

**IN THE MATTER OF THE EXAMINATION IN PUBLIC OF THE NEW
SOUTHWARK PLAN**

ADVICE

Introduction and background:

1. I am asked to advise the London Borough of Southwark (“the Council”) in relation to Policy P11 of the New Southwark Plan (“NSP”), relating to Gypsies, Travellers and Travelling Showpeople. The independent examination of the NSP is currently ongoing and Policy P11 was examined on 1st March 2021.

2. Policy P11 states:

“We will continue to protect our existing Traveller and Gypsy sites subject to need. We will provide new sites in the future to meet the accommodation needs of Travellers and Gypsies. We will do this by:

1. Safeguarding the existing four Traveller and Gypsy sites in Southwark where there is an identified need; and
2. Identifying new sites for additional accommodation to meet the needs of Travellers and Gypsies having regard to...” [*criteria 1-6 are then set out*]

3. The reasons state:

“1. We support the culture and traditions of Gypsies and Travellers in Southwark. We will assess our need for Gypsy and Traveller sites and look at how best to meet any additional need. This could be at a local, sub-regional or regional level.

2. We currently have 42 authorised Gypsy and Travellers’ pitches across four sites which is one of the highest in London. The four sites are Brideale Close, Burnhill Close, Ilderton Road and Springtide Close and we have shown these on our Planning Policies Map. We will protect these sites where there is a need to make sure they remain as homes for Gypsies and Travellers.”

4. By way of background, I note the guidance in Planning Policy on Traveller Sites (2015) (“PPTS 2015”) which provides at para 9 that local authorities “...should set pitch targets for gypsies and travellers as defined in Annex 1 and plot targets for travelling showpeople as defined in Annex 1 which address the likely permanent and transit site accommodation needs of travellers in their area, working collaboratively with neighbouring local planning authorities.” It is therefore the Gypsies, Travellers and Travelling Showpeople *as defined in Annex 1 of PPTS* for whom the LPA must plan. The definition in Annex 1 of PPTS states as follows:

“1. For the purposes of this planning policy “gypsies and travellers” means: Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.

2. In determining whether persons are “gypsies and travellers” for the purposes of this planning policy, consideration should be given to the following issues amongst other relevant matters: a) whether they previously led a nomadic habit of life b) the reasons for ceasing their nomadic habit of life c) whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances.”

5. The previous definition included the words “or permanently” after the words “ceased to travel temporarily”. The change in 2015 was therefore a substantial (and controversial) one.

6. I further note section 8 of the Housing Act 1985 (as amended by section 124 of the Housing and Planning Act 2016) which provides that local housing authorities in England have a duty to consider the needs of “people residing in or resorting to their district with respect to the provision of (a) sites on which caravans can be stationed or (b) places on inland waterways where houseboats can be moored.”
7. As part of its preparation of the NSP, the Council commissioned a Gypsy and Traveller Needs Assessment (“GTNA”) from ORS consultants. The GTNA identified a zero need for further pitches in Southwark in order to meet the needs of Gypsies and Travellers *as defined in the PPTS*. The GTNA did also look at wider need in this general context (essentially those who identify as Gypsy/Traveller but who do not meet the PPTS definition) and found, counting that way, that there was a need for 43 more pitches. That includes the need for 27 pitches in years 0-5 of the NSP, or 22 taking into account the 5 spaces represented by the Springtide Close site which is currently under review.
8. The GTNA was completed in May 2020 and was referred to in the Council’s letter to PINS dated 20th May 2020, written in response to the Inspectors’ letter of 20th April 2020. That letter set out some general concerns about the practicalities of examining the NSP given the various stages of its evolution, and also raised some specific queries at paras 7.1-7.4 on the topic of gypsy/traveller needs and wider caravan/houseboat needs. One of those two main queries stemmed from the fact that the Inspectors did not yet have the Council’s GTNA. The Inspectors said that the starting point for providing for need should be 15 pitches, following the London Plan figure for Southwark. It is notable that the Inspectors specifically referred in that regard to the “...identified need for *those who meet the planning definition*” (*emphasis added*).
9. The approach of the Inspectors in this letter has to be seen in the context of the progress of the London Plan since the time that the letter was written (see further below).
10. In July 2020 the Council updated its Equalities Impact Assessment (“EQIA”); this includes statements (in the same form throughout) about Gypsies and Travellers with

reference to Policy P11. The EQIA states that the PPTS definition does not include those who have ceased to travel permanently, and therefore that Policy P11 does not “...seek to meet any wider need for pitches to meet the needs of settled Gypsies and Travellers...” but that the Council is “...committed to working to meet this wider need through other mechanisms outside of planning policy” and that that will continue to be monitored.

11. On the last day of the consultation period in respect of the NSP (in its consolidated form) the Southwark Travellers’ Action Group (STAG) submitted a response which criticised the soundness of Policy P11 due to the alleged failure to consider the PSED or the general duty to assess the accommodation needs of people who live in caravans and the the failure of the GTNA to involve “enough” Gypsies and Travellers, including those who live in ‘bricks and mortar’, or to show its questionnaire results. Policy P11 is criticised (see paras 5.2 and 5.3) on the basis that the needs of those who do not meet the PPTS definition are ignored. According to STAG’s own data, there are many more Gypsies and Travellers living in bricks and mortar accommodation who were excluded from the ORS survey, or inadequately consulted, such that overall need has been underestimated.
12. The STAG consultation response also (see para 4.23) criticises the PPTS definition, stating that it discriminates against older people, those with disabilities and those with caring responsibilities, who are unable to show that they plan to travel again in the future.
13. Pursuant to the hearing session on 1st March 2021, the recording of the relevant parts of which I have viewed and the transcript of which I have read, the Inspectors have asked the Council for further information, by 23rd April 2021, on the following issues:

“Issue 1

Council to prepare a note confirming that the short term need (2020-2024) for gypsy and traveller pitches for those not meeting the planning definition but seeking culturally appropriate accommodation is 27 pitches (net) of which 5 pitches could be accommodated at Springtide Close. For the residual 22 pitches the Council’s note will explain the extent to which turnover on sites may meet this need; the extent to which site improvements and remodelling may meet need; and the

extent to which the Council has assessed potential site options through NSP/OKRAAP. If there remains a residual unmet need, the note should advise on the role/potential of early partial plan review.

Issue 2

Modifications to Policy P11/reasons text to clarify it will apply in meeting non-Planning definition needs (27 pitches by 2024); given the scale of need the 4 existing sites should be unambiguously safeguarded in the NSP and references to 'subject to need' deleted; the Equalities Impact Assessment and IIA updated to reflect the non-planning definition need and consider mitigation where necessary.

Issue 3

Unauthorised encampments added to the monitoring framework.”

Advice:

14. It is clear that the Inspectors' requests as set out above proceed on the basis that the Council should be planning for the need presented by those Gypsies and Travellers who, whilst identifying as such, do not actually meet the definition in the PPTS.
15. However, in my view, for the Council to do so, within its Gypsy and Travellers policy (P11) would mean that the NSP would be contrary to national policy. The definition in the PPTS does not now cover those who have ceased to travel permanently, a deliberate decision having been made when the guidance was amended to exclude those in that position. Whilst I note that STAG and others do not consider that this was an appropriate change, it is clearly not something over which the Council itself has any control. In order to be sound, the NSP must conform with national policy (para 35d NPPF) and so I do not see that the Council has any choice but to plan for Gypsies and Travellers according to the PPTS definition rather than its own or any other definition. Further, in my view, the Council has complied with its duty under section 8 of the Housing Act 1985 because the GTNA has considered the needs of those living in caravans by virtue of considering need arising outside of those meeting the PPTS definition.
16. The Mayor of London recently attempted, in the new London Plan, to employ a definition of Gypsies and Travellers which was different to that in PPTS 2015 and *did*

include those who have ceased to travel permanently. However, this resulted in the Secretary of State directing that changes be made to the Plan (see the letter of 13th March 2020). Direction 7 concerned Policy H14 of the London Plan and its supporting text and stated that because the policy contained a definition of Gypsies and Travellers that was wider than the PPTS definition by including those who had permanently settled, the policy was “inconsistent with national policy set out in [PPTS].” The reasons for the direction continued:

“The panel of inspectors examining the plan concluded that the Mayor failed to demonstrate that London was so distinctly different to elsewhere in the country to justify a departure from national policy.

The panel highlighted that a different definition would create anomalies with individuals defined differently for planning purposes on whether they are assessed by a district outside London or one of the boroughs. This could also impact on proposals for joint working as set out in the PPTS.

The Housing and Planning Act 2016 replaced the duty to assess the needs of gypsy and travellers, with a duty on local housing authorities to consider the needs of people residing in or resorting to their District with respect to the provision of sites on which caravans are stationed. Therefore, the needs of those outside the PPTS definition must be considered as part of this assessment.

A Written Ministerial Statement (WMS) of 22 July 2015 set out that those travellers who do not fall within the definition set out in the PPTS should have their accommodation needs addressed under the provisions of the National Planning Policy Framework.

As a consequence of directing the Mayor to accept the Inspector’s recommendations and to delete Part B of the Policy we are also seeking a direction to the proposed Policy H14(C) and (D) as the wording requires authorities to undertake a needs assessment in accordance with the proposed definition in Part (B) of the Policy. We are also ensuring that reference to gypsies and travellers are consistent in line with PPTS.”

17. I therefore advise that the Council must respond to the Inspectors emphasising the need to employ the PPTS definition when planning for Gypsies and Travellers. It does not seem entirely clear to me that the Inspectors have recognised this constraint. Alternatively, it may be that this is in fact accepted, but that the Inspectors

nonetheless consider that the Council must find a way to meet the 'non-PPTS definition' need.

18. This brings me to the possible solutions that the Council have available in terms of providing at this stage for the 'non-PPTS' identified need. As for pitch turnover, which is mentioned under Issue 1 of the Inspectors' note, I understand that there is a very low turnover on the existing sites and that this is certainly not something which can be relied on in any real way in order to meet need.
19. It seems to me that the Council is sympathetic to the preferences of the Gypsy/Traveller community in Southwark, but is obviously constrained by the lack of sites available: it remains a stark fact that even where a potential new site may be found, to use it for pitches would necessarily mean the loss of the opportunity to plan for general housing instead. This is a particularly serious conflict given that it stands to reason that on any one site which might in theory be used to pitch (single-storey) caravans, that could have been a site which would have accommodated, say, several hundreds of (higher-density) homes instead. In my view there is unfortunately a limit to the steps which the Council can reasonably be expected to take in order to meet the requirements outlined by the Inspectors in Issues 1-3 above. In my view it is clearly reasonable to balance the needs of all, and to take into account the wider context, which includes that fact that the Council has a priority to build 11,000 new homes Council-homes by 2043.
20. As such, it seems to me that the use of Council-owned land is unlikely to provide for the extra need either. However, I note that the Council has indicated that it can certainly review sites in the Old Kent Road area which are Council-owned, and in my view this is a reasonable and proportionate response.
21. That leaves the options of reconfiguring the existing sites, and considering an early amendment to the NSP in order to consider sites for culturally-appropriate accommodation. It seems to me that both of these are reasonable options, but that it must be understood that neither is guaranteed to meet all (or necessarily any) of the identified need. The Council can simply use all reasonable endeavours to try to create the necessary space. In my view, however, it would not be reasonable or proportionate

to expect the Council to do so at the expense of the wider objectives of the Plan and maximising the use of available sites.

22. The best option may be to work with the GLA/Mayor as they begin their London-wide needs assessment.

23. As to Issues 2 and 3 above, I understand that Issue 3 poses no problem for the Council. In relation to Issue 2, I advise that the Council should seek to explain to the Inspectors that whilst it is understood that the inclusion the words ‘subject to need’ has caused some confusion or consternation amongst the various interest groups, it is actually necessary in view of the fact that the Plan has to be flexible enough to provide for its full lifetime, and that the words do not imply, and should not be taken so as to read, that the Council may on a whim seek to delete the existing provision.

24. I believe that this advice deals with the relevant points. If those instructing would like to discuss any matters arising, I would be happy to do so on the telephone or as is otherwise convenient.

Kate Olley
9th April 2021