

**REPOSE OF COMMUNITY LAW PARTNERSHIP AND RUSTON PLANNING  
LIMITED TO THE DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT  
CONSULTATION 'PLANNING AND TRAVELLERS'**

The Community Law Partnership (CLP) is a radical, progressive firm of solicitors specialising in the law relating to Housing and Public Law. CLP incorporates the Travellers Advice Team (TAT) – a ground-breaking nationwide 24 hour advice service for Gypsies and Travellers. TAT have taken some of the leading cases in this area of the law including three cases in the House of Lords, one in the Supreme Court and one in the European Court of Human Rights.

Ruston Planning Limited (RPL) are chartered town planners specialising in Gypsy and Traveller planning matters. RPL is currently involved in over 45 Gypsy and Traveller cases all over England. The principle, Simon Ruston has a doctorate in Gypsy and Traveller planning law from the University of the West of England. He has worked and researched in this field for the last seven years, and has spoken, published and delivered training on the subject on behalf of the Royal Town Planning Institute, Planning Aid Scotland, NAPE (Network for Planning Enforcement), South West Councils, Legal Action Magazine<sup>1</sup>, and Bristol UWE.

**Introduction**

Quoted in the Sunday Times on 14 September 2014 (when the 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.

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. We call on the Government to withdraw this consultation, re-draft the paper accordingly and then commence a proper consultation process. This is especially in the context where Gypsies and Irish Travellers are recognised ethnic groups protected under the Equality Act 2010.

Recent reports show the discrimination and disadvantage experienced by the Gypsy and Traveller community in England and in the UK in general (see, for example, *Experts by Experience* from Anglia Ruskin University and the Joseph Rowntree Foundation and *Civil Society Monitoring on the Implementation of the National Roma Integration Strategies* from the Decade of Roma Inclusion Secretariat Foundation – both published in October 2014).

It is important to have regard to the historical context. The Caravan Sites Act (CSA) 1968 introduced a duty on certain local authorities to provide sites for Gypsies and Travellers (brought into force in 1970). This duty was eventually repealed by a previous Conservative Government in the Criminal Justice and Public Order Act 1994. On the one hand it is true to say that the some 350 local authority Gypsy and Traveller sites that currently exist in England, would probably not have been in place (in the vast majority of cases) without the existence of that duty. On the other hand it is also true to say that the failure of successive central governments to ensure that local authorities complied with this duty meant that insufficient sites were built during this period of time leading to the current situation where there is completely inadequate provision of sites.

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<sup>1</sup> *The Localism Act 2011 and planning*, co-authored with Chris Johnson, Tim Jones, and Marc Willers, see Legal Action Magazine, June 2012.

In many ways this was a period of time when there was a certain amount of “localism” in that certain local authorities were meant to be providing the sites and, on the other hand, a potential for “central control” in that the Government could (albeit that they virtually never did) have stepped in to ensure that recalcitrant local authorities complied with the duty.

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. In a sense this period of time is the perfect example of “localism” and also the perfect example of how, if local authorities are left to their own devices, then there will be complete stagnation in the provision of sites.

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. Certain Conservative MPs have claimed that this Circular produced a bias in favour of Gypsies and Travellers but, if this had been the case, then presumably the problem of site provision would have been resolved by now.

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 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 certain 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 sites that are now in place. Nevertheless, history also shows that the “problem” of site provision would have been resolved if there had been some central oversight. The current proposals will lead to an even more disastrous deterioration in the supply of Gypsy and Traveller pitches.

The Government accepts that the problem of unauthorised encampments and unauthorised developments is created by the lack of adequate pitches and adequate stopping places. The actions of the Coalition Government have done very little to improve the situation. Since coming to power in 2010, the following law and policy have had a significant impact on the Gypsy and Traveller community:

- The Localism Act 2011 amongst other measures curtailed the ability to apply for retrospective planning and revoked the regional strategies that had previously contained pitch targets
- The Legal Aid, Sentencing and Punishment of Offenders Act (LASPOA) 2012 and subsequent legal aid changes and cuts have had serious implications on the provision of legal aid for Gypsies and Travellers
- *Planning policy for traveller sites* (PPTS) in March 2012 changed the national planning policy and withdrew Circular 01/06
- The 2005 Temporary Stop Notice (TSN) regulations have been withdrawn meaning that a TSN can be issued for caravans that are a Gypsy's or Traveller's home. Failure to comply can mean a fine of up to £20,000
- Since June 2013 most Gypsy and Traveller planning appeals in the Green Belt have been recovered for decision by the Secretary of State for Communities and Local Government (SSCLG). In most cases the SSCLG has gone against the recommendation of his Planning Inspector.

These provisions of law and policy have already had a significant detrimental impact on the Gypsy and Traveller community. However, the latest proposals will have even more serious detrimental implications. The Government have presented Gypsies and Travellers who continue to live in caravans with a Catch 22 scenario. If you travel, you will be hounded from pillar to post. If you decide that you cannot possibly keep up with this travelling due to the impossibility of the situation and you settle down, you will be told that you should travel. Our conclusion is that what the Government are really seeking is not integration but assimilation. They are seeking to drive Gypsies and Travellers into housing and, indeed, the restrictive policies applied by this Government and the failure of this Government to ensure that there is adequate site provision has already led to large numbers of Gypsies and Travellers (much against their will in many cases) moving into bricks and mortar accommodation.

This amounts to a destruction of a way of life by the back door.

It will be important to have a look at the statistics that the Government are quoting. The historical count of Gypsy/Traveller caravans shows that, since 2000, in general, the numbers on unauthorised sites (covering both unauthorised developments and unauthorised encampments) has been dropping. Numbers certainly have not been rising despite the propaganda put out by this Government.

The Government like to paint a picture of a situation where the planning system is, in their strange view of things, slanted in favour of Gypsies and Travellers. In fact, the history mentioned above indicates that it has become more and more difficult for Gypsies and Travellers to obtain authorised sites and the system has not enabled them to do so (obviously we partially except the situation with regard to the provision of local authority sites between 1970 – when the Caravan Sites Act 1968 duty came into force - and 1994). In fact, when housing development is required, it is often the case that this is either allowed in the Green Belt or the Green Belt boundary is re-drawn to allow this to occur (see, for example, the recent approval of 100 new houses at Bucknalls Lane, Watford in the Green Belt, APP/B1930/A/13/2207696). It would appear that the discrimination in the planning system is against rather than in favour of Gypsies and Travellers in terms of attempting to get sites in the countryside.

In the Introduction at para 1.2 DCLG state:-

*Our policy is clear that local authorities are responsible for objectively assessing their own site needs and identifying a suitable 5-year supply of sites to meet their needs, as is consistent with national planning policy as a whole.*

However it is abundantly clear that this will not happen without some active, central oversight and central involvement.

### **The Definition of Gypsy and Traveller for the purposes of planning and for the purposes of accommodation needs assessment**

**The Government propose that the planning definition of ‘travellers’ (as they insist on describing them) should be amended to remove the words “or permanently” to limit it to those who have a nomadic habit of life. They further propose that the definition for the purposes of accommodation needs assessment should be identical to this new proposed definition.**

The Government proposal brings us back to the situation that we were faced with at the time of the judgment of the Court of Appeal in *Wrexham CBC v The National Assembly for Wales & Berry* [2003] EWCA Civ 835 i.e. that Gypsies and Travellers would apparently stop being Gypsies and Travellers if they retired or if they stopped travelling permanently so as to deal with education issues or health issues. This is also in the context of the immense difficulties for Gypsies and Travellers in travelling at all as mentioned above. It is perhaps useful to note the following from Sullivan J in *Berry* (whose judgment in favour of Mr Berry was overturned by the Court of Appeal):

*[20] I can see nothing in the judgments to suggest that had the Court of Appeal [in previous cases concerning ‘Gypsy status’] been confronted with what might be described as a "retired" gypsy, it would have said that he had ceased to be a gypsy because he had become too ill and/or too old to travel in order to search for work. In my judgment such an approach would be contrary to common sense and common humanity. As a matter of common sense, the time comes for all of us, gypsy and non gypsy, when we become too old and/or too infirm to work. Old habits, whether nomadic or not, die hard. It could not be right for a gypsy who had been living all his life on a gypsy caravan site or sites whilst he was still young enough and fit enough to travel to seek work to be told when he reached retirement age that he had thereby ceased to be a gypsy for the purposes of the application of planning policy. It would be inhuman pedantry to approach the policy guidance in Circulars 2/94 and 76/94 upon that basis [2002] EWHC 2414 Admin.*

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).*

However, the Government fail, in the Equalities Statement, to lay out before consultees the various options that are available (see the *Moseley* judgment mentioned above).

It is abundantly clear that the Government is aware of the implications of this change of policy, but will charge on regardless. Nevertheless, there is a clear argument as to how practical this measure would be for local planning authorities (LPAs) to enforce. At present, the definition functions relatively well in comparison to its predecessor. This is evident in the reduction of the number of High Court (and above) cases concerned with the definition (3 since the changes to the definition in 2006). A change to the definition now would introduce a considerable burden on already overstretched LPAs who would have to demand, and then assess, significant amounts of information relating to 'gypsy status'. There is already evidence that local authorities recognise the increased difficulties and immense problems this change in definition will impose upon them. This view is also held by Catriona Riddell, the Planning Officers Society's Strategic Planning Specialist, who commented that "*the proposed changes to the definition of 'travellers' which distinguishes between travellers that travel and those that have ceased to travel, will be very difficult to apply in practice.*"<sup>2</sup> Another difficulty in application is that Gypsies and Travellers currently living on authorised private sites who have permanently stopped travelling (for the reasons currently within the exceptions) would effectively find themselves in breach of any restrictive conditions. The point here is that the logic of the Government's proposals would require enforcement action to be taken by LPAs where this occurs. In effect, there is potential for many vulnerable people to be evicted from their homes. Furthermore, there is likely to be significant difficulties of application when dealing with Gypsies or Travellers where some members of the family have permanently ceased travelling. Does the Government expect these families to be split up?

The Government state at para 2.9:-

*To complement the proposals set out above, the Government wishes to seek views on further measures to support those travellers which fall under the proposed new definition in order to facilitate their nomadic habit of life. For example, through the use of conditions which ensure that transit sites are available at certain times of the year for travellers to occupy on a temporary basis. This of course would be a matter for the local authority but may go towards making provision for those travellers who do travel. We are open to views on how we could further facilitate travellers' nomadic habit of life including its potential effects on the traveller community.*

It is not explained how the Government would facilitate a nomadic habit of life. Transit sites are extremely rare. Emergency stopping places are non-existent. Local authorities are, in the vast majority of cases, not willing to identify tolerated sites that do not have planning permission. It is only when there is a duty to facilitate the provision of sites that sites will actually be provided. The Welsh Government have realised this and introduced such a duty in the Housing (Wales) Act 2014. However, this Westminster Government are cynically moving in the opposite direction in an attempt to drive Gypsies and Travellers into housing.

If this proposal is introduced, there will inevitably be strong legal challenges to this situation. It would be argued that there is a clear breach of the European Convention on Human Rights in terms of Article 8 (right to respect for private and family life and home) in conjunction with Article 14 (the discrimination article). Specifically these proposals need to be seen in the light of the positive obligation in *Chapman v UK* (2001) 33 E.H.R.R. 18 at para. 96:

*...the vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in arriving at the decisions in particular cases. To this extent there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way of life.*

<sup>2</sup> <http://www.planningofficers.org.uk/Planning-Officers-Society-News/POS-welcomes-the-Government's-consultation-on-changes-to-Planning-Policy-for-Travellers-But-Expresses-Concern-298.htm>

Turning to the specific relevance to this consultation, the relevant section is as follows:

*73 The Court considers that the applicant's occupation of her caravan is an integral part of her ethnic identity as a gypsy, reflecting the long tradition of that minority of following a travelling lifestyle. This is the case even though, under the pressure of development and diverse policies or from their own volition, many gypsies no longer live a wholly nomadic existence and increasingly settle for long periods in one place in order to facilitate, for example, the education of their children. Measures which affect the applicant's stationing of her caravans have therefore a wider impact than on the right to respect for home. They also affect her ability to maintain her identity as a gypsy and to lead her private and family life in accordance with that tradition.*

*74 The Court finds therefore that the applicant's right to respect for her private life, family life and home are in issue in the present case.*

The key point here is that regardless of nomadism (or lack of it) the occupation of caravans is an integral part of Romani Gypsies' and Irish Travellers' ethnic identity. As such, any amendment to the planning definition which curtails this offends Article 8.

It would also be argued that there would be a breach of the Framework Convention for the Protection of National Minorities. In particular, article 5 states:

*1 The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.*

*2 Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.*

### **The Housing Act 2004 definition**

The Labour Government introduced the different Housing Act 2004 definition (contained, in fact, in regulations) in order to take account of the needs especially of Gypsies and Travellers in housing when looking at accommodation needs assessment. It is well known that many Gypsies and Travellers in housing have been forced to move into housing and that, in many cases, this has had an extremely detrimental effect. Many of those Gypsies and Travellers really require site accommodation. Indeed this can be seen as a form of hidden homelessness. In the most severe cases, Gypsies and Travellers are suffering psychologically because of their existence in bricks and mortar. This proposal will thus ignore the needs of large swathes of the Gypsy and Traveller community. This proposal can be seen as an attempt by the Government to block off the hopes of those Gypsies and Travellers in housing who wish to obtain site accommodation. It will inevitably lead to a large drop in the already sometimes dubious accommodation needs assessment figures for local authorities.

It is also useful to note the following quotes on the merits of the current Housing Act 2004 definition:

- (i) From the House of Commons ODPM: Housing, Planning, Local Government and the Regions Committee *Gypsy and Traveller Sites* Thirteenth Report of Session 2003–04

*59. Officials from ODPM...suggest that:*

*“There is a difference between having a definition that leads specifically to a site’s outcome so far as the planning legislation is concerned and the sort of definition that you might want for a housing needs survey to accommodate the wider needs of Gypsies and Travellers. The planning definition would necessarily be related to the land use, whereas a housing needs assessment might be related to the wider needs of Gypsies and Travellers, considering those who are already living in bricks and mortar, for example.” [Dawn Eastmead, Head of Housing Management, Office of the Deputy Prime Minister]*

(ii) From the Consultation on the definition of the term ‘gypsies and travellers’ for the purpose of the Housing Act 2004:

*12. The purpose of the planning system is to regulate the use and development of land in the public interest. It is, therefore, appropriate that the planning definition should be limited to those who can demonstrate that they have specific land use requirements arising from their nomadic way of life. The planning definition is relevant to the application of planning policies and the determination of applications for planning permission. In this context, having ‘gypsy status’, where it has implications for land use, can be a material consideration in the determination of planning applications.*

*13. The proposed housing definition is for a very different purpose. It is intended to be a pragmatic and much wider definition which will enable local authorities to understand the possible future accommodation needs of this group and plan strategically to meet those needs. It recognises that there will be movement between sites and bricks and mortar housing, and that an understanding of the full gypsy and traveller community, not just those who are currently travelling, is necessary in order for local authorities to meet their responsibilities and put proper strategic plans in place.*

*14. Falling within the housing definition does not confer a direct advantage on any individual. It does not in itself imply that that person ‘should’ live on a site, or has ‘gypsy status’ for planning purposes. It means that the individual belongs to a group whose accommodation needs must be assessed by the local authority. Once a need has been identified the local authority will then develop a strategy to meet it. However, there are a variety of ways in which gypsy and traveller accommodation needs may be met and the definition does not tie the local authority to specific solutions.*

Whilst it is our view that the Housing Act 2004 definition should be adopted for the purpose of planning, it is, at the very least, vital that the Housing Act 2004 definition needs to stay as it is now. The arguments of the ODPM (now DCLG) cited above are important in setting out the rationale for the wider scope of the present Housing Act 2004 definition. We would refer to and support the report by the Traveller Movement on this subject, *A Place to call home: Ethnicity, culture and planning for Traveller sites* (October 2014). This report does what the Government fails to do: present and discuss the various options available on the question of the planning definition of ‘Gypsy and Traveller’ (using capitals – Government please note).

## **The Green Belt**

**The proposals of the Government are:-**

- i) That PPTS be amended to reflect the provisions in the National Planning Policy Framework (NPPF) that provide protection to the following sites: sites protected under the Birds and Habitats Directive; Sites of Special Scientific Interest; Local Green Space; Areas of Outstanding Natural Beauty; National Parks; the Broads;**

- ii) **That the absence of an up to date 5 year supply of deliverable sites should be removed from PPTS as a significant material consideration in the grant of temporary permission for Gypsy and Travellers sites in the Green Belt and the other areas mentioned above;**
- iii) **That, subject to the best interests of the child, unmet need and personal circumstances should be held to be unlikely to outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.**

Taking the 'other sensitive sites' first, given that PPTS is to be read in conjunction with the NPPF, it would seem highly unlikely that decision makers would not apply these provisions to Gypsy and Traveller sites. It would seem that this is merely window dressing to the proposals. What is concerning, however, is the proposal to amend para. 25 of PPTS. These proposals will encourage local authorities, especially where most of the available land is in the Green Belt, to not produce a 5 year supply since it will make no difference if they do not.

Turning to the other proposals with regard to the Green Belt, these proposals amount to discrimination against Gypsies and Travellers since housing development cases will still have the current system applied to them. We currently have the correct balance. This is a test that has worked perfectly well for many years. Why change it now apart from a desire to discriminate against Gypsies and Travellers? It will make it virtually impossible for Gypsies and Travellers to get permission in the Green Belt. We now see the real reason for the recovery, since June 2013, of most Gypsy and Traveller Green Belt appeals. Mr Pickles, Mr Lewis and their colleagues have been determined to block off all Gypsy and Traveller sites in the Green Belt.

We note that at para 3.11 it is stated:

*The best interests of the child will vary from case to case and there may be circumstances where those best interests suggest living off-site rather than on-site.*

It might be assumed that 'off-site' means moving into housing and this provides a further indication of the true motivation of the Government, i.e. to force Gypsies and Travellers into housing. If this is not the case, then this should be made clear.

### **Open Countryside**

**The Government proposal here is that PPTS should be amended to state that "local authorities should very strictly limit new Traveller sites in the open countryside" (our emphasis).**

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 proposal, effectively, indicates that the Government intends that Gypsies and Travellers should not be able to obtain site provision anywhere apart from in very, very rare circumstances.

### **Unauthorised occupation of land**

**The Government proposal and contention here is:-**

- i) **That intentional unauthorised occupation should be regarded by decision takers as a material consideration that weighs against the grant of permission;**



**ii) That intentional unauthorised occupation causes harm to the planning system and community relations.**

Whilst we do not condone breach of planning law, the vast majority of unauthorised occupation of land is not “intentional” but as a result of the Gypsies and Travellers concerned running out of options. Due to the lack of site provision, Gypsies and Travellers are hounded from pillar to post and may eventually end up moving onto land that they own because they feel there are no other options available. If there were sufficient transit sites and emergency stopping places, then this would not occur..

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

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

With respect, this is complete nonsense. There are a full array of enforcement powers available to local authorities. In serious cases, there are powers of direct action under Town and Country Planning Act (T&CPA) 1990 Section 178 or injunction under T&CPA Section 187B. There are also temporary stop notice powers. In addition, if planning permission is granted at appeal, the Inspector is able to impose conditions.

Para 4.5 of the paper is very revealing. It states:-

*Furthermore, it is clear that the intentional unauthorised occupation of land particularly in sensitive areas (including the Green Belt) where those who would apply through the proper channels would be unlikely to gain permission, is highly contentious at the local level and fuels tension between the site occupants and the surrounding community (our emphasis).*

The fact is that Gypsies and Travellers, as the system stands at the moment, can, where material considerations outweigh the harm to the Green Belt thus creating very special circumstances, obtain permission. The above paragraph indicates that the Government believe that they should never gain permission in the Green Belt otherwise why is it stated that they “would be unlikely to gain permission”.

Turning to the contention that community relations are harmed, it is useful to note the response of the Planning Inspectorate (PINS) to a Freedom of Information Act request from planning consultant Alison Heine which demonstrated that Gypsy and Traveller cases are only a small percentage of enforcement appeals .

Whilst it is acknowledged that the provision with regard to intentional unauthorised occupation will also be applicable to the settled community, it is important to note that such a provision will have a disproportionate effect on Gypsies and Travellers.

**Large-Scale Unauthorised Sites**

**The Government proposal is to amend PPTS to state that, where a local authority is “burdened” by a large-scale unauthorised site which has significantly increased their need, and their area is subject to strict and special planning constraints, then there is no assumption that the local authority is required to plan to meet their Traveller site needs in full.**

It is very difficult to know what this proposal has to do with planning considerations. As we have mentioned above, there are already very strong enforcement powers available to local authorities if

they are needed. There is no need for any extra enforcement powers. The repeated mention of the Dale Farm case by the Government is very misleading. Obviously, the Dale Farm Travellers need authorised provision. However, the Dale Farm eviction case is most exceptional. The vast majority of Gypsy and Traveller planning sites are small and do not involve the kind of eviction scenarios that occurred in the Dale Farm case. Therefore the quoting of the Dale Farm case is entirely misleading in this context.

Aside from the Dale Farm case, the Government have put forward no evidence that there is a significant problem of large-scale unauthorised sites. Surely if significant changes are to be made to planning policy, proper evidence should be submitted.

### **Accommodation Needs Assessment Guidance**

**The Government proposal here is to replace the current guidance with new draft guidance which is attached to the consultation paper at Annex A.**

The existing guidance has proved very important and extremely useful to both local authorities and Gypsies and Travellers and their support groups. The ostensible reasoning from the Government is that they want to streamline planning guidance. However, an examination of the proposed new guidance as compared with the existing guidance shows that the real reasoning is that they wish to water down the guidance. This is presumably in an attempt to reduce the accommodation needs assessment figures even further (see also above).

Below we list the main bullet points from the ODPM Guidance. An asterisk indicates where that matter is also addressed in the DCLG draft. However, even where the same issue is addressed, whereas the ODPM Guidance provides detailed and clear discussion, the DCLG draft provides no such discussion. We believe that paltry guidance is likely to lead to paltry assessments.

1. Credible evidence base;
2. Robust evidence base\*;
3. Seniority of officers;
4. Partnership working (travelling patterns)\*;
5. Steering group:
  - a) Reps from Housing and Planning;
  - b) Reps from local Gypsy and Traveller communities\*;
  - c) Reps from Gypsy and Traveller service and other services.
6. Community liaison group (to explain purpose of GTAA);
7. Transparent process;
8. Who manages the GTAA:
  - a) In-house staff, and/or
  - b) County Council staff, and/or
  - c) ConsultantsCan be mixture for various stages
9. Production of specification and methodology;
10. Existing data sources:
  - a) Caravan count\*;
  - b) Site management records inc waiting list\*;
  - c) Info re private sites\*;
  - d) Data on unauthorised encampments and developments;
  - e) Additional data from service providers inc education\*;
  - f) GLO and other records.
11. Conducting a specialist survey:
  - a) Identifying the communities;
  - b) Difficulties in accessing the communities;

- c) Survey coverage and response rates;
  - d) Cultural sensitivities;
  - e) Timing of the survey;
  - f) Survey techniques;
  - g) Survey questions
12. Making use of the GTAA.

Bizarrely it is stated that the new guidance would also replace the Office of the Deputy Prime Minister guidance *Designing Gypsy and Traveller Sites - Good Practice Guide* (2008). This latter guidance is also extremely useful and important to local authorities and other providers of Gypsy and Traveller site accommodation in designing sites and there is no reason to replace it. The new draft guidance does not deal with the question of designing sites at all.

### **Questions and answers**

**Q1 – 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?**

For the reasons given above, we do not agree

**Q2 – 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?**

As explained above, we believe that the duty to facilitate the provision of sites should be re-instated

**Q3 – 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, 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?**

For the reasons given above, we do not agree with either of these proposals.

**Q4 – 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? If not, why not?**

For the reasons given above, we feel this is unnecessary.

**Q5 – 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?**

For the reasons given above, we do not agree with this proposal.

**Q6 – 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? If not, why not?**

For the reasons given above, we do not agree with this proposal.

**Q7 – 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?**

For the reasons given above, we do not agree with this proposal.

**Q8 – 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?**

For the reasons given above, we do not agree.

**Q9 – Do you agree that unauthorised occupation causes harm to the planning system and community relations? If not, why not?**

For the reasons given above, we feel the harm caused is mainly to Gypsies and Travellers who are not assisted in finding suitable sites due to the failure of central and local governments to ensure adequate site provision. Harm is caused to them especially in educational and health terms

**Q10 – Do you have evidence of the impact of harm caused by intentional unauthorised occupation? (And if so, could you submit them with your response.)**

Please see our answer to Q9.

**Q11 – Would amending Planning Policy for Traveller Sites in line with the proposal set out in paragraph 4.16 above help that small number of local authorities in these exceptional circumstances? If not, why not? What other measures can Government take to help local authorities in this situation?**

For the reasons given above, we do not think PPTS should be amended as suggested. Local authorities would be enormously assisted by the re-instatement of a duty to facilitate the provision of sites as has happened in Wales.

**Q12 – 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?**

We would refer you to all the points we make in the main body of this response.

**Q13 – Do you have any comments on the draft planning guidance for travellers (see Annex A)?**

For the reasons given above, the current guidance should be retained.

## **Conclusion**

We fully support the London Gypsy Traveller Unit campaign -  
<https://www.facebook.com/WeSTILLcount>

If these proposals are brought in, there will be strong legal challenges being brought forward. The Government should be left in no doubt that these challenges will come forward at the earliest possible opportunity.

Chris Johnson – Community Law Partnership  
Dr Simon Ruston – Ruston Planning Limited  
22<sup>nd</sup> November 2014