Derbyshire Gypsy Liaison Group Consultation on the Review of the National Planning Policy Framework

1. Derbyshire Gypsy Liaison Group DGLG[1] has worked in the provision of sites for Gypsy and Travellers since 1983. it has worked with planning consultants in obtaining sites through the planning system, by input into borough plans and applied for and obtained sites with and without professional help.

2. DGLG worked to get the 1/94 guidance in place and the 1/2006 guidance. DGLG have undertaken this work locally and nationally Our Safe Place to Be project 2007- 2012 saw a number of family sites granted planning permission across the East and West Midlands. As part of this work, Derbyshire saw a reduction of unauthorised encampments down from an average of fifty- eight in a year to nine. This equates to 3 families, one now sited in Leicestershire and the two left have now increased back to 3 families due to growth.

3. It is problematic to rely on the voluntary sector to work with authorities to increase provision and in the main this is what has happened and is happening, with a handful of planning consultants that specialise in Gypsy/Traveller planning and a handful of support groups trying to lodge information into the Local Plan system and support families where they can, all often dependant on funding

4. We welcome the direction of travel of the proposed changes to the National Planning Policy Framework (NPPF), which are intended to address the imbalance in the planning system between providing adequate, affordable housing and policies of restraint.

[1] Queens Golden Jubilee Award for Voluntary Groups 2003, Home Office Award in Conjunction with Derbyshire Police 2004

5. DGLG has held two national consultation events in August and September in Birmingham and have also consulted in a wider capacity using a series of social events.

6. We are however deeply concerned that the changes to the NPPF are not matched by parallel changes to the separate policy document, Planning Policy for Traveller Sites (PPfTS), and therefore it will be important to revise PPfTS guidance to remove conflict **Para 16.** *'Inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development. 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.'*

7. The Above para is completely contrary to the change proposed in the new para 152 of the NPPF where development is not inappropriate if a local planning authority cannot demonstrate a five- year supply of deliverable housing sites plus buffer. It is essential that the NPPF and PPfTS make explicit that Para 152 also applies to accommodation for Gypsies and Travellers. Accordingly, para16 of PPfTS should be deleted.

8. In planning law, the definition of who constitutes a Gypsy was brought forward from the now defunct Caravan Sites Act (1968). This definition was informed by the decision in the *Mills* v *Cooper* case of 1967. a "gypsy way of life"(See Appendix background history). This is outdated and pre dates the cases of *Dutton*[2], *O'Leary*[3] and *McLennan*[4] that recognises Gypsy and Traveller people as distinct ethnic groups. Now that we have the ethnic definitions recognised in law, it follows that it should be within the very law that is meaningful.

[2] *Commission for Racial Equality v Dutton* QB 783; [1989] 1 All ER 306

[3] *O'Leary* v *Allied Domecq* [2000] 29th August (unreported) Case No CL 950257-79 Central London County Court

[4] *MacLennan v GTEIPS* / 132721/07 2008

9. Subsequent case law now requires that Gypsies be actively seeking work as a requisite to prove their "gypsy status" (ex parte Gibbs, 1994). Ethnic definition in law has been further weakened by this further interpretation of law after the Gibb case (1994). Gypsies are defined by trade in relation to moving about for work, not by social and cultural movement inherited by tradition and heritage, which is how the Gypsy community defines itself. An ethnic community has a right to self - identify, therefore there should be a renaming of PPfTS to Planning Policy for Gypsy and Traveller Sites. (See historical Appendix below)

10. DGLG has had a long history of highlighting the very unsatisfactory definition question and lodged a national petition through MP Harry Barnes in 2004[5], no one could have intended elder, disabled ethnic Gypsy people to actually become the ones least likely to be disadvantaged, but that is precisely what happened and the recent case of *Lisa Smith* an Appeal decision, found that the definition change in 2015 was discriminatory and the December 2023 edition of PPfTS returned the definition to what it had been before 2015, but still the definition issue is not clear.

11. DGLG undertook the witness statement for Lisa Smith who coincidently was one of the families that we were unable to get a site for in Derbyshire, all we had been able to do was facilitate a series of unofficial temporary stops on old laybys with very often no facilities.

12. The families mentioned above are the ones which have been let down by present policy, the old ill and disabled and relegated to not real "gypsies" not even able to keep the higher case letter of their name. A solution would be to look at the Welsh Government's definition, which includes recognition of a cultural tradition of nomadism, but we would recommend that Gypsies and Travellers are inserted directly at (a) *Gypsies and Travellers means persons of a nomadic habit of life, etc.* We do not accept the phrase regardless of race or origin.

[5] https://hansard.parliament.uk/commons/2004-07-07/debates

13. The Gypsy people as an ethnic group has been recognised by the European Court of Human Rights. In *Chapman v United Kingdom* (2001) 33 EHRR 18, the court held at para 73:

> *" The court considers that the applicant's occupation of her caravan is an integral part of her ethnic identity as a gipsy, 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 gipsies 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 therefore have a wider impact on the right to respect for home. They also affect her ability to maintain her identity as a gipsy and to lead her private and family life in accordance with that tradition."*

14. Gypsy and Traveller people are both indigenous communities (Gypsy people are not classed as Roma and do not use that name to reference themselves in UK. Gypsy or Romany Gypsy people developed within the UK as a distinct ethnic group) and their treatment is contrary to various international conventions and the UK Government's commitment to them, see for example the Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities, Fifth Opinion on the UK Government, December 2022.[6]

15. <u>Concerns</u>

Given the fact that local planning authorities seem to find it difficult to allocate sites, Gypsies and Travellers have often acquired for example, former scrap yards, abandoned nurseries and market gardens . Reflecting the limited harm such sites do to the Green Belt, they form a considerable proportion of those which have been won on appeal in Green Belts, these types of sites are ideal to identify , many being adopted back into Greenbelt, however how will it be possible for these types of sites not to be snapped up by property developers and for every development imaginable but for Gypsy and Traveller people. Local Authorities will be swayed by those who can deliver community assets through 106 agreements something families cannot afford to do. We would specifically recommend that:

[6] https://rm.coe.int/0900001680ab55b4

- The duty to provide sites is reintroduced with Councils required to be able to offer pitches on social rented sites; and

- Sites obtained within the Greenbelt should not be developed to bricks and mortar accommodation to increase the value of the land and sold.

- A mix of provision should be available so that pitches are available both privately and publicly.

Consultations questions

Questions	Our answer
Q 6: Do you agree that the presumption in favour of sustainable development should be amended as proposed?	**6.** sustainable can be problematic and we would hope not to see unrealistic criteria
Q7: Do you agree that all local planning authorities should be required to continually demonstrate 5 years of specific, deliverable sites for decision making purposes, regardless of plan status?	**7**.Yes, but specific reference on Gypsy and Traveller pitches subject to on a sound GTAA. Guidance on Needs Assessment should be updated and issued at the same time as update on TTfTS
Q9: Do you agree that all local planning authorities should be required to add a 5% buffer to their 5-year housing land supply calculations?	**9** 5yrs, yes welcome this update of 5% (links to question10)
Q10: If yes, do you agree that 5% is an appropriate buffer, or should it be a different figure?	**10**.5% may not be enough due to shortfall, there is a bigger margin of shortfall for Gypsies and Travellers (supplementary planning guidance update)
Q12: Do you agree that the NPPF should be amended to further support effective co-operation on cross boundary and strategic planning matters?	**12**.Yes, agree with strategic planning dimension for Gypsies and Travellers. We found under the old regional strategy we were obtaining more sites; we think this aspect of planning is better suited regionally DGLG undertook a lot of work through the regional spatial strategies.
Q14, Do you have any other suggestions relating to the proposals in this chapter, Planning for the homes we need.	**14.** Mobile homes and Caravans should not sit outside that of conventual housing, r *Wenman* v *SSCLG* [2015] EWHC 925 (Admin)
Q19: Do you have any additional comments on the proposed method for assessing housing needs?	**19.** As mentioned above relies on robust Gypsy and Traveller Accommodation Assessments
Q20: Do you agree that we should make the proposed change set out in paragraph 124c, as a first step towards brownfield passports?	**20**. Yes, should include Gypsy and Traveller sites, including Showmen (Showmen mixed commercial and residential) however

	concern expressed of land values going up, what advice to keep this down?
Q23: Do you agree with our proposed definition of grey belt land? If not, what changes would you recommend?	**23** Agree, how do we hold down the value of grey belt land for social accommodation use? There will also need to be guidance in identification of sites with Greenbelt. This may also mitigate fears of a rush on the Greenbelt, (which is there for a sound purpose)
Q25: Do you agree that additional guidance to assist in identifying land which makes a limited contribution of Green Belt purposes would be helpful? If so, is this best contained in the NPPF itself or in planning practice guidance**?**	**25** Yes (planning practice guidance)needs to be flexible attitude, allocate to grey and link to affordable housing in Greenbelt (154f), withdraw the exclusion G/T now to start.
Q28: Do you agree that our proposals support the release of land in the right places, with previously developed and grey belt land identified first, while allowing local planning authorities to prioritise the most sustainable development locations?	**28** No too accessible for property developers etc, little people need the access- criteria how allocated, specific allocations and land bank "zones" Still think about small sites that could be windfall not allocated but could be taken out of Greenbelt.
Q29: Do you agree with our proposal to make clear that the release of land should not fundamentally undermine the function of the Green Belt across the area of the plan as a whole?	**29**.Yes, the Greenbelt is there for a purpose
Q30: Do you agree with our approach to allowing development on Green Belt land through decision making? If not, what changes would you recommend?	**30.**Yes, agree Gypsies and Travellers included, not inappropriate, implement through plan making. If not Identified could lose appeals
Q31: Do you have any comments on our proposals to allow the release of grey belt land to meet commercial and other development needs through plan-making and decision-making, including the triggers for release?	**31**.Yes, it should not just be for big property developers and huge commercial concerns I think everyone would hate to see an Oklahoma land rush into the Greenbelt based on who has the most money only small (the little people). Initiatives that fit into Greenbelt, promote low carbon energy saving initiatives.
Q32: Do you have views on whether the approach to the release of Green Belt through plan and decision-making should apply to traveller sites, including the	**32**.Yes, we welcome this change and land should be released, but allocated through both plan and decision making, (discussion

sequential test for land release and the definition of PDL?	on land price and how to keep that down, is needed) and also the fact that land will rise in value and caution would have to be strict re sites, not half a dozen years down the line put in application for bricks and mortar accommodation, (value hike)
Q33: Do you have views on how the assessment of need for traveller sites should be approached, in order to determine whether a local planning authority should undertake a Green Belt review?	**33**.This has to rely on a decent GTAA and numbers, it may be applicable more to an authority that has no land other than Greenbelt land, they would need to review to meet their need. Authorities could look now at removing existing sites that are within Greenbelt at appeal set to go to appeal if all other issues resolved. GTTA s need to be conducted with community members to make sure they are robust. Sites may still be obtained through appeal, which is a waste of time and money on both sides as there are areas where the only land there is, is in the Greenbelt. There has been policy failure for along time.
Q34: Do you agree with our proposed approach to the affordable housing tenure mix?	**34**.Inclusive of Gypsy and or Traveller sites, make sure explicitly included in social and affordable housing, all types of Local authority and self-build. It does need spelling out as part of social housing not outside of it.
Q42, Do you have a view on how Golden Rules might apply to non-residential development including commercial development. Travellers' sites and types of development already considered not appropriate in Greenbelt.	**42.** Not clear, most sites would be under the 10 (social housing requirement) Implies that Gypsy and Traveller sites are non -residential development .
Q47. Do you agree with setting the expectation that local planning authorities should consider the particular needs of those who require Social Rent when undertaking needs assessments and setting policies on affordable housing requirements?	**47**. Yes, specific to Gypsy and Traveller Assessment
Q51, Do you agree with introducing a policy to promote developments that have a mix of tenures and types?	**51**.Yes, in regard to Gypsy and Traveller Accommodation Assessments and Needs
	54.Social rented Gypsy and Traveller sites, pitches on transit sites, and pitches on self-

Q54 What measures should we consider to better support and increase rural affordable housing?	build sites should be specifically included within rural exception sites
Q59, Do you agree with the proposals to retain references to well-designed buildings and places, but remove references to 'beauty' and 'beautiful' and to amend paragraph 138 of the existing Framework.	**59** Yes but w-ell designed should include reference to disability legislation and also link to culturally appropriate accommodation.
Q70 How could national planning policy better support local authorities in (a) promoting healthy communities and (b) tackling childhood obesity?	**Q70** Reflecting on the past, where many sites were situated in places where housing would never have been allowed, many sites were situated onto contaminated land. Environmental health factors are important to Gypsy and Traveller Sites as it is to conventual housing. We would urge the new Government to recognise that ensuring sufficient sites both for permanent as well as transit sites will enhance the health and education outcomes of Gypsies and Travellers and dramatically reduce the costs of enforcement that are presently being wasted by councils which fail to make sufficient sites available. Also there is a total neglect of Gypsies and Travellers who have disabilities, some of the most vulnerable families are living on sites with no basic facility of water and electricity let alone aids. Elder support is almost non existent

Dr Siobhan Spencer MBE

(Expert witness for Inequalities Faced by Gypsy Roma and Travellers [2019], House of Commons Women and Inequalities Committee.[7])

[7] https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/360/full-report.html

Appendix

Historical background

The Enclosures of Commons Act 1876 reduced the common land, but this was only part of a long history of enclosure and these are too numerous to mention because between 1604 and 1914, some 5,200 enclosures took place by Parliamentary Acts. Additionally, the Highways Act (1959), followed by the Caravan Site Control and Development Act (1960) caused hardship to many families, as they returned to winter quarters to find them now gone. Farmers and landowners were frightened of reprisals as they had not got the requisite Caravan Sites Licence. The 1960's Caravan Sites Act was an act of good intention in that sites had to have facilities , but in actual practice it put many families on the road with no legal base.

There has always been a misconception that Gypsy families travelled all the year through. In reality, there was always a winter yard and for many the travelling period would not be until March to late October. This base from which to travel is not a new notion and farmers and others afraid to let families stay on land without the mandatory sites licence, (a requirement of the Caravan Sites Control and Development Act 1960), had no alternative but to turn families away. The Caravan Sites Act, (CSA, 1968) defined Gypsies as: *"persons of nomadic habit of life, whatever their race or origin, but does not include members of an organised group of travelling showmen, or persons engaged in travelling circuses, travelling together as such"* (Caravan Sites Act 1968.) The words, "whatever their race or origin" has been somewhat of an anomaly as it was later discussed in case law. Between the CSCDA, 1960 and CSA, 1968, three things happened: i) there was a movement from traditional stopping places that were now prohibited; ii) there was movement from sites without sites licences; and iii) there was an upsurge in confrontation between the settled communities and Gypsies (and Travellers).

It is notable that it was the record of evictions that helped to inform the Government of the need for sites as a duty and Norman Dodds MP, lobbied in 1951 for a survey of families to be undertaken in light of the number of evictions (Hansard, 1951, Dodds, 1966). Finally, a statutory duty to provide sites for Gypsies finally came through the Caravan Sites Act 1968

(CSA), so there was a respite, but people had great difficulty in obtaining the provision that was needed. In reality, only one-third of district and borough councils provided accommodation

under this Act and the Cripps report (1977[8]) identified that obtaining sites was extremely problematic. Indeed, only 38% of local and district authorities had identified and provided sites when the statutory duty under the CSA 1968 was repealed by the Criminal Justice and Public Order Act 1994.

After lobbying by Gypsy and Traveller NGO's (non-governmental organisations), a circular followed (Department of the Environment Circular 1/94; Welsh Office 2/94) which put the onus on the Gypsy community to provide their own sites. However, this also did not produce positive outcomes because of the onerous criteria, and consequently evictions increased (Cripps,1977).
This was summed up very eloquently by Justice Sedley in the case of Atkinson[9] After Atkinson, it became unlawful for local authorities to carry out an eviction without checking health and welfare first If a local authority does evict someone without a welfare check, then this would be subject to Judicial Review.

> *"It is relevant to situate this new and in some ways draconic legislation [CJPOA 1994] in its context. For centuries, the commons of England provided lawful stopping places for people whose way of life was or had become nomadic. Enough common land had survived the centuries of enclosure to make this way of life sustainable, but by section 23 of the Caravan Sites and Control of Development Act 1960 local authorities were given the power to close the commons to travellers. This they proceeded to do with great energy, but made no use of the concomitant power given to them by section 24 of the same Act to open caravan sites to compensate for the closure of the commons. By the caravan Sites Act 1968, therefore, Parliament legislated to make the section 24 power a duty, resting in rural areas on county councils rather than district councils (although the latter continued to possess the power to open sites). For the next quarter of a century; there followed a history of non-compliance with the duties imposed by the Act of 1968, marked a series of decisions of this court holding local authorities to be in breach of their statutory duty; but to apparently little practical effect. The default powers vested in central government, to which the court was required to defer, were rarely if ever used. The culmination of the tensions underlying the history of non-compliance was enactment of the sections of the Act of 1994... There followed, in section 80(1), the wholesale repeal of the material part, Part II, of the Caravans Sites Act 1968."*

In planning law, the definition of who constitutes a Gypsy was brought forward from the now defunct Caravan Sites Act (1968). This definition was informed by the decision in the Mills v Cooper case of 1967. This was a criminal case, in which Mr Cooper was accused of being a Gypsy hawking at the side of the road. There was a debate in the case that surely the law could not be established in a way to discriminate against someone because of their race but that the word „gypsy" in this sense, meant someone regardless of race or religion and it insinuated a

[8] Cripps J.(1977) Accommodation for Gypsies; A Report on the Working of the Caravan Sites Act 1968,London HMSO

[9] (*R v Lincolnshire County Council ex p. Atkinson* (1995) 8 Admin LR 529 at p.p.533 – 534).

“gypsy way of life.” In subsequent cases, no one seems to remember that the judge in this case said, “*I hope no one uses these words as statute”* (Mills v Cooper 1967 (1967.p 467) and yet that is precisely what happened because the definition of a „gypsy" regardless of race or origin was then transcribed across to the 1968 Caravan Sites Act.

Subsequent case law now requires that Gypsies be actively seeking work as a requisite to prove their „gypsy status"13 (Gibb, 1994). There was no protection in the words „gypsy regardless of race or origin" (Mills and Cooper 1967) an ethnic definition in law has been further weakened by this further interpretation of law after the Gibb case (1994). Gypsies were to be defined by trade in relation to moving about for work, not by social and cultural movement inherited by tradition and heritage, which is how the Gypsy community defines itself.

The Criminal Justice and Public Order Act 1994 repealed the Caravan Sites Act1968. It abolished the duty on local authorities to provide sites, discontinued grants for sites, and made it a civil offence to camp on land without owner’s consent, and a criminal offence if people failed to move when directed to do so. The Despite the fact that Gypsy people were supposed to be protected as a national minority.

In the UK, a report by the cross-Parliamentary Ministerial Working Group on Tackling Inequalities Experienced by Gypsies and Travellers (DCLG, 2012) contained 28 measures aiming to improve outcomes for Gypsies and Travellers across education, employment, health and accommodation as well as the criminal justice system. However, the report did not mention how it was going to do this and where funds were to be accessed to do it.

In 2015 we had the second edition of PPfTS, which changed the definition of who had nomadic status and was a Gypsy for planning purposes. This had the effect of substantially reducing the numbers who met the definition by 73% There has been over half a century of policy failure.


DERBYSHIRE
GYPSY LIAISON
GROUP
MOVING FORWARD FOR CHANGE LOCALLY & NATIONALLY

23.09.24