light of this, the Authority acknowledges that a degree of need exists at this time – a further 52 pitches....**”*

8. The Gray DL was issued on 28th June 2012:

*“7. However, in the first instance, although the policy aims to increase the provision of sites in the Newark Urban Area, it does not rule out the possibility of sites coming forward elsewhere. Secondly, the policy goes further than merely the identification of the preferred location of sites. **It is a policy which sets out the Council’s strategy for identifying and, where necessary, allocating the sites to meet the identified need for gypsy pitch provision.** The Council*

accept that this has not been done; that there is currently an unmet need in the District for 39 pitches; and that the need will not be met by the end of 2012, as required by the policy...

10. Policy CP4 also requires the Council to keep the levels of need beyond 2012 under review and seek to address any demand by further identification of pitches. Whilst discussions are underway with other local authorities on this matter, there are no firm proposals to address the issue of need beyond 2012.

*11. The lack of achievement of these strategic aims is itself contrary to policy CP4. It is also contrary to the advice in the Government's Planning policy for traveller sites which requires local authorities to plan for a 5 year supply of specific deliverable sites for gypsies and travellers. **It is clear from the above that the outstanding unmet need in the District will not be provided through the development plan process.** This matter weighs in favour of the appeal.*

12. The result is that the need for gypsy pitches in the District will have to be met through the consideration of unallocated sites such as the appeal site..."

9. The LPA accepted that a need for 39 residential pitches at 28th June 2012 (I consider that there was an existing unmet need of 54 pitches: $84 - 30 = 54$). As the Appeal was allowed for 4 pitches then some 50 further permanent residential caravan pitches were outstanding as of the date of the Decision Letter rather than 39.

10. In the Officer's Report for Hiram's Paddock, Tolney Lane (approved on 20th September 2011):

*"Whilst it is acknowledged that **there is a need for additional gypsy and traveller pitches**, the application site is located within an area that is at risk from flooding. The guidance within PPS25 states that Local Planning Authorities should apply the Sequential Test to minimize risk by directing development to lowest flood risk areas. This involves considering whether there are any reasonable available alternative sites for this use, this means sites that are available, suitable, acceptable and affordable. In practice this means sites which have planning permission for occupation for*

*gypsies, as the allocation of land for gypsies sites in the Allocations and Development Management DPD has yet to be completed which would identify areas where there would be good prospects of applications for gypsy sites being granted. **There is no evidence of any currently available lawful pitches in the District and therefore the Sequential Test is passed when considering the immediate need for an additional gypsy site. This is reinforced by two other factors. Firstly the substantial need in the District for 52 additional pitches for the period 2007 – 2012. Secondly, meeting this need through allocations in a DPD is a year or so away. I am thus satisfied that the Sequential Test is passed not based on transient circumstances, but is underpinned by a substantial local need and the lack of a current allocations Development Plan Document to address that need.***

*Although **the Sequential Test is passed, the Exception Test also needs to be passed for this type of accommodation. There are three parts to the Exception Test set out in PPS25. The provision of a lawful gypsy pitch in an area of need avoids the disadvantages of roadside or other unauthorised camping both for the gypsy families involves and the wider community. Whilst I consider that these include benefits for the community at large, and whilst the risk of a flood event is medium on the application site itself, the access to the site is within Flood Zone 3 and is at high risk of flooding. I therefore do not consider that the wider sustainability benefits outweigh the flood risk in this case and the proposal fails Part a) of the Exception Test. Part b) relates to previously developed land. The site is not previously developed, but in the absence of any reasonably available alternative sites, I consider that this test is met...***

11. In the Cabinet Report (12th April 2012) it was proposed that 2 other sites in Tolney Lane – Church View and Land North of Rope Walk Farm be considered as part of the DPD allocation. Both sites are in the rural area and FZ 2/3. In September 2012 the LPA resolved to progress these 2 sites, even if the landowners did not want to sell them and CPO powers were required, even in the absence of funding from the HCA.
12. Attached at Appendix 2 is the DL in the Green Park, Tolney Lane Appeal (allowed on 10th June 2014) where the Inspector addressed the 3rd Main Issue - namely the need for and supply of Traveller sites - thus:

“49. The Council contends that there is an unmet need for 21 pitches up to 2012, with the future need yet to be identified. That figure is subject to considerable dispute for a number of reasons. Most significantly, the appellants point out that some of the sites, such as Hoes Farm, Sandhills Sconce and Hiram’s Paddock, which have been treated by the Council as contributing to the supply, are not subject to conditions restricting their use to occupation by gypsies and travellers. Accordingly, their availability for use by gypsies and travellers cannot be guaranteed. For these and other reasons, the appellants contend that the unmet need for the period up to 2012 is for as many as 72 pitches. Whatever, the correct figure, the Council concedes that there is a significant unmet historic need. I accept that, without needing to identify a precise figure, and note that there is no current allocations policy to meet that historic need.

*50. Paragraph 9 of PPTS requires lpa’s to identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years’ worth of sites against their locally set targets. The Council has not done this **and indeed does not have the required robust evidence base to enable it to set targets...***

54. I conclude on this main issue, that there is a significant, historic unmet need for gypsy and traveller sites in the district and that the Council cannot demonstrate an up-to-date 5 year supply of sites, or even quantify the future need.”

13. Thus, by June 2014 the LPA accepted that there was an unmet need to 2012 of 21 pitches (I made that 72). Therefore, there was an agreed historical shortfall that was accepted by the Inspector and conceded by the LPA on cross-examination.

14. When dealing with the overall balance at paragraph 70 the Inspector made the following findings:

“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."

15. The added significance of the date of that DL was that it was issued after the March 2013 base line date referred to in the new GTAA.
16. Attached at Appendix 3 is the Appeal Decision (5th April 2017). The LPA presented the GTAA to the Inspector appointed to determine that Appeal and below I reproduce her conclusions:

*"24. PPTS identifies a national need for traveller sites and seeks to ensure that local planning authorities develop strategies to meet the need for sites in appropriate locations, to address under provision and maintain an appropriate level of supply (including a five year supply) of sites. I have not been referred to a specific need for transit pitches but despite **the appellant's concerns regarding the methodology and findings of the Council's Gypsy and Traveller Accommodation Assessment (GTAA) 2016, which will in any case be tested as part of the forthcoming CS Review, both parties agreed at the hearing that the Council does not have a five year supply and that there is a need for at least 20 pitches in the district to 2021.***

25. Since the hearing, I have been told that the Council's 'Preferred Approach Sites and Settlements' consultation document (January 2017), which forms part of the CS Review, includes an assessment of pitch requirement up to 2028 and an approach to addressing need which includes the suggested allocation of a site at Quibells Lane...

*26. Notwithstanding the very limited weight I have given the consultation document and **whatever the precise need figures are, the evidence before me suggests a significant and urgent need for pitches in the district and the Council continues to accept that it is not yet in a position to demonstrate a five***

year supply of pitches.”

”

17. PPTS states:

11. 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. Criteria based policies should be fair and should facilitate the traditional and nomadic life of travellers while respecting the interests of the settled community.

18. It is beyond doubt that there is an identified need. It follows that the LPA should have an allocation policy to meet that need. That requirement is not just derived from the 2012 PPTS but from Circular 1/2006 which had required need to be met by way of allocations by February 2011. We have seen above that there was unmet need in 2011 as well as ever since. The LPA have at least twice abandoned putative allocations policies in the past, the most recent of which was abandoned when the LPA decided to ‘decouple’ this emerging Plan from the Allocations DPD the latest such resiling being in July 2017. The lack of an allocations policy renders the Plan unsound as it is not in accordance with national policy in PPTS.

19. The PPTS continues:

“In assembling the evidence base necessary to support their planning approach, local planning authorities should:...use a robust evidence base to establish accommodation needs to inform the preparation of local plans and make planning decisions.”

20. The emerging Plan does not comply with this element of PPTS either as the evidence in the GTAA is out of date and not robust.

21. The title of the GTAA betrays how out of date it is as the first 5 year period that it covers - that from 2013 to 2018 - is already effectively over. The base date for the evidence is March 2013 (para 3.2). This is plainly not an up-to-date evidence base for the emerging Plan and is conflict with PPTS above.

22. Paragraph 3.3 compounds this further because not only is the evidence out of date, it is incomplete as only Travellers in the west of the District were interviewed. This undermines further the reliability of the GTAA and indicates that further and comprehensive survey work is required.
23. So far as section 4 is concerned, the main source of information for the population are the bi-annual counts which are well known to be an unreliable source of information; it was because those counts were so unreliable that the GTAA process was commenced in 2006. Moreover, from 4.3 onwards we can see that on the basis of the revised definition of Traveller in PPTS the LPA has sought to reduce the extent of need: *“as none of the [known Travellers living in bricks and mortar [B&M] due to the shortage of authorised sites] had formally expressed a preference to be on sites...we considered them to have permanently ceased travelling.”* At Stage 1 of the GTAA the LPA assert the figure of Travellers in B&M to be 198. All of these people are assumed to have ceased travelling permanently (when there is no evidence to substantiate that assumption). By this contrivance, the base line figures are reduced to suggest a population of just 189 households. If you add in all that 198 then that would increase to 387 which has implications for all the other extrapolations on need and supply in the document. Even more concerning is the reliance on the 2011 census for the base line data on B&M Travellers when that source is notoriously unreliable. I have been involved in EIPs since 2008 and this is by far the least robust GTAA I have considered in all those years.
24. I will put a marker down here that in my view the revised definition in PPTs 2015 discriminates unlawfully against those Travellers who are too old or ill to travel for work.
25. Moving on through the GTAA, we can see at Stage 1, step 1a that the data relied on is the 2013 bi-annual count which showed 292 caravans. By 2017 this had increased to 354 caravans but by relying on the 2013 count figures, an inherent unreliability is built in to the assessment, let alone how out of date those figures are.
26. In addition, we can also see from step 1a that the new GTAA relies upon assumptions from the 2007 GTAA, thereby compounding further how out of date this assessment is. Those assumptions then continue throughout every stage of the assessment.

27. At stage 4 the LPA asserts that there are 300 pitches “*available*.” No evidence is presented as to how many of these pitches have a) permanent b) temporary or c) even a condition restricting the occupation of the site to Travellers. **The LPA is put to proof on these figures.**
28. The assumption at Stage 5 that the purported ‘turnover’ of pitches on private sites will generate some 86 pitches in the supply chain is quite simply fanciful. Firstly, turnover on public sites is one thing as there are allocation policies to ensure that any pitches that become available are allocated to other families. No such mechanism arises where private sites are concerned. In Newark as there is no public site, it follows that reliance on ‘turnover’ is unreliable and should be discounted.
29. In the attached DLs in Appendix 4 & 5 the issue of turnover was rejected (para 22 & 82 respectively).
30. The reliance on turnover here is even less robust than in the 2 cases referred to above. If those 86 pitches are factored in, then need for the first 5 years alone would increase by more than 50% from 169 to 255. Where more than half of a so-called ‘supply’ of 156 pitches is from the supposed ‘turnover’ from private sites with no up-to-date reliable evidence to substantiate that, then the entire assessment is called into question and should be rejected as unsound. Residual need then becomes not 14.3 but over 100 for the first 5 years.
31. I note further that whilst the baseline figure was 189 households (without those in B&M being factored in so even that was unduly low) only 16 interviews with actual Travellers was achieved (stage 6). This is plainly unrepresentative and undermines the assessment even further.
32. Though stage 4 of the 2013-18 period factors in 31 pitches as being “*available*’ when these are long-term voids that a) can not be used and b) are physically not able to be lived on, as found in the DLs referred to at the beginning of this submission.
33. The issues raised above recur in the next 2 time-periods in the GTAA so I will not repeat my criticisms here but ask that they are read across.
34. In conclusion the GTAA is not robust, is out of date and any Plan deriving from it would be unsound.