



Department for
Communities and
Local Government

Response form: Consultation: planning and travellers

We are seeking your views to the following questions on proposed changes to planning policy and guidance, to:

- ensure that the planning system applies fairly and equally to both the settled and traveller communities
- further strengthen protection of our sensitive areas and Green Belt
- address the negative impact of unauthorised occupation

And

On proposed planning guidance on assessing traveller accommodation needs and use of Temporary Stop Notices.

How to respond

The closing date for responses is 23 November 2014.

This response form is saved separately on the DCLG website.

Responses should be sent to PPTS@communities.gsi.gov.uk.

Written responses may be sent to:

Owen Neal
Planning Policy for Traveller Sites Consultation
Department for Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF

About you

i) Your details:

Name:	Adrian Jones
Position:	NFGLG Community Network & Policy Officer
Name of organisation (if applicable):	National Federation of Gypsy Liaison Groups
Address:	c/o Derbyshire Gypsy Liaison Group, Unit 3, Molyneux Business Park, Whitworth Road Darley Dale MATLOCK Derbyshire DE4 2HJ
Email:	info@nationalgypsytravellerfederation.org
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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

Personal views

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):	Gypsies & Travellers
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Would you be happy for us to contact you again in relation to this questionnaire?

Yes

No

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

See Supporting Statement

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

Provision of transit sites. See accompanying statement.

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

While there is clear inconsistency between the housing and planning definitions which needs to be addressed, the proposed changes will not do so satisfactorily. Further, this is not something which should be rushed through. We propose the establishment of a working party which would propose a more consistent and widely-acceptable definition - see the attached statement.

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

Not necessary if the suggestions in our attached statement are followed.

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

Not necessary as it is already well covered in existing guidance and practice. The current system works well and does not need to be changed.

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

What is meant by “open countryside”? If Gypsies and Travellers are not allowed to settle in the Green Belt, are unable to afford land within urban areas and are very likely to face local opposition if they purchase land within villages, where then are they supposed to go? What is needed is a policy that creates provision, not one that makes it more difficult.

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

The Government is targeting the wrong people here. It should be focussing on local authorities, whose failure to provide a five year supply of deliverable sites has necessitated the granting of temporary permissions.

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

See our earlier responses.

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

If local authorities provided enough sites then unauthorised occupation wouldn't be necessary. Unauthorised occupation is not done to flout planning laws but as a matter of necessity – people have no alternative given the huge gap between the number of sites needed and the number of sites actually provided.

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

Yes No

Comments

See our response to Question 8. As to whether it harms community relations that depends on a range of factors (location, size, attitudes of local community etc) that can't be answered by a simple yes/no question.

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

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

There is a danger here of developing policies purely on the basis of exceptions (e.g. Dale Farm) than the norm. Mechanisms for inter-local authority work to address this issue already exist, they just haven't been fully utilised. Why re-invent something that already exists?

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 X No

Comments

See our attached statement.

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

This is wholly inadequate. 103 points of detailed guidance spread over 103 pages (plus a further 8 in an annex) have been whittled down into 4 points (point 5 isn't really to do with accommodation need assessments) on a page and a half. Where GTAAs worked well this was where local Gypsy and Traveller communities played a central role in the assessment process. The proposals set out in Annex A water this down dangerously - compare point 38 on page 13, point 46 page 14 and point 49 page 15 in the previous "Gypsy and Traveller Accommodation Needs Assessments" guidance with the bland statements in the draft planning guidance "local authorities should engage both the local traveller and settled communities..." and local authorities COULD (our emphasis) use "information gathered by traveller groups...". The proposed guidance will produce GTAAs that are neither robust nor credible and is, therefore, not fit for purpose.



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21st November 2014

Consultation: planning and travellers - A response from the National Federation of Gypsy Liaison Groups

About the Federation

The National Federation of Gypsy Liaison Groups originated in 2005 when 5 groups came together. Over the last 9 years it has increased from a membership of 5 to a membership of 16, which is the majority of the groups in the country. The Federation contains not only Romany Gypsy groups but also Irish and Scottish Traveller organisations. We are constantly looking at how we can develop in a way that will help the communities that we serve.

The Aims of the Federation are:

1. To promote social inclusion for the public benefit by working with Gypsy and Traveller groups who are socially excluded and to relieve the needs of such people to assist them to integrate into society, in particular by:- Providing a network group that encourages and enables members of the Gypsy and Traveller community to participate more effectively with the wider community. Increasing, or co-ordinating, opportunities for members of the Gypsy and Traveller community to engage with service providers, to enable those providers to adapt services to better meet the needs of that community.
2. To educate the public, for the benefit of the public, in the culture, life and traditions of the Gypsy and Traveller community.

Introduction

On September 14th Brandon Lewis (Minister of State at the Department for Communities and Local Government with responsibility for Housing and Planning) announced the launch of a consultation paper ("Consultation: planning and travellers"), which includes a proposal to change the planning definition of "gypsies and travellers". The proposed change is to take the words "or permanently" out of the present definition wording which is:

"Persons of a nomadic habit of life whatever their race or origin, including such persons who on the grounds 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".

As a result of this change the Government states that definition of "gypsies and travellers" (and indeed, of "travelling showpeople") for planning purposes will be "limited to those who have a nomadic way of life".

We believe that it is extremely problematic to take the words "*or permanently*" out of the definition as it will mean a return to the *Berry* (Wrexham County Borough Council v. Berry (2001) judgement. This case held that someone could be too old or too ill to be a Gypsy. Mr Berry having previously lived a nomadic existence for his entire life had been unable to work and consequently travel for the previous three years due to severe health issues.

It is, however, also problematic to keep the definition as it is currently, as recent case law illustrates that it is discriminatory to women (R (on the application of McCann) v Secretary of State for Communities and Local Government [2009]). NFGLG were so concerned over this we attended the Subsequent *Medhurst* case. The ruling upheld earlier rulings that applicants applying for planning permission have to be of a 'nomadic habit' of life; this is a functional test applied to the way of life at the time of the determination of the appeal. This indicates that caselaw will further develop to be discriminatory towards women, in time there may be an Article 8 and 14 challenge. It is extremely difficult then for families who have had for various reasons to resort to housing; lack of sites is not in the equation for these families within the deliberations of the planning inspector. If a family are deemed to have lost their "gypsy status", they lose at the first hurdle. This may in the future include women who have been carers (for example of elder parents) who may end up in "no mans land", never having travelled for work purposes and the caring responsibility role gone.

It is perhaps time to re visit the definition and discuss a definition which will be useful to the communities it was intended to serve.

Background

Gypsy people and Irish Travellers are recognised as ethnic minorities and are protected under the Equality Act 2010, however the contentious issues of 'gypsy' or "traveller" status for the purposes of planning law undermines their protection as a minority, as 'gypsy' status in relation to land use is not defined by an ethnicity, but is determined by work patterns at the time of the application for planning permission.

Homelessness legislation has assisted Gypsy and Traveller people, but the issues now appear very unclear blurring those that may be statutory homeless with a want to adopt the gypsy way of life as a 'lifestyle' and those that have a perceived traditional and ethnic right to live in caravans, knowing

no other way of life and who are statutory homeless because there is nowhere legal to place their caravans.

The definition used for the Caravan Sites Act 1968 was transferred from the Divisional Court case of *Mills v Cooper* (1967) The Court had to consider the meaning of Gypsy with regard to s127 of the Highways Act 1959. The Court came to the conclusion that Parliament did not intend to discriminate by meaning the Gypsy people as a race, the wording of the Act being "a hawker or other itinerant trader or a "gipsy". Lord Parker stated that although in the context of the Act he felt that the word gipsy means no more than a person living in no fixed abode or fixed employment, he also stated that:

"I am hoping that those words will not be considered as the words of statute"

How prophetic and, of course, historically we know there had been discrimination with regard to the law, for example the Egyptian Acts from 1530s and beyond and anti Gypsy wording has been placed in a number of Acts through the years. There was no reason to worry about this interpretation until the early nineties, when others tried to claim rights under 'gypsy status'. Unfortunately the resulting case *R(South Hams DC ex parte Gibb* (2001) damaged the traditional Traveller community by introducing the concept, that a "gypsy" is someone who travels to seek work, and the case of *Wrexham CBC Berry* followed where effectively, it was found that Mr Berry was too old and too ill to be a (G)gypsy.

We are now at a point in time where there is a system that allows anyone who may choose to take to the road to become a 'gypsy' for the purposes of planning law, but there has to be proof of a nomadic habit of life, while at the same time the system denies the status to the original Gypsy or Traveller people as they do not comfortably fit into the 'case law interpretation'.

The Race Relations Act 1976 has not had the teeth when it is needed in order to preserve a cultural and ethnic way of life. The Equalities Act 2010 means that there can now be a further legal argument to put forward, this time for the women, traditionally not workers in the sense of 'moving for an economic purpose' [as in the case of *McCann*, and subsequently *Medhurst*] but do we want more years of endless argument, more years of a pincer movement of Equalities/Homeless/Planning /Human Rights [articles 8 and 14] and case law that has defined who and what is a Gypsy and often defined it wrongly? We need to get to grips with this issue.

Given that the present definition is problematic the Government's current consultation paper gives us a chance to re visit the issue. This issue has been discussed numerous times by member groups of the National Federation of Gypsy Liaison Groups and by families going through the planning system. It is quite safe to say few Gypsy or Traveller people understand the concept of status, and often when they say they do understand the concept, get into a hearing or worse an enquiry and find that they definitely do not. As all sides recognise that this is an unsatisfactory situation it is worth looking outside the UK Box and considering other definitions.

One definition from overseas that may have applicability in the UK context is that of the Métis of North America. The Métis history and definition (how they define themselves, not how they are defined by others) is the closest to the Gypsy cultural group as it stands today. The Métis (the word Métis means 'a mix' of Scots French Iroquois) culture grew up mainly around the Red River area of Manitoba and is a distinct culture that developed over a period of time (approximately 600 years).

This argument for review is not a racial one. The problem that Native people have had in the USA through, for example, the Dawes Rolls and quantum of blood illustrates that this is not a road to travel down; basically a quantity of Indian blood was required for various treaty rights and is still required for tribal membership - the implications of that today are extremely complicated and it is worth remembering that the Nazi physician Robert Ritter used the original Indian Quantum Blood chart for his model, when studying the Roma and Sinti. The consideration of how much Indian blood made a Métis is immaterial.

There are many similarities with the above and the situation of Romany Gypsies in the UK. - Both have been referred to as "the invisible people". Both had Acts specifically to improve conditions: The Métis Betterment Act in 1938 and the Caravan Sites Act 1968, the latter unfortunately substantially repealed.

The Métis have struggled for their cultural identity usually involving hunting and fishing rights as in the case Of R v Powley (Canadian Supreme Court) [2003] 2.S.C.R. There are ten tests laid out in Powley most connected to harvesting and fishing rights but the ones that could be attributed to Gypsies are:

a) Self - identification. The individual must self- identify as a member of the Métis community, although this is not enough in itself to qualify as Métis. In order to do so the individual must also have an ongoing connection to a historic Métis community (see below).

b) Ancestral connection. There is no minimum blood quantum requirement, but Métis rights holders must have some proof of ancestral connection to the historic Métis community whose collective rights they are exercising. Ancestral connection was also defined by the Court as by birth or adoption. (This is very important as community acceptance in the Romany Gypsy community has always included adoption and non-Gypsy people who have entered the community by marriage)

c) Community acceptance. There must be proof of acceptance by the modern community - a membership of a Métis community must be put into evidence. The court stated that the evidence presented must be objectively verifiable.

The term Métis that was affirmed in the Canadian Constitution Act amendment of 1982 does not encompass all individuals with mixed Indian and European heritage; rather it refers to distinctive peoples who in addition to

their mixed ancestry developed their own customs, way of life and are recognisable, hence capital M for the Métis as a cultural people

Many Gypsy people in the UK are worried that the definition should not be made wider, after all we are an island and many people may have some Gypsy blood. This argument was addressed in Canada for the Métis in the case of Hopper. Evidence was rejected that Mr Hopper had direct lineage to a signatory of a treaty in Massachusetts dated from 1693. The judge stated that.

"[if that was] enough to gain status then most Acadians would qualify as Métis."

(Acadia was an area in North Eastern America/the Canadian Maritime Provinces with a high proportion of citizens having native blood somewhere in their ancestry).

Conclusion

We have had approximately 20 years of nonsensical interpretation post Gibb. NFGLG welcome a debate but we believe that this should be a debate with a review of recent history and status addressed with regard to those who are traditionally Gypsies or Travellers. In our view Gypsy or Traveller status should not be 'lost or acquired', neither should it be opened so wide that the small traditional community loses out.

Our answer would be "no" to any further legal interpretation. Rather we would like to see the indigenous Gypsy and Traveller people of England and Wales with a protective statute, similar to that of the Métis cultural people from Canada. The law has struggled with the definition of Gypsy and has not had the opportunity to look outside of its own jurisdiction for what may be an answer. It is time that this issue was addressed sensibly and calmly but it does need addressing. Rather than rush things through prior to a General Election in May 2015 we would, however, like to see (as per the recommendation included in "Civil Society Monitoring on the implementation of the National Roma Integration Strategy in the United Kingdom") the establishment of a "Gypsy and Traveller" Working Group, representative of those particular people, in relation to "gypsy status" so that a relevant definition can be discussed and agreed.