



PINS NOTE 30/2015r4

To: All Inspectors (England)

Relevancy: Planning appeals and Secretary of State Casework; enforcement appeals; and Local Plans examinations

Date of Issue: 1 September 2015

Currency: review on 1 September 2016

Last updated: 29 February 2016 – paragraph 4 updated and new Annex C inserted providing advice where the occupants do not fall within the PPTS definition of “travellers ”

UPDATED PLANNING POLICY FOR TRAVELLER SITES

Action

1. The Secretary of State published on 31 August 2015 an updated version of [Planning Policy for Traveller Sites](#) (PPTS).
2. This is in response to the outcome of the Government’s consultation on [Planning and travellers: proposed changes to planning policy and guidance](#).
3. Planning Policy for Traveller Sites must be taken into account in the preparation of development plans, and applies to planning applications and appeals, including enforcement appeals, **from the date of its publication and should be taken into account in planning decisions with immediate effect.**
4. The policy changes concern:
 - i) **Change of planning definition** - the words “or permanently” have been removed from the definition of “travellers” in Annex 1 of Planning Policy for Traveller Sites (March 2012). For the avoidance of doubt, this change applies to both “Gypsies and Travellers” and “Travelling Showpeople” as defined in Annex 1 of Planning Policy for Traveller Sites (August 2015). When applying the new definition, Inspectors will need to be mindful of Article 8 of the European Convention on Human Rights and the best interests of the child (see paragraph 3.7 of the Government’s response to the

consultation). In relation to Gypsies and Travellers only, the policy lists three issues that Inspectors should also consider when determining whether persons fall within the definition (see Annex 1 paragraph 2 of Planning Policy for Traveller Sites (August 2015). Advice on appeals where there is concern that the intended site occupants do not fall within the PPTS definition of travellers, is contained within Annex C.

- ii) **Temporary permission in the Green Belt and other sensitive areas** – The Government has made clear that the absence of an up-to-date 5 year supply of deliverable sites does not constitute a significant material consideration when considering the grant of temporary planning permission where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and/or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).
 - iii) **Protecting open countryside** – To give greater protection to the countryside, the Government has added the word “very” to what was paragraph 23 of Planning Policy for Traveller Sites (March 2012). It now reads “Local planning authorities should very strictly limit new traveller site development in open countryside . . .”.
 - iv) **Unmet need and personal circumstances** – To protect the Green Belt, the Government has made clear that, “subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.” (Further advice is available in the Planning Practice Guidance on how [should children’s best interests be taken into account when determining planning applications?](#)).
 - v) **Large-scale unauthorised sites** – The Government has made clear that “In exceptional cases, where a local planning authority is burdened by a large-scale unauthorised site that has significantly increased their need, and their area is subject to strict and special planning constraints, then there is no assumption that the local planning authority is required to plan to meet their traveller site needs in full.”
5. With regard to **Traveller Accommodation Needs Assessments** Planning Policy for Traveller Sites (August 2015) is unchanged in relation to needs assessment and continues to require that the LPA should make their own assessments of needs (paragraph 4(a)) and use a robust evidence base (paragraph 7(c)). However, paragraph 3.11 of the Government’s response to the consultation makes clear that it has decided to put before Parliament the revoking of “Gypsy and Traveller Accommodation Needs Assessments – Guidance” (2007). Subject to that the Government will publish new guidance on traveller accommodation needs assessments.

6. In addition the Government has cancelled¹ the:
- Guide to effective use of enforcement powers – Part 2 (2007); and,
 - Designing Gypsy and Traveller sites, Good Practice Guide (2008)
7. The 'Guide to effective use of enforcement powers - Part 1 (2006)' remains extant.²

Background

8. The Government previously consulted on proposals to ensure fairness for all in the planning system and provide greater protection for our countryside (PINS Note 14/2014 is hereby withdrawn).
9. Inspectors will wish to ensure that the weight they give to the new policies mentioned above is consistent with the Government's intentions, and that progress is maintained in the decision-making process without allowing any significant unnecessary delay. Advice on the handling of appeals and Secretary of State casework is at Annex A, and a protocol for handling planning and enforcement appeals casework is available here.
10. As regards local plans that are currently being examined, we do not anticipate that the amended policy will generally necessitate revision of GTAAs prepared by Councils to inform plans that are at such an advanced stage, albeit there may be case specific considerations. We do not propose that formal steps are initiated by Inspectors in relation to examinations in progress unless it is raised as an issue specifically by Councils or interested parties, in which case Inspectors should contact XXXX to discuss handling further.

¹ [See DCLG letter of 31 August to Chief Planning Officers in England.](#)

² [See DCLG letter of 2 October 2015 to Chief Planning Officers in England.](#)

APPEALS, CALL-INS

Before a case file is sent to the Inspector, for an interim period case officers will alert the main parties³ of the need to consider the implications of the updated version of Planning Policy for Traveller Sites (PPTS) and request those are provided within 14 days in normal circumstances⁴. To facilitate this for all cases not with the Inspector a letter has been produced to be sent by Case Officers – reproduced at Annex B. It is anticipated, however, that appeal parties will rapidly assimilate the contents of the PPTS so this will be a short term measure. Case Officers will be instructed not to turn away representations on this specific matter as “late”. Where a site visit, hearing or inquiry is yet to be held or is sitting Inspectors are advised to accept evidence or submissions on the policy changes at the event or as written representations. Where it is evident to an Inspector upon receipt of a file that the above process has not been conducted, s/he should promptly ask the Case Officer to undertake it, but should not postpone the site visit or other event.

With regard to undecided cases already before the Inspector, the following approach has been developed to assist in determining which cases can proceed and should not need any additional action, and those which, due to their current position, require reference back to the parties for comment (or merit reopening):

- a) there may be cases where the balance that the Inspector is required to make would be unaffected by the change in policy, such that the appeal would be dismissed in any event. Provided that the Inspector is satisfied that there would be no infringement of natural justice, it is likely that s/he need not refer back to the parties and can simply note the PPTS changes in his/her decision indicating that they have not borne on the decision. Suitable wording might be along the lines: ‘I have had regard to the changes to policy from the updated Planning policy for traveller sites which, in the light of the facts in this case, do not alter my conclusion and decision that . . .’.
- b) where a site visit has taken place or a hearing or an inquiry has closed, and the Inspector judges that the parties must be asked to comment, s/he should seek written representations from the main parties on the implications of the publication of the PPTS, which must be cross copied between the main parties (ie LPA, Appellant and any Rule 6(6) parties). The Inspector must then consider and apply reasonable judgement to the question as to whether it is necessary to

³ This in all such circumstances should cover the main parties (LPA, Appellant’s side, and Rule 6 Parties), with others included at the Inspector’s discretion.

⁴ In relation to enforcement appeals, generally only appeals where there is a ground (a) (and/or linked s.78) and/or ground (g) will be written out on automatically. For EN appeals with any other grounds the Inspector should specifically request the case officer to write out.

re-open the inquiry or hearing (advising Chart as necessary) or, *exceptionally*, where the case is being conducted by WR, to arrange an oral event if the responses merit further exploration of the issues. Before deciding to re-open / arrange an event Inspectors should discuss the case with their SGL or GM; Non Salaried Inspectors (NSIs) should contact XXXX, who will refer to the GM. In bespoke cases the target may need to be adjusted

- c) although ordinarily for SoS casework we would not seek views once an event has closed, PINS will refer back to the parties on the implications of the PPTS and, as above, may in certain circumstances consider the need to re-open events. Inspectors who already have the case file should contact XXXX for further advice on such cases.

In the event that a decision has been sent to Despatch prior to the publication of the PPTS, but had not been issued at the point of its publication, the Despatch Team will return the decision to the Inspector (in cases where the file has been received in the office it will not be returned unless the Inspector requests it). Having applied the principles above as to whether the case merits re-consulting with the parties or whether suitable explanatory text can be inserted, the decision should either be sent to Despatch or to the CPI Reading Unit address, in each instance the email subject bar should state "updated Planning policy for traveller sites considered".



Temple Quay House
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Customer Services: 0303 444 5000
e-mail:

By E-mail

Your Ref:

Our Ref:

Date: xx xxxx 2015

Dear Sir/Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION [78] [174]
DETAILS OF CASE**

The Inspectorate invites the appellant (or their agent) and the LPA to comment on how the updated Planning policy for traveller sites affects the development which is the subject of this appeal.

The updated Planning policy for traveller sites can be read [here](#).

Please send your comments to me by [insert date - 14 days from date of letter] and copy in the other party (ie the appellant / agent / LPA as appropriate).

If, having seen the other party's comments as mentioned above, you wish to comment on what they've said, please do so within 7 days of receipt (again, sending to me but copying to the other party too).

A letter in identical terms has been sent to the appellant (or their agent) and the LPA.

Yours faithfully

Xxxx Xxxxxx

Case Officer Name

What happens if the appeal is seeking permission for a traveller site in accordance with the PPTS but the site occupants / intended site occupants do not fall within the PPTS definition of "travellers"?

1. In cases where the status of the site occupants / intended site occupants is in question it may be advisable to ask the appellant if they wish for the appeal to proceed:
 - a) on the basis that the site is suitable for gypsies and travellers / travelling showpeople as defined in the PPTS, bearing in mind that a condition will limit the occupation of the site to such persons; or
 - b) on the basis that it is suitable for a residential caravan site for the specific site occupants and any permission granted would be personal to those persons.
2. If it is clear that the site occupants / intended site occupants do not satisfy the definition of a "traveller" as defined in the PPTS and they are seeking permission for a residential caravan site, the PPTS will not apply and the appeal should be considered under the NPPF. As highlighted in the [Written Ministerial Statement of 22 July 2015](#) the needs of such persons will be assessed in accordance with paragraph 159 of the NPPF.
3. Paragraph 159 of the NPPF requires LPA's to assess their full housing needs and address the needs for all types of housing and the needs of different groups in the community. This includes those persons who no longer fall within the definition of a "traveller" under the PPTS but still have specific accommodation needs, e.g. to live in a caravan in accordance with their culture and traditions.

Romany Gypsies & Irish Travellers

Public Sector Equality Duty (PSED)

4. The PSED, as set out in s.149 Equality Act 2010, applies to all Inspectors in reaching any decision which could affect a person with a protected characteristic.
5. Race is a protected characteristic and the courts have recognised Romany Gypsies (*CRE v Dutton* [1988]) and Irish Travellers (*O'Leary v Allied Domecq* [2000]) as being distinct racial groups.
6. Romany Gypsies and Irish Travellers are therefore persons who share a protected characteristic for the purpose of the PSED irrespective of whether they come within the PPTS definition of "gypsies and travellers".
7. Essentially this means that where Romany Gypsies or Irish Travellers might be affected by the decision, the Inspector must, in reaching his / her decision, have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

8. Having 'due regard' involves: consciously thinking about the three aims of the Equality Duty as part of the process of decision-making. This means that consideration of equality issues must influence the decision but it does not mean that decisions cannot be made that do not advance equality of opportunity etc.

9. Due regard is the regard which is appropriate in consideration of the circumstances of the particular case. The level of regard appropriate will depend on the importance of the decision for the lives of persons with the protected characteristic, the extent of the inequality and any countervailing factors. Where negative impacts are identified, potential ways to mitigate these should be considered. The principle of proportionality applies: the more serious the negative impact, the greater the requirement to consider the negative impact, consider mitigation and justify any decision.

10. Further advice on this can be found in the Human Rights and PSED chapter of the Inspector Training Manual.

Human Rights

11. Article 8 of the European Convention of Human Rights, which is incorporated into the Human Rights Act 1998, states that 'everyone has the right to respect for his private and family life, his home and his correspondence'.

12. The court has determined that Article 8 imposes a positive duty to facilitate the Gypsy way of life⁵. This means that consideration should be given to their specific needs which arise as a result of their culture and traditions, for example, living in caravans when considering their Article 8 rights. In this context a Gypsy is defined by race and ethnicity and not by the planning definition of "travellers" in PPTS.

13. Further information on Human Rights can be found in the Human Rights and PSED Chapter of the Inspector Training Manual.

⁵ [Chapman v UK \(2001\) 33 E.H.R.R. 18](#)