

# About you

## i) Your details:

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Name of organisation (if applicable):	ACPO (Association of Chief Police Officers) Lead for Gypsy, Roma and Traveller issues. I hold this portfolio as a member of the wider ACPO / National Policing Equality, Diversity and Human Rights Business Area.
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## ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?

Organisational response

## iii) Please tick the box which best describes your organisation

- Local/ District Council
- Unitary Authority
- County Council
- Parish/ Town Council
- Traveller
- Public
- Representative body/ voluntary sector/ charity
- Non Departmental Public Body
- Other

(please specify):	ACPO / National Policing Service
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## Would you be happy for us to contact you again in relation to this questionnaire?

Yes  No

We foresee the day-to-day administration of the above as being extremely difficult, if not impossible.

If the words "or permanently" were removed, that would mean that people who cease travelling permanently because of "educational or health needs or old age" will be taken out of the definition. Most of the people so affected by this change would be those whose health is sufficiently bad or who are sufficiently old to cease travelling permanently. Put another way, the most ill, most disabled and the oldest will suffer from it which is a position that is surely unjustifiable.

In housing legislation terms, the old and the ill are considered in greater need (all other things being equal) than others, indeed the following have a "priority need" for accommodation under the Housing Act 1996 s189 (1)(c):

*"a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside".*

The current proposal would mean that, whilst the old and the most ill in need of accommodation amongst the house-dwelling population would be treated more favourably, their equivalents in the Gypsy and Traveller communities would be treated less favourably.

The government recognises the implications of this policy in the Equalities Statement which accompanies the consultation:

*This proposal would impact on those Gypsies and Travellers who have given up travelling permanently for whatever reason, but in particular on the elderly who no longer travel due to reasons related to ill-health or disability. Similarly, it would also impact on children and young people including those with disabilities or special educational needs who use a settled base in order to access education; as well as women who have ceased to travel in order to care for dependents. (sec.3)*

However, they go on to state:

*The Government is fundamentally of the view that where travellers have given up travelling permanently, they should be treated in the same way as other members of the settled community for planning purposes. (sec.3).*

The Government fail, in the Equalities Statement, to lay out before consultees the various options that are available. See our comments to Questions 12 for the importance of this.

We do not agree that the planning definition of travellers should be amended to remove the words or permanently to limit it to those who have a nomadic habit of life. This would not be a humane position to take as it would severely disadvantage the most ill, the most disabled and the oldest in the Gypsy and Traveller communities.

# Questions

Please refer to the relevant parts of the consultation document for narrative relating to each question.

## Ensuring fairness in the planning system

**Question 1: Do you agree that the planning definition of travellers should be amended to remove the words or permanently to limit it to those who have a nomadic habit of life? If not, why not?**

Yes  No

Comments

Quoted in the Sunday Times on 14 September 2014 (the same day this consultation paper was published) Andrew George MP, the Chair of the All Party Parliamentary Group on Gypsy Roma Travellers stated that the Government "can't redefine travellers out of existence."

In many ways these proposals seem designed to make it impossible for Gypsies and Travellers to obtain planning permission for sites anywhere in England.

Since 2006 the definition of "gypsies and travellers" in town and country planning – a phrase which we believe should have capital G and T letters from common courtesy if nothing else – has been as follows:-

*"Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such."*

This consultation paper proposes removal of the words "or permanently".

A first observation is that the consultation is not clear as to what the phrase "or permanently" actually means in practical terms. For what length of time will a person have to cease travelling before they are regarded as having ceased to do so "permanently"?

Secondly, the Equalities Statement accompanying the consultation states: *"Where cases involve families in which some members do not travel, it may continue to be appropriate to grant permission for traveller sites on the grounds that it is proportionate to do so, and would be an interference with the family's Human Rights to limit the permission to particular family members only."*

This has the potential to create a new burden for councils in establishing nomadic lifestyles, i.e. establishing if some or all of a group has a permanent site in another local authority area.

**If any changes to the definition are made, we favour the adoption of the definition of "gypsies and travellers" as set out in Section 225 of the Housing Act 2004 as follows:**

*Persons with a cultural tradition of nomadism or living in a caravan; and all other persons of nomadic habit of life, whatever their race or origin, including such persons who, on grounds only of their own or their family's or dependant's educational or health needs or old age have ceased to travel temporarily or permanently; and members of an organised group of travelling showpeople or circus people (whether or not travelling together as such).*

This definition is more pragmatic, wider and enables local planning authorities to understand the possible future accommodation needs of this group and plan strategically to meet those needs. Whilst we accept that the purpose of the planning definition is to identify those who have specific land use requirements for a site, or sites, it is too limited for that purpose. The definition should include those ethnic Gypsies and Travellers who may be in housing only or mainly because there are no sites available but who otherwise would wish to live in caravans.

**Question 2: Are there any additional measures which would support those travellers who maintain a nomadic habit of life to have their needs met? If so, what are they?**

Yes            No     

Comments

The Caravan Sites Act 1968 (which came into force in 1970) introduced a duty on certain local authorities to provide sites for Gypsies and Travellers. Some local authority Gypsy and Traveller sites were provided under this legislation, which was a welcome development, but by the time the duty was eventually repealed by the Criminal Justice and Public Order Act 1994, less than half of all local authorities had in fact complied with it. Virtually no action was taken against any authority by central government in respect of that failing.

The Department of the Environment Circular 01/94 (Welsh Office Circular 02/94) Gypsy Sites and Planning (in combination with the repeal of the duty to provide sites) put the emphasis on the provision of private sites. However it did not provide a system by which private individuals could realistically bring such sites into existence.

Research has shown that, in this period of time, some 90% of planning applications to local authority planning committees by Gypsies and Travellers were unsuccessful (*Confined, Constrained and Condemned*, Friends, Families and Travellers (FFT), 1996).

In a later study by FFT (*Planning Appeals Gypsies and Travellers*, January 1998) it was shown that only 34% of appeals to Planning Inspectors by Gypsies and Travellers against unsuccessful applications were successful.

In the Niner report *Local Authority Gypsy / Traveller Sites in England* (2003), it was estimated that between 1,000 – 2,000 permanent and 2,000 – 2,500 transit pitches were required by 2007 just to keep up with the current Gypsy and Traveller population.

The introduction of some central control of the process in the form of Housing Act 2004 and Office of the Deputy Prime Minister (ODPM) Circular 01/06 led to a slow but sure increase in the provision of sites.

The slow improvement that took place in the wake of Circular 01/06 is shown by research by Doctor Jo Richardson and Ros Lishman of the De Montfort University for Lord Avebury (*Impact of Circular 01/06 : Supply of New Gypsy/Traveller Sites*, 29 March 2007). In this study a total of 129 appeal decisions were reviewed, 75 being before 1 February 2006 (the implementation date for the Circular) and 54 being after that date. Between the two periods the number of allowed appeals increased by 20% and the number of dismissed appeals decreased by 20%. Before 1 February 2006, the majority of temporary allowed appeals were for two years. In contrast, after 1 February 2006, all but two temporary appeal decisions were for 3 years.

The Department for Communities and Local Government (DCLG) presented their own evidence at the time indicating that, in the year ending December 2009, local authorities determined 217 applications for Gypsy and Traveller pitches, 50% of which were granted. This is a figure that is unprecedented in terms of the period prior to the introduction of ODPM Circular 01/06 (and the period subsequent to the removal of Circular 01/06).

**The history of the attempt to ensure adequate provision of Gypsy and Traveller sites (which can be dated from the introduction of the Caravan Sites and Control of Development Act 1960) has shown that, without some form of central control and central oversight, site provision will not be achieved.**

Though central government failed to step in sufficiently in the period between 1970 and 1994 when there was a duty on local authorities to provide sites, it appears that the fact that there was a duty was sufficient to ensure the provision of the 350 or so local authority sites that are now in place.

**The problem of unauthorised encampments and unauthorised developments is created by the lack of adequate pitches and stopping places. The provision of accommodation is paramount if we are to address all the fundamental issues facing Gypsies and Travellers today.**

**An effective planning framework which can deliver the accommodation needed will surely continue to require some monitoring and direction from central government and sufficient political will to ensure that the Travelling communities are finally treated in a fair and equitable way. ACPO and the police service are ready to play their part in that work.**

**Question 3: Do you consider that:**

**a) we should amend the 2006 regulations to bring the definition of “gypsies and travellers” into line with the proposed definition of “travellers” for planning purposes?**

Yes  No

Comments

As per our comments to Question 1 above, we favour the use of the Section 225 Housing Act 2004 definition for both Housing and Planning purposes, i.e. :

*Persons with a cultural tradition of nomadism or living in a caravan; and all other persons of nomadic habit of life, whatever their race or origin, including such persons who, on grounds only of their own or their family's or dependant's educational or health needs or old age have ceased to travel temporarily or permanently; and members of an organised group of travelling showpeople or circus people (whether or not travelling together as such).*

This definition is more pragmatic, wider and enables local planning authorities to understand the possible future accommodation needs of this group and plan strategically to meet those needs. Whilst we accept that the purpose of the planning definition is to identify those who have specific land use requirements for a site, or sites, it is too limited for that purpose. The definition should include those ethnic Gypsies and Travellers who may be in housing only or mainly because there are no sites available but who otherwise would wish to live in caravans.

Many Gypsies and Travellers on Traveller sites, or wishing to live on Traveller sites, no longer follow the kind of nomadic life that previously the norm. By reinforcing the requirement for Gypsies and Travellers to be “living a nomadic lifestyle” to be eligible for permanent sites, the proposed changes to the definition could lead to the unintended consequence of families in housing returning to a nomadic lifestyle to safeguard their status. This could lead to an increase in unauthorised encampments and unauthorised developments.

and

**b) we should also amend primary legislation to ensure that those who have given up travelling permanently have their needs assessed? If not, why not?**

Yes  No

Comments

We do not agree with this proposal – see a) above.

Any assessment of need would surely be best conducted by taking into account all factors pertaining to relevant groups? Removing factors from consideration would not lead to sound decision making.

## Protecting sensitive areas and the Green Belt

**Question 4: Do you agree that Planning Policy for Traveller Sites be amended to reflect the provisions in the National Planning Policy Framework that provide protection to these sensitive sites (set out in para. 3.1 of the consultation document)? If not, why not?**

Yes  No

### Comments

Planning Policy for Traveller Sites was designed to be read in conjunction with the National Planning Policy Framework, so the two documents are inextricably linked. The sensitive sites mentioned at para. 3.1 of the consultation are already sufficiently protected and it is surely highly unlikely that any decision makers would not apply these provisions to Gypsy and Traveller site applications.

The lack of a 5 year supply of land for sites / pitches is currently one of the most significant material considerations for approval of sites in the Green Belt and other designated areas.

**If sufficient sites were provided as they should be, this problem would not arise.**

Planning authorities should have a plan in place to meet properly assessed needs in their area. If they do not, **any** restraints on meeting legitimate need would be open to legal challenge.

**Question 5: Do you agree that paragraph 23 of Planning Policy for Traveller Sites should be amended to “local authorities should very strictly limit new traveller sites in the open countryside”? If not, why not?**

Yes  No

### Comments

If specific categories of countryside (e.g. areas protected under the Birds and Habitats Directives, Sites of Special Scientific Interest, Local Green Spaces, Areas of Outstanding Natural Beauty, National Parks, the Broads and Green Belts etc) are dealt with elsewhere, this question is mainly concerned with countryside that isn't in these categories. In other words it would be made more difficult to gain planning permission **anywhere** in the countryside, not just in those areas that government considers the most sensitive.

The vast majority of Gypsies and Travellers who buy land to try and get planning permission cannot afford to buy development land because it is so expensive. The only possible land they can buy is in the countryside. This is also traditionally where the majority of the Gypsy and Traveller community have lived.



This raises the obvious question of where Gypsies and Travellers can actually go. Is there realistically a supply of non-countryside land that would be (a) affordable and (b) not subject to even greater local opposition than current sites?

**Question 6: Do you agree that the absence of an up-to-date five year supply of deliverable sites should be removed from Planning Policy for Traveller Sites as a significant material consideration in the grant of temporary permission for traveller sites in the areas mentioned above (set out in para. 3.7 of the consultation document)? If not, why not?**

Yes  No

Comments

This would further reduce the possibility of meeting the accommodation needs of Gypsies and Travellers. The effect of this would be especially harmful in parts of the country where, over a wide area, most available land is designated, such as in the Metropolitan Green Belt.

As we have stated before, if sufficient sites were provided as they should be, this problem would not arise and removing the "five year supply" provision is an example of dealing with issues in the wrong order. Local planning authorities should be incentivised to produce the necessary provision, including a five year land supply. Some authorities have made efforts in that regard whilst many have not. Why should those who have not be freed from the obligation clearly outlined in Planning Policy for Traveller Sites?

Green Belt does not equal greenfield. The Green Belt includes brownfield sites and much previously developed land. Planning permission has previously been granted for new homes in the Green Belt and a similar approach should be adopted for Gypsy and Traveller sites.

The Metropolitan Green Belt around London is enormous, occupying a large proportion of available land in the Home Counties. Coupled with other designations such as areas of outstanding natural beauty and the South Downs National Park etc., this creates exceptionally severe difficulties for Gypsies and Travellers in the Home Counties. Nothing in the consultation paper faces up to these difficulties.

**Question 7: Do you agree with the policy proposal that, subject to the best interests of the child, unmet need and personal circumstances are unlikely to outweigh harm to the Green Belt and any other harm so as to establish very special circumstances? If not, why not?**

Yes  No

**Comments**

This proposal seems unfair as housing development cases in the Green Belt will still have the current system applied to them. We currently have the correct balance and it should remain.

The problem of unauthorised encampments and unauthorised developments is created by the lack of adequate pitches and stopping places. The provision of accommodation is paramount if we are to address all the fundamental issues facing Gypsies and Travellers today. The best interests of the child would also surely continue to be served by the provision of more small-scale family sites.

## Addressing unauthorised occupation of land

**Question 8: Do you agree that intentional unauthorised occupation should be regarded by decision takers as a material consideration that weighs against the grant of permission? If not, why not?**

Yes  No

### Comments

Without condoning breaches of planning legislation, the majority of unauthorised occupation of land is not "intentional" but as a result of the Gypsies and Travellers concerned having no other options to pursue. If there were sufficient sites and stopping places, then this would not occur.

Another key point is that there **is** adequate remedy to restore the land if a retrospective application is refused. This is applicable to all retrospective planning matters. The consultation states, at para 4.4:-

*Where occupation takes place without planning permission, there is no opportunity to appropriately limit or mitigate harm has already taken place.*

This is incorrect. There is a full array of enforcement powers available to local authorities. In serious cases, there are powers of direct action under the Town and Country Planning Act. There are also temporary stop notice powers. In addition, if planning permission is granted at appeal, the Inspector is able to impose conditions.

**Question 9: Do you agree that unauthorised occupation causes harm to the planning system and community relations? If not, why not?**

Yes  No

### Comments

This is a poorly worded question to which there is not a "yes" or "no" answer.

There are many small encampments in "accepted" locations which are not contentious. Unauthorised encampments are a symptom of the planning system's failure to meet the existing need.

Most harm is caused mainly to Gypsies and Travellers – especially in health and education terms – who are not assisted in finding suitable sites due to the lack of adequate site provision. Harm is caused to them especially in educational and health terms

We would also disagree with your "Equalities Statement", in which you already appear to have prejudged this question by stating at the bottom of page 3:

*"These unauthorised sites fuel community tension, undermine community cohesion and create resentment against the overwhelming majority of travellers who are law abiding and do not live on unauthorised sites. This serves to undermine public confidence and trust in the planning system."*

**Question 10: Do you have evidence of the impact of harm caused by intentional unauthorised occupation? (And if so, could you submit them with your response.)**

Yes  No

Comments

As stated in our answer to Question 9, there are many small encampments in "accepted" locations which are not contentious.

Unauthorised encampments are a symptom of the planning system's failure to meet the existing need.

Most harm is caused mainly to Gypsies and Travellers – especially in health and education terms – who are not assisted in finding suitable sites due to the lack of adequate site provision. Harm is caused to them especially in educational and health terms

**Question 11: Would amending Planning Policy for Traveller Sites in line with the proposal set out in paragraph 4.16 of the consultation document help that small number of local authorities in these exceptional circumstances (set out in paragraphs 4.11-4.14 of the consultation document)? If not, why not? What other measures can Government take to help local authorities in this situation?**

Yes  No

Comments

We do not think Planning Policy for Traveller sites should be amended as suggested. Local authorities in the position as outlined in para. 4.16 would best benefit from Central government assistance to resolve the situation.

**Question 12: Are there any other points that you wish to make in response to this consultation, in particular to inform the Government's consideration of the potential impacts that the proposals in this paper may have on either the traveller community or the settled community?**

Yes  No

Comments

The Supreme Court judgment in *R (Moseley) v LB Haringey* [2014] UKSC 56, 29 October 2014, shows that, when carrying out a consultation, a public body must explain to the consultees the various options that are possible. The Government have failed to do this in this consultation and we suggest that this paper should be withdrawn, re-drafted and the process started again properly. This is especially important in this context where Gypsies and Irish Travellers are recognised ethnic groups protected under the Equality Act 2010. That said, we have commented at this stage on the questions asked.

The primary assumption of this consultation appears to be that the planning system is somehow biased in favour of Gypsies and Travellers at the expense of other communities. **We would fundamentally disagree with this assumption.**

We would consider Gypsies and Travellers to be the most disadvantaged ethnic minority group in the country and the ongoing shortage of appropriate accommodation leads to these communities suffering many other inequalities such as poor health, difficulties in accessing education and other services etc. All such inequalities would be reduced if the shortage of accommodation was addressed.

## Draft planning guidance for travellers (Annex A)

**Question 13: Do you have any comments on the draft planning guidance for travellers (see Annex A of the consultation document)?**

Yes    X        No       

Comments

The existing guidance has proved very important and extremely useful to both local authorities and Gypsies and Travellers and their support groups.

The ODPM guidance *Designing Gypsy and Traveller Sites - Good Practice Guide* (2008) is also extremely useful and important to local authorities and other providers of Gypsy and Traveller site accommodation and there is no reason to replace it.