

Planning for traveller sites Consultation response form

When complete please email to: travellerspps@communities.gsi.gov.uk
Alternatively, we would be happy to receive responses by post. Please send to:
Paul Williams
Planning Economy and Society Division
Department for Communities and Local Government
1/G6 Eland House
Bressenden Place
London SW1E 5DU

The deadline for submissions is Wednesday 6 July 2011

(a) About you

(i) Your details

Name: Panda Smith
Position: Deputy Chair
Name of organisation (if applicable): National Bargee Travellers Association
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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 X
Personal views

(iii) Please tick the one box which best describes you or your organisation:

Voluntary sector or charitable organisation X
Relevant authority (i.e. district, London borough, county council)
Parish council
Business
Other public body (please state)
Other (please state)

(iv) Do your views or experiences mainly relate to a particular type of geographical location?

City
London
Urban
Suburban
Rural
Other X
Comment The inland waterways and coastal waters of the UK.

(vi) Would you be happy for us to contact you again in relation to this consultation?
Yes X
No

(b) Consultation questions

Q1. Do you agree that the current definitions of “gypsies and travellers” and “travelling showpeople” should be retained in the new policy?

Yes BUT see below

No

Comment: The current definitions of “gypsies and travellers” and “travelling showpeople” should be retained. However "Bargee Travellers" should be added to these definitions as a third category. There is currently no recognition of Bargee Travellers anywhere in Government policy or in law. This has created a dangerous policy vacuum which allows navigation authorities, local authorities and riparian landowners to violate the rights of Bargee Travellers under Articles 6, 8, 14, and Protocol 1 Articles 1, 2 and 3 of the European Convention on Human Rights and under the Equality Act. Bargee Travellers should be recognised as "Travellers" for the purpose of the 2004 Housing Act and for the purpose of planning policy guidance. Bargee Travellers should also be recognised as a specific minority group for the purposes of the Equality Act and the Human Rights Act.

The term "Bargee Travellers" should include any person whose only or main home is a boat and who does not have a permanent mooring for their boat with planning permission for all-year-round residential use.

The lack of security of tenure for non-residential boat moorings also needs to be addressed by Government. The issue of poor or no security of tenure for boat dwellers living on permanent moorings with residential planning permission is also of concern to the NBTA (as well as to the Residential Boat Owners Association and the National Association of Boat Owners) and needs to be resolved by Government intervention as well.

In April 2009 the NBTA asked the DCLG for determination that Bargee Travellers were included under Section 225 of the Housing Act 2004. The Secretary of State DCLG stated that "there is no reason why Bargee Travellers should not be considered to fall within the appropriate definition. Paragraph 2b of the Housing (Assessment of Accommodation Needs) (Meaning of Gypsies and Travellers) (England) Regulations 2006 states that 'gypsies and travellers' means (b) all other persons of a nomadic habit of life, whatever their race or origin..."

As such, Section 225 of the Housing Act 2004 covers Bargee Travellers. In April 2009 the Secretary of State also determined that the definition of Gypsies and Travellers in Circular 01/06 (now rescinded) was fully capable of incorporating Bargee Travellers and the definition of Gypsies and Travellers in the Housing Act 2004 specifically related to Bargee Travellers.

We know that a statement of interpretation by a Secretary of State clearly constitutes a determination. This can be overruled by the Courts but nevertheless does not dilute its efficacy. Obviously if there is ambiguity in the intention of Parliament regarding this legislation then the proper forum to resolve ambiguity is in the Administrative Court.

The two-yearly Gypsy and Traveller Accommodation Assessments, including caravan counts, are clearly a fundamental mechanism for determining what is required to support Gypsies and Travellers of all kinds. We note that caravan counts have excluded Bargee Travellers and therefore this is something the Administrative Court may be asked to rule on, remembering that Article 8 of the European Convention on Human Rights is engaged in the case of Bargee Travellers. The Equality Act 2010 stipulates that a demographic group such as that described as Bargee Travellers (constituted on the basis of philosophy) is a protected group. This means that Article 14 of the European Convention on Human Rights is engaged and so for Bargee Travellers to be excluded from Caravan Counts and Gypsy and Traveller Accommodation Assessment constitutes a violation of their Article 14 rights.

The Department for Communities, with its responsibility for policy on Gypsies and Travellers, has a duty to ensure that all legislation and policy regarding Gypsies and Travellers complies with the Human Rights Act, the Equality Act, the Housing Act and any other cross-departmental legislation including provisions for the enforcement of statutory obligations on Local Authorities, quasi-public bodies and other bodies carrying out statutory functions. There should be an obligation for Bargee Travellers to be included in all assessments of the accommodation needs of Gypsies and Travellers.

We draw the Secretary of State's attention specifically to *Kay & Ors v United Kingdom* [2010] ECHR 1322 in which it is perfectly clear that Article 8 of the European Convention on Human Rights applies to housing needs and that Bargee Travellers enjoy these rights no less than other groups, and if anything, more than other groups given their lack of any other rights.

Q2. Do you support the proposal to remove specific reference to Gypsy and Traveller Accommodation Needs Assessments in the new policy and instead refer to a "robust evidence base"?

Yes

No

X

Comment:

This will not provide the quality of evidence required. The GTAAs are carried out using a specific methodology which ensures a specific standard of evidence. The NBTAs believe that the needs of Bargee Travellers should be included and assessed when the GTAAs are carried out and that a "boat count" similar to the two-yearly caravan count should be carried out.

Q3. Do you agree that where need has been identified, local planning authorities should set targets for the provision of sites in their local planning policies?

Yes X

No

Comment: Yes but these targets must be adequate to meet need. The targets should include planning to meet the needs of Bargee Travellers.

Q4. Do you think that local planning authorities should plan for “local need in the context of historical demand”?

Yes

No X

Comment: Meeting need in the context of historical demand should be done on a regional basis because travellers do not remain within one local authority area and frequently cross local authority boundaries. This is particularly true in the case of Bargee Travellers. This needs to be a key element in any planning process.

Q5. Do you agree with the proposal to require local planning authorities to plan for a five-year supply of traveller pitches/plots?

Yes X BUT in addition see below

No

Comment: The plan should be for a 30 year supply otherwise it is not on a par with house building and would therefore breach the Equality Act. New houses are normally expected to have at least a 30-year life.

Q6. Do you agree that the proposed wording of Policy E (in the draft policy) should be included to ensure consistency with Planning Policy Guidance 2: Green Belts?

Yes

No X

Comment: Traveller sites should be permitted in the Green Belt and should always include the ability to work from as well as live on the site.

Q7. Do you agree with the general principle of aligning planning policy on traveller sites more closely with that on other forms of housing?

Yes

No X

Comment: The impact of travellers' sites is far less than the impact of bricks and mortar housing. This should be recognised throughout the planning process including in the Use Class and in decisions regarding sites on Green Belt and rural land. In addition, the Use Class of permanent residential boat moorings should be changed to reflect the fact that the impact is far less than that of bricks and mortar so that it is possible to get planning permission for residential boat moorings on the basis that they are a unique form of land use.

Q8. Do you agree with the new emphasis on local planning authorities consulting with settled communities as well as traveller communities when formulating their plans and determining individual planning applications to help improve relations between the communities?

Yes

No

Comment: This is a recipe for violations of the Human Rights Act and the Equality Act and will increase the difficulties in providing sites. Any consultation with the settled community will give a voice to prejudice against the travelling community and will increase conflict and attacks on travellers.

Q9. Do you agree with the proposal in the transitional arrangements policy (paragraph 26 in the draft policy) for local planning authorities to “consider favourably” planning applications for the grant of temporary permission if they cannot demonstrate an up-to-date five-year supply of deliverable traveller sites, to ensure consistency with Planning Policy Statement 3: Housing?

Yes

No

Comment:

Q10. Under the transitional arrangements, do you think that six months is the right time local planning authorities should be given to put in place their five-year land supply before the consequences of not having done so come into force?

Yes

No

Comment:

Q11. Do you have any other comments on the transitional arrangements?

Yes

No

Comment:

Q12. Are there any other ways in which the policy can be made clearer, shorter or more accessible?

Yes

No

Comment:

Q13. Do you think that the proposals in this draft statement will have a differential impact, either positive or negative, on people because of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation? If so, how in your view should we respond? We are particularly interested in any impacts on (Romany) Gypsies and (Irish) Travellers and welcome the views of organisations and individuals with specific relevant expertise. (A draft Equalities Impact Assessment can be found at Annex C.)

Yes X

No

Comment: The proposals will have a negative impact on Gypsies and Travellers.

(c) Consultation questions on the impact assessment

The impact assessment is annexed to the consultation document. It is a consultation stage impact assessment, which analyses the costs and benefits of the policy options alongside the “do nothing” baseline.

General questions about the impact assessment

Q1. Do you think that the impact assessment broadly captures the types and levels of costs associated with the policy options? If not, why not?

Yes

No

Comment:

Q2. Do you think that the impact assessment broadly captures the types and levels of benefits associated with the policy options? If not, why not?

Yes

No

X

Comment: It vastly overestimates the benefits of the proposed changes.

Q3. Are there any significant costs and benefits that we have omitted? If so, please describe including the groups in society affected and your view on the extent of the impact.

Yes

X

No

Comment: You have omitted to state that the wealthy and the settled community will gain a disproportionate benefit from these proposals over and above the advantages they already have.

Q4. Do you agree that the impact assessment reflects the main impacts that particular sectors and groups are likely to experience as a result of the policy options? If not, why not?

Yes

No

X

Comment: It does not reflect the disproportionate adverse impact that these proposals will have on Gypsies and Travellers.

Q5. Are the key assumptions used in the analysis in the impact assessment realistic? If not, what do you think would be more appropriate and do you have any evidence to support your view?

Yes

No

X

Comment: The assumptions are vastly skewed in favour of the settled community.

Q6. Are there any other relevant key sources of evidence relating to the policy or the effectiveness of the suggested options that have been omitted? If so, please provide details.

Yes X

No

Comment: The existence and needs of Bargee Travellers have not been considered at all

Q7. Are there any significant risks or unintended consequences we have not identified? If so, please describe.

Yes

No

Comment:

Specific questions about the proposed policies in the impact assessment

Q8. Do you think there are any other benefits to retaining the existing policy (Option 1, do nothing), and whether these can be quantified?

Yes X

No

Comment: Option 1 is the least worst option. It has been very slowly redressing the balance of inequality between Gypsies and Travellers and the settled community. All other options would virtually halt this process of redress.

Q9. Can you identify - in quantitative terms if possible - whether you think there would be any benefits to Option 2 (withdraw circulars 01/2006 and 04/2007 and do not replace them)?

Yes

No X

Comment: There would be no benefits but enormous risks if Option 2 was adopted.

Q10. Please comment on whether you envisage any extra costs to local planning authorities associated with the assessment of need for traveller sites in their areas, over and above those which they experience at present.

Comment: There would be an unnecessary duplication of costs and time compared to carrying out regional assessments due to the loss of economies of scale.

Q11. Please give your view on the scale of the time and money benefits which will accrue to local planning authorities as a result of being able to set traveller site targets locally.

Comment:

Q12. Please give your view on whether the transitional period envisaged will lead to any extra costs “ and what those might be in monetised terms.

Comment:

Q13. Please give your view on the extent to which, and rate at which, you consider new sites will come forward as a result of the new approach.

Comment:

Q14. Is the draft policy likely to have any significant monetary benefit in terms of protection of the Green Belt, and, if so, what this is likely to be?

Yes

No

X

Comment:

The biggest risk to the Green Belt is not from travellers sites' but from large developments carried out by big companies or wealthy individuals that have the ear of the local planning authorities or can pay for significant "planning gain" benefits, such as out-of-town retail parks; new private housing estates, large industrial sites and mansions.

Q15. Do the familiarisation costs estimated for local planning authorities appear reasonable? Please give your view on the assumptions made in this calculation.

Yes

No

Comment:

Q16. Do the estimated administrative savings for local planning authorities, as a result of streamlining national planning policy, seem reasonable? Please give your view on the assumptions made in this calculation.

Yes

No

Comment:

Q17. Are there any significant costs and benefits that we have omitted? If so, please describe including the groups in society affected and your view on the extent of the impact.

Yes

No

Comment:

Q18. Do you think that the draft policy is likely to have any impact, positive or negative, on travelling showpeople as an economic group?

Yes

X

No
Comment:

Q19. Are there any significant risks or unintended consequences we have not identified? If so, please describe.

Yes X

No

Comment: The unintended consequences of addressing "perceived unfairness" as opposed to actual unfairness will exacerbate inequality of opportunity for travellers, and risk creating greater social conflict and unrest.

Q20. Do you think there are any groups disproportionately affected?

Yes X

No

Comment: All gypsies and travellers will be disproportionately and adversely affected by these proposed changes.

END