

South Norfolk Gypsy and Traveller DPD Examination Exploratory Meeting 29 March 2010, 12 noon

Inspector's Concerns

1 Introduction

1.1 In my note to the Council of 24 February 2010, I set out some *Preliminary Questions and Comments*. I have considered the Council's response of 8 March 2010, together with various supporting documents provided. On 25 February 2010, I viewed from public roads, the 2 allocated sites and the other short listed sites.

1.2 I have serious concerns as to whether, on completion of the Examination, I am likely to be able to find the submitted DPD sound, even with changes to the document which I could recommend. This note summarises my concerns. All the matters would be the subject of further consideration and discussion if the Examination were to continue and thus I am indicating only my preliminary view as at this stage. Nonetheless, I explain my concerns fully so that the Council and the Government Office can make a realistic assessment of how best to proceed. This note also highlights some matters that would need to be addressed by the Council if the Examination were to proceed.

1.3 I would encourage the Council to give careful consideration to the continuation of the Examination prior to the Exploratory Meeting. The meeting may not be necessary if the Council is minded to seek withdrawal. The Council may wish to discuss the matter with the Government Office for the East of England as, now that the DPD has been submitted, it can be withdrawn only if I were to recommend so in my report following the Examination or if the Council is directed to do so by the Secretary of State.

1.4 The purpose of an Exploratory Meeting and possible outcomes are explained in section 9 of the Planning Inspectorate's publication *Examining Development Plan Documents: Procedure Guidance* November 2008, see: http://www.planning-inspectorate.gov.uk/pins/appeals/local_dev/dpd_procedure_guide_aug09.pdf

1.5 This DPD is the first to be submitted making allocations for sites for gypsies and travellers. Such allocations raise unusual and difficult issues in relation to site selection and delivery. I recognise the considerable time and effort expended by the Council in reaching this stage. I also recognise the importance of finding additional lawful and suitable sites for gypsies and travellers given present under-provision. However, if the Examination were to continue it would require considerable additional work and cost for the Council and other parties and should not be progressed if it is unlikely that the DPD will be found sound, taking into account the scope for changes which I could recommend.

2. The scale and nature of accommodation needs to be met

2.1 The proposals for the additional pitches to be provided by the 2 allocations made in the DPD need to be considered in the context of the minimum provision required in the District by the Regional Spatial Strategy (Policy HS3). This is a total of 53 pitches by 2011 based on assumed existing provision of 25 authorised pitches in January 2006. I would be concerned if the DPD's allocations did not result in at least 53 permanent pitches for the period 2006-2011.

2.2 The references in the DPD to the number of authorised pitches at the base date and the number of pitches permitted since then is inaccurate. But the background evidence now provided by the Council about pitch numbers is also unclear. Several of the permissions do not state or relate to pitches, but are for large single family groups with a limit on the number of caravans. On several sites there have been applications described as "variation of conditions" to previous permissions. It is not clear in all cases what is the effect of the subsequent permission. If the Examination were to continue, I would need the Council to explain carefully the reasons for the assumed number of pitches on each permitted site and test this assessment in discussion.

2.3 Occupation of all the permitted private sites is limited in some way by a condition referring to named individuals or families. The precise wording of these conditions vary in scope, but mean that none of the permitted sites are available for occupation by anyone else fulfilling the definition of a gypsy in Circular 1/2006. The sites would no longer provide accommodation for gypsies if and when those named individuals/families ceased to occupy the sites. In that sense, these permissions are temporary, albeit for an uncertain and perhaps lengthy period. If the Examination were to continue, I would need to explore carefully the extent that these permissions represent long term capacity that meets the accommodation needs of gypsies and travellers in the area.

2.4 The site selection process has been strongly guided by the recommendations made in the *Accommodation Needs Survey July 2006 (Supporting Document 12)*. That recommended that sites should be for about 6-8 pitches each and found along the 3 main route corridors. On the evidence before me, I do not see the justification for these recommendations to have been used and applied as rigidly as they appear to have been. I have not seen a plan of the distribution of the long list of sites in relation to the corridors or the likely capacity of each site, but these 2 factors appear to have been important in defining the long list.

2.5 I have seen no evidence as to why sites for a smaller number of pitches should not have been considered an option. There is no evidence of large groups needing to be accommodated on one site and smaller sites may provide greater flexibility at all stages of the process. Nor is the evidence convincing about the use of narrow corridors as the essential areas of search. There is little evidence in the *Needs Survey* about local travel patterns. The survey responses indicated (p11) that about 2/3rds

of the families had a preference for *living where I am now* which may relate equally or more so to a general area than a route corridor.

3 Site selection

3.1 I have serious concerns about the mix and weighting of the site selection criteria which was used to derive a short list of potential sites. I highlighted some concerns in my previous note, which I amplify here.

3.2 *Avoid sites where the wellbeing of site occupiers would be adversely affected* should be an essential, not just a desirable factor. Everyone is entitled to a satisfactory living environment and the plan-led system for the provision of sites for gypsies and travellers should consider as acceptable only sites where the living environment would be acceptable for permanent dwellings (whilst bearing in mind the different characteristics of caravans, such as in relation to noise insulation).

3.3 *Avoiding sites where there is more than minimal effect on visual and residential amenities* is a much more stringent test than would normally be applied to any other type of development. My preliminary view is that it is unreasonably restrictive. It appears to have been the decisive criterion in ruling out many of the sites on the long list, particularly sites in public ownership where actual delivery of pitches might be more readily achievable than with unwilling landowners. Compatibility between proposed and existing land uses (not just residential uses) is a legitimate essential consideration, but gypsy sites are a form of residential use. The size of the site in terms of traffic movement or activity within the site is, of course, a consideration in assessing compatibility, but many small lawful gypsy sites are close to other dwellings.

3.4 Circular 1/2006 indicates that acceptable sites may be found *in or near existing settlements* (paragraph 65) - where Councils should first consider finding sites - and that sites on the outskirts of built-up areas may be appropriate (paragraph 54). In such locations, potential sites may be expected to be close to some existing dwellings. *Having access to social and community facilities* was a desirable factor in the site selection criteria, applied only to the short list. However, as noted above, Circular 1/2006 indicates that sites should be considered first *in or near existing settlements*. Whilst this advice does not make such a criterion essential, it should have been weighed more significantly in the process and influenced the approach to other considerations, such as proximity to existing dwellings.

3.5 The other element of the site selection process which concerns me is the reason for the inclusion and exclusion of sites from the long list of sites in Appendix 3 of the DPD. There is no clear explanation of the factors which influenced such decisions. One consideration appears to have been the potential *deliverability* of each site, although it is not listed as either an *essential* or *desirable* criterion in the site selection process. The long list groups sites under different headings, which include: *2005 search Council owned land*; *2007/8 landowner offers*; and *2008/9 public/landowner suggestions* which all seem to relate to potential

deliverability. It is unclear why the sites not in these categories were included or why land in similar locations was excluded.

3.6 In my view, deliverability is a relevant consideration for a site's inclusion in the long and/or short list, but because deliverability is not an explicit consideration in the Council's process, this factor does not appear to have been applied consistently at each stage or as circumstances changed. The Stanfield site was suggested by a then willing (or potentially willing) landowner, but the ownership has now changed and compulsory purchase would have to be pursued. Without the initial landowner offer, this site would presumably never have been identified for the long list. I understand that the Earsham site was suggested by a member of the public, not the landowner, and would have been less likely to be included on the long list if deliverability had been an explicit consideration. Conversely, the Council now envisage that compulsory purchase may be necessary to deliver the selected sites. If this is the case, it raises the question as to whether the long list should have been mainly based on public land and landowner offers or encompassed many other sites where compulsory purchase was also likely to be required.

3.7 It is the apparent inconsistency of approach in relation to deliverability in how sites were included in the long listed and the significant impact of the unreasonable residential amenity criterion which concern me most about the likely soundness of the site selection process. This matter is central to whether the allocations made in the DPD are justified representing the most appropriate choice in all the circumstances.

3.8 This DPD is concerned with the selection of relatively small sites for residential use with few absolute constraints on location. There are a wide range of potential sites and options. I accept that some broad-brush decisions and selection criteria have to be used to define a long list and subsequent short list of sites, so as to avoid a disproportionately complicated plan-making process. My concern in this case is not that a more comprehensive approach was not adopted, but that the basis for identifying potential sites is not clear, that deliverability has not been given consistent consideration and that the mix of explicit selection criteria is inappropriate.

4 Site specific considerations

Land west of the Stanfield Oil Depot, Wymondham

4.1 I have 2 main concerns about this allocation from what I have seen and read. The first is the long-term land-use compatibility between the nearby oil distribution depot and the proposed residential use. The existing depot is a substantial, long established business, well located for access to the trunk road network. There appear to be no nearby residential or other sensitive uses which might hinder any future acceptable plans for expansion of this operation. The existing operator has plans to expand.

4.2 It would be poor planning to introduce a use which might curtail potential acceptable expansion of the adjoining business, unless there were good reasons to outweigh that potential adverse impact. In accordance with the step-change in provision sought by Circular 1/2006, I attach considerable importance to finding suitable sites for gypsies and travellers, but I have seen little evidence to satisfy me that it should be this particular site so close to a land use which is incompatible with residential use. As indicated above, it appears that this parcel of land was identified as a site only because of a then willing (or potentially willing) landowner and without that stimulus it may never have been identified as a site at all.

4.3 If the Examination were to continue, I would need to explore thoroughly the nature of any future plans for the oil depot site; the potential to accommodate those alongside the proposed gypsy site; and to balance any potential conflict against the need for the gypsy allocation. I cannot come to any firm view at present, but from the available evidence it would be difficult for the Council to demonstrate an essential requirement for this particular choice of site.

4.4 My second concern is the site specific impact. I saw that the well-wooded low embankment of a former railway line crosses the site and is an integral part of the local landscape. The layout for the site suggested in Appendix 6 of the DPD pays no regard to this embankment feature and development in the manner suggested would require the removal of all the trees and the levelling of the embankment. I regard this as a particularly insensitive response to the positive features of the site. I appreciate that there appears to be sufficient land to the south of the embankment to accommodate the suggested 8 pitches, but I have seen no evidence as to whether extending an access to here and provision of services would be feasible at reasonable cost or whether the Council would consider acceptable an alternative layout to that shown in the DPD..

Old Harleston Road, Earsham

4.5 If the Examination were to continue, I would explore the compatibility of the proposed use with the existing land uses and the site specific impact, but I do not raise any overriding site concerns at this stage.

5 Deliverability and flexibility

5.1 Two key questions for the Examination and fundamental to the soundness of the DPD are: firstly, whether the proposed allocations are realistically deliverable to meet the identified immediate need and secondly, whether there is flexibility within this DPD, or in the overall LDF, to respond to changing circumstances. These are critical aspects of effectiveness.

Delivery

5.2 The submitted DPD says very little about how the 2 allocations will be delivered (but has some paragraphs on how the sites will be managed

once constructed). In my view, the DPD needs to spell out how these sites will be delivered and the critical steps in delivery need to be monitored with action identified if the steps are not met. Delivery is always an important consideration in the soundness of a DPD, but raises unusual issues in relation to gypsy and traveller allocations.

5.3 The Council has indicated that compulsory purchase may be needed to acquire and deliver the sites. Given that the landowners are unwilling sellers and opposed to the allocations that would seem inevitable. However, I have very little evidence before me to demonstrate the Council's commitment to taking such action or the likely timetable for doing so. If the compulsory purchase order is opposed, a public inquiry is likely which would consider afresh the justification for confirming the order. Whilst reliance on an allocation in a newly adopted DPD would be a weighty consideration, the landowners' concerns and intentions would still need to be considered carefully. Given the concerns I have set out above in relation to the site selection process, I find it hard to envisage a justification in the public interest for the compulsory acquisition of the sites. Allocations for gypsies and travellers in an adopted DPD which have little prospect of delivery are likely to hinder and delay adequate provision to meet local needs compared with having no such DPD at all.

Flexibility

5.4 The submitted DPD does not set out any actions or alternatives if one or both of the allocated sites are unable to be delivered within a specified time. This contrasts with the previous Proposed Submission DPD (Supporting Document 18) which indicated (p12) that the DPD was intended to be flexible, with alternative strategies to meet contingencies that might arise and included the allocation of reserve sites. There appears to be no scope for me to add flexibility within the submitted DPD.

5.5 A possible alternative to flexibility within this DPD would be to build in flexibility within another DPD, such as the forthcoming Site Allocations DPD. However, the content of that emerging DPD is not a matter on which I could make any recommendations and if the Council were to rely on this solution I would need to be satisfied such intended reliance would be followed through. In addition, if the Site Allocations DPD were to include allocations for gypsies and travellers to meet needs to 2011 a decision would need to be made to do so by the summer of 2010 so that potential sites could be considered and identified for the public consultation on that document at the end of the year.

7 Development Management Policy

7.1 If the Examination were to proceed, I would need to explore:

- the appropriateness of including such a policy in this DPD as opposed to a Core Strategy (which is where Circular 1/2006 requires a such a policy);
- the intended lifespan of such a policy and consistency with the approach to site provision post 2011 for gypsies and travellers in the recently submitted Joint Core Strategy for the area;
- the soundness of the criteria in the policy.

If I were to find the development management policy unsound and that the unsoundness could not be remedied by specific changes, then the policy could be removed entirely from the DPD without affecting the soundness of the 2 allocations. Accordingly, I do not regard any issues relating to this policy as critical to whether the Examination should proceed or not.

8 Work required if the Examination were to proceed

8.1 If, following the Exploratory Meeting, it is decided that the Examination should proceed there are a number of tasks that I would invite the Council to undertake in advance of the hearings. This includes the publication of possible changes to the DPD that I could recommend if I were to eventually conclude that it could be made sound. Such changes would need to be the subject of appropriate consultation and I would take into account the representations made on such possible changes. To ensure that all matters could be considered at the hearings, the hearings would need to be delayed compared to the early June date originally suggested. I will elaborate on these matters at the Exploratory Meeting if it appears that continuing the Examination is a possibility. I give only an outline of the main points now. For each issue that I subsequently identify for discussion at the hearings, there would be range of detailed questions in due course for the Council and other parties.

- As indicated in 2.2 and 2.3 above, carefully examine and explain the number of pitches on sites with planning permission and the implications of the various occupancy conditions for the ability of those sites to meet long term needs for gypsy and traveller sites.
- Provide a fuller, accurate, summary of existing provision to replace the information in the middle of p3 of the DPD.
- Suggest changes to make the text of the DPD appropriate for a DPD that could be adopted (as explained in my first note).
- For each of the 2 allocations, set out an identifiable policy/proposal which makes clear what is proposed, how the site is to be developed and what mitigation or other measures are required to make it acceptable; ensure that any illustration of how the site might be developed (as in the current Appendix 6) is consistent with each policy/proposal.
- Amplify section 10 of the DPD (together with supporting evidence) to explain the timetable and mechanisms for implementation of the allocations, including the availability and constraints on funding.
- Amplify section 11 on monitoring to incorporate key milestones for implementation and action to take if the milestones are missed.
- Consider what flexibility for provision to 2011 could be achieved through allocations in another DPD.

Simon Emerson

Inspector

15 March 2010