

DCLG Consultation: Planning and Travellers (14 September – 23 November 2014)

Suggested responses from WLBC (Final Draft – 29 Oct 2014)

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?

Gypsies and Travellers are an ethnic group. The Council would question whether the definition of an ethnic group can be changed and withstand legal challenge.

Whilst WLBC has sympathy with the notion that a new planning application for accommodation for a group of people who have no intention of travelling (whether the travelling or the settled community) should be determined fairly, it considers that making a judgment as to whether a group has ceased to travel permanently or just temporarily would be very difficult, and could lead to increased appeals / legal challenges, etc.

For example, Travellers could cease to travel whilst their children are in education, a period of 14 years or more (if they have multiple children), and this could be considered temporary, whereas some older Travellers who have not travelled for only a year due to health reasons, but whose health is not expected to improve, may be regarded as having ceased permanently to travel. For a family or individual who is judged to have ceased to travel permanently, could this be “undone” by the family making a single trip? How would the difference between going on holiday and “typical Gypsy travelling” (however that might be defined) be determined? And if a member of the settled community undertook a “typical Gypsy trip”, would they then be treated as Travellers for the purposes of planning?

Therefore, greater clarity and guidance would be necessary on this matter to aid decision-making, and the consistency of that decision-making across the country. Could a clear definition of what is temporary and what is permanent be provided? Could examples of how this matter should be discerned be provided within the guidance?

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?

Transit sites are good in principle to facilitate provision of facilities for Travellers, but they are extremely difficult to provide in practice. Unless sites are in the hands of the local authority or a Registered Provider, they are unlikely to be deliverable. Regardless of who actually delivers the transit sites, finding suitable sites for a transit site in an area like West Lancashire is also challenging, given that there are few, if any, suitable sites for Travellers within settlement areas and the majority of land outside settlements is in the Green Belt.

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?

a) As per the response to Q1 above, WLBC would question whether a change in definition could withstand legal challenge.

b) WLBC supports policy that requires local authorities to carry out a robust assessment of Traveller needs, whether they travel, or have ceased to travel temporarily or permanently.

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?

Yes, as it provides clarification that those relevant parts of the Framework apply to the provision of Traveller sites.

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?

WLBC is unsure how much difference this extra word makes, and may lead to protracted discussions at appeals, etc. over the weight to be given to “strictly” or “very strictly” limiting new sites against other considerations.

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 [Green Belt, nature conservation sites, local green space]? If not, why not?

WLBC would welcome this change for development management purposes.

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?

WLBC would welcome this change for development management purposes.

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?

WLBC have concern regarding this proposed change of policy simply because it would create a degree of uncertainty. Firstly, how would a decision taker determine that the unauthorised occupation is “intentional”? Secondly, presuming whether it is “intentional” could be determined, how much weight would decision takers be expected to attribute to intentional unauthorised occupation as a material consideration and how would this, in turn, affect the right of appeal, or the likelihood of an applicant appealing a decision when the level of weight that should be given to intentional unauthorised occupation is unclear? Thirdly, the Courts have held that to justify enforcement action or refusal of a retrospective application, the local planning authority would have to demonstrate harm, so in a situation where no harm was caused, how could the intentional unauthorised occupation be considered as a material consideration that weighs against the grant of permission? Finally, why should such material weight only be applied to intentional unauthorised occupation that involves Travellers? For equality reasons alone, this material consideration would more appropriately need to be applied to all intentional unauthorised occupation or development be that by the travelling or non-travelling community.

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

WLBC agrees that unauthorised occupation, together with the opportunity for the person in breach of planning control to repeatedly challenge enforcement action taken by the Council undermines confidence in the planning system and may harm relations between travellers and the local community.

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?)

West Lancashire has, and has had, a number of unauthorised sites, both long-term and short-term. In relation to long-term unauthorised sites, discussions with the police have indicated that there are no known problems in terms of community relations associated with the occupation of four current sites. However, in relation to short-term intentional unauthorised occupation of sites on a transit basis, there has been harm relating to the state of the site once the travellers have moved on and harm relating to a degree of anti-social behaviour in some circumstances. Unfortunately, WLBC do not keep documented evidence by way of these short-term intentional unauthorised occupations. Notwithstanding the lack of evidence, the anecdotal evidence West Lancashire are aware of enables us to draw the comparison between those travellers who have every intention of remaining in an area longer-term (and so wish to build up ties within the local community, e.g. through schools, but for whom there is no suitable site available and so they occupy an unauthorised site that they can purchase and that they consider suitable for their needs) and those who are just “passing through” and have limited regard for the local community, and there needs to be an understanding of this difference when dealing with different cases of intentional unauthorised occupation.

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?

Clarity is required: what constitutes “large scale” – is this numerical, or proportional to the historic Traveller need for a particular area? What constitutes “Strict and special planning constraints?” How far below their assessed need is a local planning authority able to go in terms of not meeting the full accommodation needs?

Would the need have to be met elsewhere? If so, where? Adjacent authorities, within the same county, within the same region?

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 (sic) community or the settled community?

WLBC has no further comments to make with regard to Q12, over and above its responses to Q1-Q11.

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

WLBC seeks clarification that the government is not intending to revoke the whole of the Good Practice Guide (2008), but only the sections relating to accommodation assessments; similarly with the other documents listed at paragraph 4.19 of the consultation document.

In terms of Annex A:

Part 2, bullet 7. Amend to:

- Sites owned by a Registered Provider or a local authority

Final paragraph of part 2: How should local authorities engage the settled community with regard to assessing Traveller needs? In what capacity? More guidance is required on this matter.

Part 4. Add fourth bullet point:

- Information on unauthorised sites (permanent need), and illegal encampments (transit needs)