



Gypsy/Travellers and the Scottish Planning System

A Guide for Local Authorities

#2 in a series of 5

Gypsy/Travellers and the Planning System - 2015

This guide forms part of a series of five on Gypsy/Travellers and the Scottish planning system, as listed below:

#1 Gypsy/Travellers and the Scottish Planning System - A Guide for Gypsy/Travellers

#2 Gypsy/Travellers and the Scottish Planning System - A Guide for Local Authorities

#3 Gypsy/Travellers and the Scottish Planning System - A Guide for Elected Members

#4 Gypsy/Travellers and the Scottish Planning System - A Guide for Community Councillors

#5 Gypsy/Travellers and the Scottish Planning System - A Briefing for the Media

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Ministerial Foreword



The Gypsy/Traveller community is an important Scottish community, with a long and proud history. Gypsy/Travellers have made, and continue to make, a significant contribution to Scotland. Unfortunately, Gypsy/Travellers also face many challenges and barriers to accessing services and participating in society, in ways that most people take for granted. This includes securing good quality accommodation that meets their cultural needs and has the amenities that people need for everyday living.

The Scottish Government is fully committed to meeting the needs of Scotland's Gypsy/Travellers. Our role is to set a robust framework and promote good practice, so that those needs can be properly assessed and met at a local level. To this end, we are working to develop an overarching strategy and action plan for Gypsy/Travellers in Scotland.

As part of our work, we want to promote good practice in relation to Gypsy/Traveller sites. Dialogue is the best way of increasing trust, understanding and respect between our diverse communities. We have, therefore, been pleased to fund and support PAS in its Gypsy/Travellers as Young Change Makers project. The purpose of this project was to increase awareness and knowledge of the planning system and engagement between Gypsy/Travellers, planning professionals, elected members and community councillors.

These guides have been produced by PAS, and represent its advice and views on Gypsy/Travellers and planning in Scotland. Those views are, quite rightly, independent of the Scottish Government. The guides are the end product of the Gypsy/Travellers as Young Change Makers project and the result of engagement and wide ranging discussions. I hope the guides will be well-used and that they will give all concerned the information and knowledge to meet the needs of Scotland's Gypsy/Travellers.

Alex Neil MSP, Cabinet Secretary for Social Justice, Communities and Pensioners' Rights



Photo: Damian Le Bas Cover photo: Graham Noble

Foreword



This series of guides has been developed by PAS to help raise awareness of Scottish Gypsy/ Traveller culture, and how this impacts upon land use planning for their needs.

I believe Gypsy/Travellers' unique culture should be celebrated and recognised in Scotland.

I very much hope you enjoy reading this guidance. It sets out clear and realistic means of improving Local Authority professional practice when considering the accommodation needs and expectations of Gypsy/Travellers, as a recognised ethnic group, living in Scotland.

Councillor Harry McGuigan, COSLA Local Government Spokesperson for Community Wellbeing and Safety



SECTION B-B



GABLE

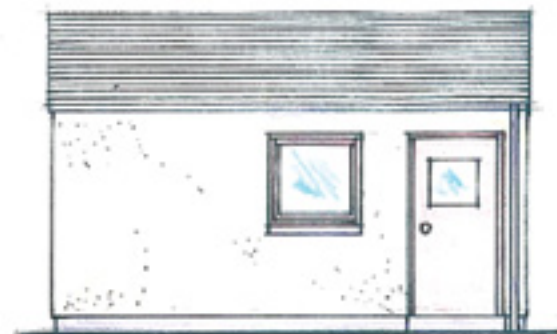
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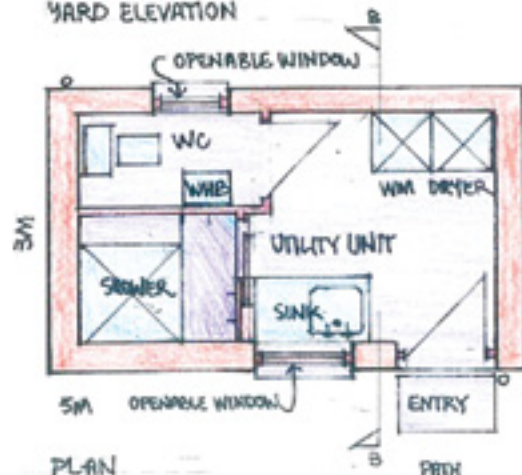
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UTILITY UNIT DESIGN

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YARD ELEVATION



PLAN

PLAN 03 : UTILITY UNIT & SCREEN FENCING DETAILS

1 | Introduction

Planning should aim to ensure the accessibility of housing, health, employment, education, other public services, shopping, leisure and recreational facilities to all members of the community. Unfortunately, Scottish Gypsy/ Travellers have all too often found that the planning system does not always provide their community with the service and outcomes due to them as citizens and as a recognised ethnic group.

Under the *Human Rights Act* 1998 and the *Equality Act* 2010, public authorities must have due regard to human rights, equality and diversity when exercising their functions. It is important to note that Scottish Gypsy/Travellers are recognised as an ethnic group for the purposes of the *Equality Act* 2010¹, and as such the Public Sector Equality Duty (PSED) is of relevance². This requires public authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between people with a protected characteristic and people without. This duty covers Local Authorities, their staff and Elected Members.

This guide aims to raise awareness of Gypsy/Traveller culture and how this impacts upon land use planning for their needs. It sets out in detail the legislative and policy obligations that planners have to the community, and offers guidance for improving professional practice in development planning and development management to meet the needs and expectations of Gypsy/Travellers living in Scotland.

1. Employment Tribunals (Scotland) Case No: S/132721/07 23rd June 2008

2. Equality Act 2010, Section 149

2 | Background information

Terminology

The official Scottish Government term for people in the Travelling community is **'Gypsy/Traveller'** and that is what is used throughout this guide³. It should be noted that the G and T of Gypsy/Traveller should always be capitalised.

Not all members of the Travelling community accept or identify with this term, which covers Scottish, English, Irish and Welsh Travellers. Many in Scotland choose to go by the term 'Scottish Traveller', or simply 'Traveller'. It is important to understand that these are not a single group but a diverse set of travelling communities, with differing identities, cultures, histories, lifestyles and languages⁴.

Those outwith the Gypsy/Traveller community are referred to as the 'settled community'.

History

There is uncertainty and disagreement around the origins of Scottish Gypsy/Travellers. What is known is that there has been a Gypsy/Traveller presence in the country for several centuries. Twelfth century documents mention itinerant smiths who travelled looking for work, and dealing with metals remains a significant business activity for Gypsy/Travellers.

Unfortunately, legal discrimination of the community also has a long history, with laws passed from the 16th century onwards which persecuted Gypsy/Travellers. In 1609 the Scottish Parliament passed the 'Act against the Egyptians', which made it lawful to condemn, detain and execute people solely on the basis of them being known or suspected Gypsies. The process of repealing such laws only began in the late 18th century⁵.

2 | Background information

More positively, Gypsy/Travellers are justly proud of their part in Scottish history, especially the service of the community in the armed forces and home front in both world wars. This is in addition to their varied contributions to Scottish culture, art and music⁶.

Population

The size of the Gypsy/Traveller population in Scotland is contested. In the 2011 Census, 4,200 people in Scotland identified themselves as 'White: Gypsy/Traveller'⁷. However, not all Gypsy/Travellers are willing to be identified as such. Organisations working with the Gypsy/Traveller community in Scotland have estimated the true figure to be in the order of 15,000-20,000 people, which may itself be an underestimate⁸.

3. Scottish Government, accessed 28.10.14, '*Gypsy/Travellers*', <http://www.scotland.gov.uk/Topics/People/Equality/gypsiestravellers>

4. Cadger, B. (2012) '*What A Voice*', Article 12 in Scotland

5. *ibid.*

6. Equality and Human Rights Commission (2013) '*Gypsy Travellers In Scotland - A resource for the media*'

7. National Records of Scotland (2013) '*2011 Census: Key Results on Population, Ethnicity, Identity, Language, Religion, Health, Housing and Accommodation in Scotland - Release 2A*'

8. Equality and Human Rights Commission (2013) '*Gypsy Travellers In Scotland - A resource for the media*'

3 | Gypsy/Traveller culture and the impact on planning

Gypsy/Travellers present the planning system with a set of very specific needs. Various aspects of Gypsy/Traveller culture and an often difficult relationship with the settled community have an influence over planning and built environment matters.

Family

Family is highly important in Gypsy/Traveller culture, and it is common for extended families to live, work and travel together⁹. If they are to be of practical use then sites need to be able to accommodate these larger groups and their caravans, trailers and vehicles.

Education

Generally speaking, the Gypsy/Traveller community places emphasis on teaching practical and vocational skills to their children, which are usually passed on through practical learning and oral instruction¹⁰. This does not mean that Gypsy/Travellers are not interested in their children receiving mainstream education. There is an increased recognition of the value of formal learning and qualifications, but this desire for children to attend school has been frustrated by discrimination and bullying, and through uncertainty regarding accommodation. Gypsy/Traveller families who have no secure base or reliable stopping places are at continual risk of being moved on. As a result, children are often unable to attend school, or end up attending a string of schools in a short space of time. This severely disrupts their education and has long-term negative impact on their skills and employment prospects¹¹.

Health & hygiene

Overcrowded and substandard sites, the stress associated with being moved on, and discrimination and harassment from the settled community all contribute to diminishing health. For many, a lack of suitable and secure accommodation limits regular access to GP surgeries and clinics, worsening conditions and contributing to Gypsy/Travellers suffering a disproportionate level of physical and mental health problems. As a result of these conditions, many are forced to cease travelling and move into bricks and mortar housing. Gypsy/Travellers have a life expectancy between 10 and 12 years lower than the settled community average¹² and higher than average infant mortality rates^{13, 14}.

Cleanliness is considered to be very important in Gypsy/Traveller culture, and this manifests itself in their accommodation. Toilets and bathing facilities are usually separated from kitchen and food preparation areas. This means that separate utility and bathroom units are a common feature of sites¹⁵.

9. Cadger, B. (2012) *What A Voice*, Article 12 in Scotland

10. *ibid.*

11. Equality and Human Rights Commission (2009) *Inequalities experienced by Gypsy and Traveller communities: A review*

12. Lane, P., Spencer, S. and Jones, A. (2014) *Gypsy, Traveller and Roma: Experts by Experience*

13. Equality and Human Rights Commission (2009) *Inequalities experienced by Gypsy and Traveller communities: A review*

14. Cadger, B. (2012) *What A Voice*, Article 12 in Scotland

15. Cadger, B. (2012) *What A Voice*, Article 12 in Scotland

Employment

Self-employment is very common among the Gypsy/Traveller community. Common occupations include construction, landscaping, gardening, and dealing in scrap metals and other goods^{16, 17}. These businesses usually require vehicles and often plant and other equipment. Therefore sites should provide adequate parking and storage space.

Work is often seasonal, and employment opportunities are usually the reason behind the movement of Gypsy/Traveller families. Having secure accommodation ensures that they have somewhere to return when these periods are over, and can be sure of somewhere to safely store their vehicles and equipment.

Working patterns have evolved, and new sites are required in areas where there was perhaps less or no demand in the past. In the past, Gypsy/Travellers were well known for their seasonal agricultural work, but in recent years they have been largely displaced by mechanisation and other groups. Site provision needs to match these changed realities.

Discrimination

Unfortunately, discrimination has been an everyday fact of life for Gypsy/Travellers for centuries. While there have been some improvements, in many instances Gypsy/Travellers continue to be treated unequally. It is often more visible and vocal than that directed at other minorities, apparently being more socially acceptable. In the Scottish Social Attitudes Survey (2011), 37% of respondents said they would be unhappy with a close family member forming a relationship with a Gypsy/Traveller, while 46% felt that a Gypsy/Traveller would be unsuitable for the job of a primary school teacher¹⁸. Approximately 90% of Gypsy/Traveller children have suffered racial abuse, and nearly two thirds have been subjected to bullying or physically assault¹⁹.

Even when no deliberate discrimination is intended, a lack of knowledge or understanding can be just as detrimental, especially when service providers work on the basis of assumptions and stereotypes.

16. *ibid.*

17. Lane, P., Spencer, S. and Jones, A. (2014) *'Gypsy, Traveller and Roma: Experts by Experience'*

18. Scottish Centre for Social Research (2011) *'Scottish Social Attitudes survey 2010: Attitudes to discrimination and positive action'*

19. Lane, P., Spencer, S. and Jones, A. (2014) *'Gypsy, Traveller and Roma: Experts by Experience'*

Accommodation

A nomadic lifestyle is the most notable aspect of Gypsy/Traveller culture. Some Gypsy/Travellers are always on the move, while many may only have seasonal movement and a permanent base for the rest of the year. Others still for various reasons, such as age or health issues, have ceased to travel and reside full time in 'bricks and mortar' housing. It is worth stressing that, regardless of their current or future living arrangements, individuals should still be recognised as belonging to the Gypsy/Traveller community.

There are three principle types of Gypsy/Traveller site:

- **Permanent sites** provide residents with permanent accommodation. These can be run by Local Authorities or registered social landlords, or privately owned by their residents. Gypsy/Travellers typically stay on-site for the majority of the year, only travelling for a few weeks.
- **Transit sites** are permanent developments which are only used temporarily by their residents, usually when they are en route between more long-term locations. They provide more basic amenities than permanent sites.
- **Stopping places** are pieces of land where Gypsy/Travellers have traditionally stayed for short periods of time.

3 | Gypsy/Traveller culture and the impact on planning

It is important to understand that Gypsy/Travellers pay for their accommodation. Public sites are not free, and in fact some Local Authorities charge more rent for Gypsy/Traveller pitches than they do for council houses. In 2012, the average pitch rental rate was £62 a week²⁰. In some Local Authorities this sum includes council tax, while in others council tax is charged separately. In return for these payments, site residents get space to park their personal vehicle and caravan, and access to basic bathing and toilet facilities. Residents of private sites are also liable for council tax, and some also pay rent to the owners of their site.

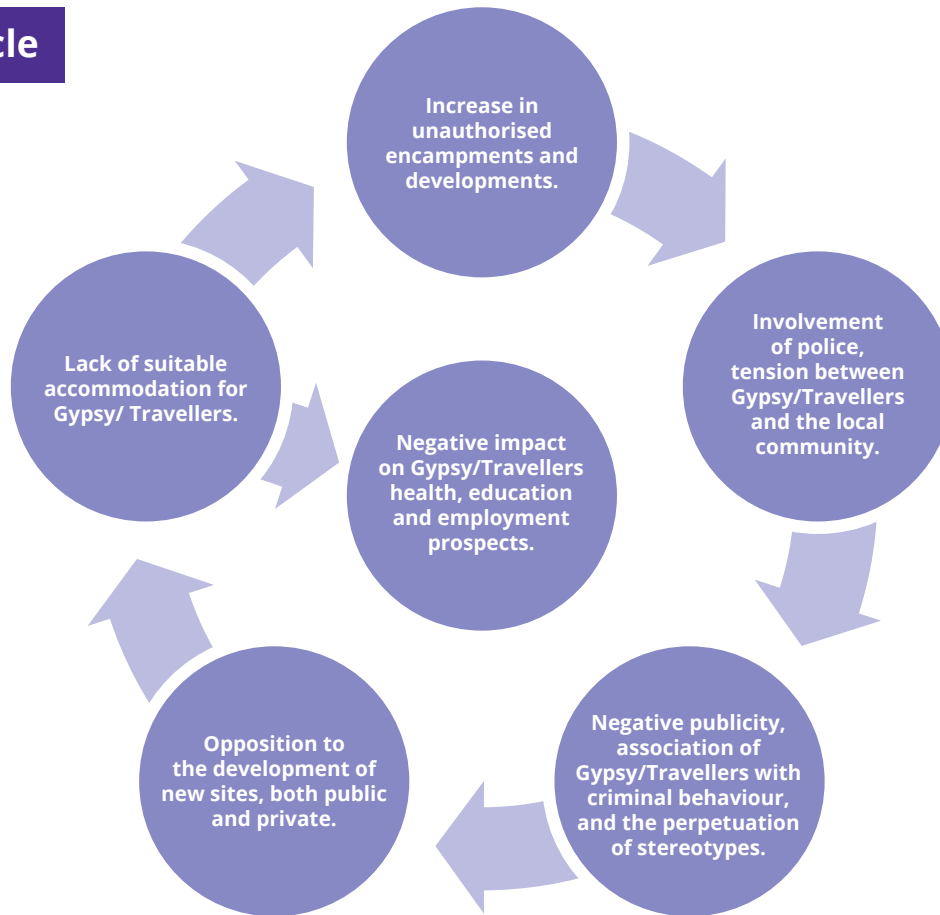
Research has indicated that there is a general preference among Gypsy/Travellers for private sites, with the desire for self-sufficiency and independence often cited as reasons for this. Furthermore, private sites are seen as giving a level of security to their residents, allowing them to avoid potential conflict with other Gypsy/Traveller families, which can occur on public sites, and to ensure that future generations will have accommodation when they form their own families²¹.

However, as with the settled community, the circumstances of individual Gypsy/Travellers vary, and not all can afford to develop their own sites or pay private rental rates. There needs to be a range of tenure available, and there is a role for socially rented sites.

20. Equality and Human Rights Commission (2013) 'Gypsy Travellers In Scotland-A resource for the media'

21. Brown, P. (2015) *'Developing Successful Site Provision for Scotland's Gypsy/Traveller Community'*, EHRC

Vicious Circle



3 | Gypsy/Traveller culture and the impact on planning

Accommodation is one of the most important issues faced by the Gypsy/Traveller community, and has an impact on a wide range of other issues. A lack of permanent sites (both public and private), and the blocking of many traditional stopping places, has contributed to a rise in unauthorised encampments on accessible but often unsuitable land. This has caused tension between Gypsy/Travellers and landowners, the settled community and the authorities. These tensions generate press coverage, usually negative, which creates and enforces an association of Gypsy/Travellers as a whole with criminality and antisocial behaviour. This builds upon existing prejudice and creates resistance to the development of suitable accommodation for Gypsy/Travellers and opposition to applications to develop such sites^{22, 23}.

If no legal alternatives are approved, unauthorised encampments and developments may continue to increase. An ongoing need will remain unsatisfied, and community tensions will continue to be generated. Furthermore, and most significantly, Gypsy/Travellers will continue to lose out on equal access to health, education, employment opportunities etc. (see **Vicious Circle** diagram on opposite page).

22. Equality and Human Rights Commission (2009) *'Inequalities experienced by Gypsy and Traveller communities: A review'*

23. Brown, P. (2015) *'Developing Successful Site Provision for Scotland's Gypsy/Traveller Community'*, EHRC



4 | The responsibilities of the Local Authority

Local Authorities are responsible for the delivery of a range of services, including housing, education, health, environmental health, and planning. Gypsy/Travellers are as entitled to benefit from these public services as the settled community. It is worth briefly considering these other services and how they impact upon planning.

Housing

Housing officers are often contacted about Gypsy/Traveller accommodation, whether by members of the public regarding unauthorised encampments, or by Gypsy/Travellers themselves seeking housing. While Gypsy/Travellers usually do not want bricks and mortar housing, many are forced into seeking such accommodation through a lack of available sites, poor living conditions, conflict on existing sites, age and/or health problems.

Those Gypsy/Travellers who maintain a nomadic lifestyle can present particular challenges to the process of planning and allocating resources to meet their needs. Local and Planning Authorities estimate their future housing needs using Housing Need and Demand Assessments (HNDAs), which are undertaken every five years. As part of their housing need estimates, authorities consider the type and scale of Specialist Housing need in their area, which includes the housing and housing-related service needs of Gypsy/Travellers. While the assessments are conducted by housing officers, close liaison with planning officers can help determine the scope of the HNDAs regarding Gypsy/Travellers issues.

Information is crucial to the HNDA process but the data which feeds into this has been contested by individuals and organisations working with Gypsy/Travellers. With a number continuing to live a nomadic lifestyle, numbers of Gypsy/Travellers in any one authority area can be fluid. The Scottish Government's *Housing Need and Demand Assessment – A Practitioner's Guide* (2014) recognises the following data sources, among others: 2011 Census,

4 | The responsibilities of the Local Authority

Twice Yearly Count Data and Survey Questionnaire, Equality and Human Rights Commission documents and the Scottish Government's A Survey of Travellers Views. Other possible sources of population figures include Gypsy/Traveller community bodies, school rolls, voluntary and charitable organisations working with Gypsy/Travellers and academic research.

Evidence gathered through the HNDA process, including that on the type and scale of Gypsy/Traveller housing needs, is then used to formulate housing policies in Local Housing Strategies (LHSs) and land allocation decisions in Development Plans. For full effectiveness, Local Housing Strategies need to recognise both the current and future accommodation needs of Gypsy/Travellers, and their aspirations for the type and location of that accommodation.

Education

By law, every child in Scotland is entitled to and must receive an education. However (as noted in **section 3 - Gypsy/Traveller culture and the impact on planning**, page 8), there are particular cultural issues concerning the education of Gypsy/Traveller children. Attendance is compromised by a nomadic lifestyle and the need to enrol at different schools, but also in some cases by a lack of reliable transport. Sites which are remote or which have no public transport links make it more difficult for residents to access schools and other public services. There also needs to be sufficient capacity to be able to enrol new Gypsy/Traveller children. Communication between the education and planning departments when allocating new sites should ensure that the increase in demand for school places can be met locally.

4 | The responsibilities of the Local Authority

Health

As with school enrolment, access to healthcare can be difficult for Gypsy/Travellers because of their nomadic lifestyle and a lack of necessary infrastructure. Many Gypsy/Travellers simply put up with ill health, or seek medical treatment through hospital A&E services rather than through a regular check-up with a doctor. Registering with a GP and subsequently using that service can be complicated by a lack of permanent or secure accommodation in the locality, and by a lack of transport links between Gypsy/Traveller sites and GP surgeries or hospitals.

Environmental Health

Environmental health officers often receive complaints about Gypsy/Traveller accommodation, both from members of the public concerned about waste generated by unauthorised encampments and by Gypsy/Travellers regarding waste disposal or unsatisfactory conditions on their sites. As a point of contact, they can often also receive queries or requests about other public services. Therefore there needs to be strong channels of communication with the other relevant departments.

Environmental health officers have the potential to make a positive difference to the living conditions of Gypsy/Travellers and public perceptions of them through the provision of resources to deal with rubbish generated on sites, e.g. bin bags, skips, and through timely arrangement of clean-up services. Ensuring on-site access to clean water and adequate toilet facilities is also an important consideration, and one which it would be prudent to address through close cooperation with the planning department when sites are being allocated and when planning applications are submitted.

4 | The responsibilities of the Local Authority

Scottish Environmental Protection Agency (SEPA)

While not a part of local government, SEPA also plays an important role in ensuring that suitable long-term environmental conditions are achieved at Gypsy/Traveller sites. SEPA has a role in providing advice and guidance on planning applications when requested to do so by planning authorities.

In most instances where SEPA objects to a plan, it is likely to be because:

- of insufficient information on the site, particularly in relation to disposal of waste (sewage), and/or
- the proposed development is on land identified as being at risk from flooding.

In relation to the disposal of waste, plans should highlight the means of waste disposal in detail. SEPA will then base its determination on the level of removal planned against the assumption of the level of occupancy of a site. SEPA uses guidance from the code of practice published by British Water on occupancy levels, which calculates an occupancy level of 5 for a three bedroom house or caravan.

To avoid objections on the basis of flood risk, applicants should consult the SEPA flood plans, which are available online: http://www.sepa.org.uk/flooding/flood_maps.aspx . They can also contact SEPA directly at an early stage to discuss any risks or concerns about waste disposal.

4 | The responsibilities of the Local Authority

Planning

In the field of planning, Local Authorities have a number of legislative duties and policy requirements in relation to planning for Gypsy/Travellers. Under the *Human Rights Act* 1998 and the *Equality Act* 2010, they must have due regard to human rights, equality and diversity when exercising their functions. It is important to note that Scottish Gypsy/Travellers are recognised as an ethnic group for the purposes of the *Equality Act 2010*²⁴, and as such the **Public Sector Equality Duty** (PSED) is of relevance²⁵. This requires public authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between people with a protected characteristic and people without. This duty covers Local Authorities, their staff and Elected Members.

Under *Scottish Planning Policy* (2014), Local Authorities are required to plan for the current and future needs of the Gypsy/Traveller community and involve the Gypsy/Traveller community in the process of planning and decision-making which impacts upon them.

In comparison to the wider housing needs of the settled community, the scale of the accommodation required by the Gypsy/Traveller community is small, but it cannot be overlooked. Decent homes are needed for any sustainable community, and Gypsy/Traveller individuals and their families are no exception to this principle. Dealing with the accommodation needs of Gypsy/Travellers is the most direct means of tackling wider problems of inequality and social cohesion²⁶. The following sections consider in more detail how Gypsy/Travellers' needs should be addressed through Development Planning and Development Management.

5 | Gypsy/Travellers and Development Planning

Scottish Planning Policy (SPP) (2014) considers Gypsy/Traveller accommodation under Specialist Housing Provision and Other Specific Needs, and states that:

'HNDAs [Housing Need and Demand Assessments] will also evidence need for sites for Gypsy/Travellers and Travelling Showpeople. Development plans and local housing strategies should address any need identified, taking into account their mobile lifestyles. In city regions, the strategic development plan should have a role in addressing cross-boundary considerations. If there is a need, local development plans should identify suitable sites for these communities. They should also consider whether policies are required for small privately-owned sites for Gypsy/Travellers, and for handling applications for permanent sites for Travelling Showpeople (where account should be taken of the need for storage and maintenance of equipment as well as accommodation). These communities should be appropriately involved in identifying sites for their use.' (Para. 133, pg. 32)

The following section considers in detail the individual requirements of this policy, as applied to development planning. Elected Members have a responsibility for ensuring that their involvement in development planning facilitates and supports these policy requirements:

1. Include Gypsy/Travellers in housing need and demands assessments.

The Development Plan is informed by the Housing Need and Demand Assessments (HNDAs), which (as mentioned in **section 4 - The responsibilities of the Local Authority**, page 16) are required to assess the current provision and likely future requirements of sites for Gypsy/Travellers. While these are conducted by housing officers,

close liaison between planning and housing officers can help determine the approach of the HNDAs to Gypsy/Travellers issues. Information is crucial to the HNDA process, and it is important that information sources are sound and verifiable.

2. Address identified need in development plans and housing strategies.

Overcrowding and an increase in unauthorised encampments are both indicators of inadequate site availability. Therefore, built-in extra capacity is vital to meet both current requirements and any future growth. As noted above, Local Housing Strategies need to recognise both the current and future accommodation needs of Gypsy/Travellers, and their aspirations for the type and location of that accommodation. The purpose of assessment is not just to obtain data but to establish whether further action is required. If there are identified shortfalls, there must be subsequent outcomes in the form of new allocations and/or appropriate policies. Planning Officers should ensure that such action is taken through the development planning process, allocating sites and ensuring that there are strong and appropriate policies in place. It is acknowledged that the availability of finance for site provision can be challenging, especially when there are competing priorities, such as affordable housing. However, even a modest response to shortfalls can begin the process of meeting need and can produce net savings (See **section 7 – The benefits of Gypsy/Traveller sites**, page 45). Any policies need to be flexible and allow for changing circumstances.

24. Employment Tribunals (Scotland) Case No: S/132721/07 23rd June 2008

25. Equality Act 2010, Section 149

26. Brown, P. (2015) *Developing Successful Site Provision for Scotland's Gypsy/Traveller Community*, EHRC

3. City regions should consider need in strategic development plans.

Given the nomadic lifestyle of many Gypsy/Travellers, there needs to be some consideration of demand and provision that is fluid and not constrained by Local Authority borders. A strategic-level, cross-authority approach to establishing population and demand levels could be beneficial. However, this should not be seen as a basis for Local Authorities to consolidate provision into fewer, larger sites. Doing so limits the accommodation choices of Gypsy/Travellers. Smaller, more numerous sites are generally preferable.

4. Local development plans should respond to identified need by making site allocations.

Local Authorities are required to adequately assess and make any necessary public provision for Gypsy/Travellers in their Local Authority areas, and should take proactive steps to facilitate private site development. Private site development presents Local Authorities with minimal costs. However, not all Gypsy/Travellers can afford to buy land and develop their own accommodation, so there is a continuing role for public provision, especially for transit sites.

Site allocations need to be realistic reflections of the needs of Gypsy/Travellers and provide a range of accommodation options, in terms of both site type and geography.

As noted above, there are three types of Gypsy/Traveller site: permanent sites, transit sites and stopping places. Problems have emerged from a lack of permanent sites, while many long-standing stopping places have been blocked off in the past couple of decades, which has coincided with an overall increase in unauthorised encampments.

Whether they are public or private developments, permanent sites need to be sustainable, to be reasonably close to essential services and transport links, and to work in basic planning terms. Among the key aspects to consider when identifying suitable sites are:

- **Size of site/number of pitches.** For public site provision, smaller, more numerous sites are generally preferable to larger sites. This offers a wider choice of accommodation and allows flexibility for different family groups. Private sites tend to have 1-5 pitches and can accommodate one or two families, though some are larger. As extended family groups are common, sites need to be able to realistically accommodate residents.
- **Location.** A number of existing local development plan policies concern themselves with location, usually with regards to how close sites can be to settlements. It is important that these policies are realistic about access to essential services. A good degree of flexibility is required given the cost of development land in built-up areas.
- **Type of land.** Sites should not be on or near contaminated land or sites at risk of flooding. In some Local Authority areas Green Belt land forms a significant amount of available land. Serious consideration should be given as to whether the benefits of granting permission for sites on Green Belt land outweigh the purpose of the designation.
- **Water, electricity and sewage.** Sites need to be able to be supplied with all the essential services. There should be flexibility with regards to connections to public supplies and networks if self-contained solutions exist. Public sites should include amenity blocks for toilets, bathing, utilities and cooking facilities, bearing in mind cultural sensitivities around the separation of cooking, bathing and living spaces.

5 | Gypsy/Travellers and Development Planning

- **Roads and access.** Safe and easy access for vehicles is important. Sites should be easy to reach from main roads, but usually not right beside them. They should avoid causing significant volumes of additional traffic. Layout and parking arrangements should reflect Gypsy/Travellers' everyday lives. Given the nature of many occupations and businesses, there should be enough parking for work vehicles in addition to caravan stances and cars. In light of seasonal movement, consideration should be given to allocating enough space for both permanent and touring caravans, and potentially also for those of visitors.
- **Character and Appearance.** Sites should not cause significant harm to the character and appearance of their surroundings. If necessary, this can be achieved through landscaping, although there should be no requirement for sites to be 'hidden'.
- **Residential amenity.** There should be no significant harm to the residential amenity of site residents or neighbouring properties.
- **Access to public services and amenities.** It should be possible for residents to reach vital facilities such as schools, hospitals, shops and recreation facilities. Proximity to public transport would also be highly beneficial, although Local Authorities should be realistic about the availability of alternatives to the car in accessing local services.

Transit sites and stopping places should provide basic facilities, e.g. water, electricity, rubbish collection and washing and sanitation facilities. They do not require the same level of proximity to services and amenities as permanent sites. Consideration should be given to upgrading traditional stopping places which are already established as part of the network of known locations used by Gypsy/Travellers when on the move.

5 | Gypsy/Travellers and Development Planning

A good practice design guide was produced by the UK Department for Communities and Local Government in 2008 and is available here: <https://www.gov.uk/government/publications/designing-gypsy-and-traveller-sites-good-practice-guide>

5. Consider if criteria based policies are required for small privately owned sites.

Successful private sites will contain some or all of the aspects listed above. There is no requirement to establish a general need for Gypsy/Traveller site when determining applications for private sites. Criteria-based policies for private site development enable a flexible approach, allowing demand to be met as and when it emerges, with the Local Authority acting as facilitator rather than provider. An example of good policy is that of the East Ayrshire Local Plan (2010):

'Policy RES 32: Travellers' Sites

The Council will assess any applications for small, privately owned Travellers' Sites on their own merits and will support the development of such sites where all of the following criteria can be met:

- (i) the site is in a location readily accessible to the main strategic road network;*
- (ii) the site does not adversely affect or impact on any areas of recognised nature conservation and built heritage interest, sites of significant landscape quality and any existing surrounding uses;*
- (iii) the site can be accessed and serviced to the standards of the Council's Roads Division and other service providers;*
- (iv) the site is adequately screened and landscaped to the satisfaction of the Council; and*
- (v) the site does not cause any unacceptable damage or detriment to the amenity of residents of surrounding properties.*

Proposals which do not meet all these criteria will not be supported by the Council.'

This policy focuses on the practical aspects of accessibility and public services, and the safeguarding of protected sites, landscape quality and residential amenity. As such it forms a straightforward set of criteria to assess applications, makes explicit the consideration of individual merits, and does not try to apply a homogeneous approach to site developments.

6. Engage with the community in identifying sites.

Gypsy/Travellers must be meaningfully involved in the development planning process if the resulting plans and policies are to be fit for purpose. There are a number of different groups working with Gypsy/Travellers, with activities as diverse as youth groups and employment training schemes. Any existing relationships between these external organisations and the Local Authority should be utilised. Such relationships may be spread across different departments, e.g. housing, education, social work, so liaison between these departments is essential. Gypsy/Traveller Liaison Officers (GTLOs) could act as intermediaries and facilitate consultation and engagement. Local Authorities should not restrict themselves to these established relationships, and should seek to engage with as broad a constituency as possible. Word of mouth can be an effective means of getting the message to the local Gypsy/Traveller population.

Meetings for the discussion or preparation of plans should be handled with sensitivity. Neutral venues, with none of the potentially intimidating aspects of Local Authority offices, should be used wherever possible. Problems with literacy can be avoided by not relying solely on text and making good use of visual content and oral explanation and discussion. Technical terminology should be substituted wherever possible for plain and clear language.



6 | Gypsy/Travellers and Development Management

Local Authorities have a number of legislative duties and policy requirements in relation to planning for Gypsy/Travellers. As noted in the previous section, under the Human Rights Act 1998 and the Public Sector Equality Duty²⁷, they must have due regard to human rights, equality and diversity when exercising their functions. Under SPP (2014) they are required to plan for the current and future needs of the Gypsy/Traveller community, and involve the Gypsy/Traveller community in the process of planning and decision-making which impacts upon them.

There should be an awareness on the part of planning officers that for Gypsy/Travellers, their past experiences with public bodies and the settled community in general may have been largely negative. In dealing with the planning system, common complaints from Gypsy/Travellers include being subject to prejudice, a lack of progress in processing applications, too much division of responsibility, and a lack of accountability. There are concerns among many that an application from a Gypsy/Traveller is not considered in the same way as one from a member of the settled community. These feelings are exacerbated by racist representations which may be made during consultations.

Communicating and meeting with Gypsy/Travellers

While planning officers' communications with all applicants and other members of the public should be conducted in a professional manner, there needs to be an awareness of the particular issues and challenges that Gypsy/Travellers face when dealing with the planning system.

27. Equality Act 2010, Section 149

6 | Gypsy/Travellers and Development Management

Gypsy/Travellers generally prefer direct and personal forms of communication, meeting people face-to-face and presenting information orally. As a result, Gypsy/Travellers often find planning help and advice difficult to access. Some Gypsy/Travellers also have issues with literacy, which is a significant problem when dealing with a system that makes extensive use of written documentation and forms. It is however important to ensure that all advice is also given in writing to ensure a record is provided.

Planning officers need to recognise the importance of personal relationships and the potential difficulties with literacy and accessibility. In response to these challenges they need to be approachable, and prepared to make a little extra effort if necessary. Wherever possible, enquiries from Gypsy/Travellers should be handled by a planning officer with some degree of specialist knowledge, but all staff should be willing to help if required.

Pre-application discussions should be focused on explaining the circumstances in which an application would likely be supported, i.e. what would be required to comply with policy and what material considerations should be addressed. Professional terminology may be confusing, and should be clearly defined for the layperson, in plain English where possible. An explanation of the process, timescales and the different roles and responsibilities is encouraged.

Retrospective planning applications for Gypsy/Traveller sites can be fairly common, so applicants must be made aware of the particular requirements and implications of this route.

If there are issues with literacy, these should be handled tactfully and planning officers should be prepared to explain things verbally and potentially assist in filling in forms (or at the very least, providing contact details to those who can do this) and/or help prepare supporting documentation such as a planning statement.

6 | Gypsy/Travellers and Development Management

In some cases it may become apparent that the potential applicant(s) would benefit from additional professional help. While it would be inappropriate to direct individuals to particular consultants, advising them where they may find such services, e.g. through PAS's free advice service, planning directories, the internet, the RTPI etc., would be helpful. Colleagues in other Local Authority departments may have useful contacts, so ask around.

Public consultation

There may be existing prejudices or stereotypes about Gypsy/Travellers held by some within the local community, which can be expressed in opposition to proposals or applications for Gypsy/Traveller sites. At times, opposition can spill into outright hostility. Of course, not all members of the settled community are opposed to Gypsy/Traveller sites, but there is always the potential for an active and vocal minority to overwhelm others.

The media can play a powerful role in determining whether or not sites are successfully developed. At times the reporting of such applications has severely compromised the planning process. Reporting can be inaccurate and sensationalist, placing considerable pressure on planning officers and elected members. Planning staff should avoid being drawn into media coverage, beyond providing the bare facts of how the application will be handled.

When dealing with the public, it may be beneficial to work with small groups, rather than large public meetings which can become heated and generate adverse publicity. Meetings of any size should have clear ground rules and it should be made clear that threatening or racist language will not be tolerated. Professional mediators may be beneficial in dealing with especially difficult groups.

Racist representations

Racist representations are those whose content applies pressure on the receiver to discriminate on racial grounds, is racially abusive or insulting, which could stir up racial hatred or contempt, or which is likely to be offensive to a particular racial or ethnic group.

While racist representations may only form a small minority of the correspondence received by planning officers, it can often be a significant feature of applications for Gypsy/Traveller sites. As a public body, the Local Authority and its staff have a legal responsibility to take measures against such material. As professional planners, planning officers who are chartered members of the RTPI also have a duty to adhere to the equal opportunity provisions of the RTPI Code of Professional Conduct.

There is a perception among some Gypsy/Travellers that planning officers actively collude with those who object on racist grounds to Gypsy/Traveller sites, ensuring that they do not obtain permission. Proactive steps should be taken to demonstrate and emphasise that only material planning considerations influence decision-making, and that racist representations play no part in determining whether or not permission is granted.

Racist correspondence should be returned if possible with an explanation that its content may be unlawful and, as such, ineligible for consideration²⁸. Planning officers should also take the advice of their legal colleagues and consider referring the matter to the police.

If racist comments are made to planning officers verbally, then they should respond that such pressure to discriminate on racial grounds was not acceptable and that such comments would have no bearing on the consideration of an application.

Material considerations for Gypsy/Traveller applications

The Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Scottish Government Circular 6/2013 Development Management notes that statements in the following documents may be material considerations to be taken into account in development management decisions:

- National Planning Framework
- Scottish Planning Policy
- Creating Places
- Designing Streets
- Circulars

In addition to these, relevant matters of law and case law are also material considerations. It is worth going over some of the main examples of what may be material considerations for Gypsy/Traveller applications in particular:

- Relevant legislation, including the *Human Rights Act* 1998, *Equality Act* 2010 and *Children (Scotland) Act* 1995.
- Scottish Planning Policy (2014) Paragraph 133, policies on Gypsy/Traveller sites.
- Development Plan policies on Gypsy/Traveller sites, including policies in any emerging plans.

28. Public Order Act 1986, Section 19

6 | Gypsy/Travellers and Development Management

- In the absence of any policies at the Local Authority level, the following guidance documents:
 - The Secretary of State's Advisory Committee on Scotland's Travelling People (ACSTP) Guidance Notes on Site Provision for Travelling People (1997).
 - ACSTP's 9th and Final Report (2000).

Advisory Committee on Scotland's Travelling People

Until 2000, the central government body dealing with Gypsy/Traveller issues in Scotland was the Secretary of State's Advisory Committee on Scotland's Travelling People (ACSTP). It set targets for the provision of pitches by individual Local Authorities, partly funded through central government grants. As part of its work, the Advisory Committee published various documents, including Guidance Notes on Site Provision for Travelling People (1997). This set out criteria to use when considering proposals for sites. These included:

- (i) sites should be accessible to a main road network,
- (ii) sites shouldn't be too remote, to allow the possibility of social integration,
- (iii) sites should be suitably screened or have the potential for screening,
- (iv) the location of sites should offer some prospect for Gypsy/Travellers to seek work opportunities in the area, and
- (v) sites should be within reasonable proximity to as broad a range as possible of community facilities.

6 | Gypsy/Travellers and Development Management

In essence, this guidance, which remains current, considers the practical considerations for determining site provision for the Gypsy/Traveller community. It seeks a balance between maintaining the distinct Gypsy/Traveller lifestyle in its own space, and enabling that community to be an integral part of wider society.

The ending of central government grant payments required a shift in Local Authority policy and practice, while the Advisory Committee itself was wound down. In its 9th and Final Report (2000), it gave guidance on a range of issues, including matters of accommodation:

- (i) The need for Traveller [sic] site provision should be a requirement for local planning authorities and be included within relevant statutory plans.
- (ii) Travellers themselves should be consulted about their accommodation needs as part of any assessment.
- (iii) Local Authorities should strive within their allocation policies to reflect the particular needs of Travellers to prevent their lifestyle disadvantaging their right to decent accommodation.
- (iv) Travellers' individual lifestyle and requirements should be reflected in a sympathetic management regime for any accommodation occupied.

In summary, the Advisory Committee was of the opinion that Local Authorities should have clear responsibilities to the Gypsy/Traveller community, ensuring that they could engage fully in society while maintaining their way of life, and being directly involved in shaping planning policy and practice to achieve these goals.

The work of the Advisory Committee continues to be of relevance. Appeal cases have confirmed that the 1997 Guidance Notes and 2000 9th and Final Report continue to be accorded weight when assessing such planning proposals (see cases PPA-300-2011, PPA-250-838 and PPA-150-70 in Appendix 2: Four Gypsy/Traveller Appeal

Cases). In practice these documents have also been used to guide decision-making in the absence of detailed planning guidance at national level and where no relevant planning policies exist at the local level, i.e. where there are no Gypsy/Traveller site policies in the Development Plan (see application ref: 13/00105/P in East Lothian).

Other material considerations

Turning to other material considerations which may be particularly relevant to Gypsy/Traveller cases, it is important to note that these are matters which only become relevant when there is conflict with the Development Plan. The correct approach is to assess a proposal for compliance with the Development Plan and the material considerations of SPP noted above. If conflict is found, then the decision maker must take into account the material considerations outlined below if relevant and decide if the development should be given consent. This may involve the use of temporary or personal conditions (see subsection **Decisions and conditions**, page 42, for more details).

Reference will be made to various pieces of case law. The case law of the UK Supreme Court (formerly the House of Lords) is binding. In addition, some reference will be made to the decisions of the lower English courts (namely the High Court and the Court of Appeal) on Gypsy/Traveller planning matters. Whilst these are not binding to a Scottish Judge (or Reporter or Planning Authority), they are very persuasive. Finally, given the incorporation of the European Convention of Human Rights into UK law through the *Human Rights Act* 1998, the decisions of the European Court of Human Rights (ECtHR) are relevant and persuasive.

Personal circumstances

The personal circumstances of an applicant are usually not of relevance in the determination of planning matters. However, the case law is clear that there are occasions where exceptions should be made. The leading case on this is *Great Portland Estates plc vs. Westminster City Council*²⁹ which held at 750:

'Personal circumstances of an occupier, personal hardship, the difficulties of businesses which are of value to the character of a community are not to be ignored in the administration of planning control. It would be inhuman pedantry to exclude from the control of our development the human factor. The human factor is always present, of course, indirectly as the background to the consideration of the character of land use. It can, however, and sometimes should, be given direct effect as an exceptional or special circumstance. But such circumstances, when they arise, fall to be considered not as a general rule but as exceptions to a general rule to be met in special cases. If a planning authority is to give effect to them, a specific case has to be made and the planning authority must give reasons for accepting it. It follows that, though the existence of such cases may be mentioned in a plan, this will only be necessary where it is prudent to emphasise that, notwithstanding the general policy, exceptions cannot be wholly excluded from consideration in the administration of planning control.'

Given the inequalities faced by Gypsy/Travellers, it may be the case that the personal circumstances of a Gypsy/Traveller applicant should be given weight in the determination of planning matters. Such an approach is commonplace in both England and Wales. Considerations may include the education of children, ill health or old age. However, as already noted above, personal circumstances only come into play if there is conflict with the Development Plan.

29. (1984) 3 All ER 744

Human rights

In 1998 the European Convention of Human Rights (ECHR) was incorporated into UK law by the *Human Rights Act 1998*. The parts of the Act that are of particular relevance for Gypsy/Traveller planning issues are Articles 8 and 14.

Article 8 regards the right to private and family life and provides that:

- '(1) Everyone has the right to respect for his private and family life, his home and his correspondence.*
- (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'*

The implications of this are that public authorities are required to consider carefully the proportionality of their actions when making decisions which interfere with Article 8 rights. In practice for Gypsy/Traveller applications this is the balancing of considerations such as a pressing social need and the protection of a designated area, e.g. Green Belt land.

Article 14 is concerned with the prohibition of discrimination:

'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

6 | Gypsy/Travellers and Development Management

These provisions of law should be a key consideration for any decision maker for a Gypsy/Traveller planning application. Furthermore, there is a positive obligation on the UK to facilitate the Gypsy/Traveller way of life³⁰. Applying this in practice, the planning authority must make an assessment of the facts of the case in the light of the requirements of the articles and strike an appropriate balance. This is of particular relevance to enforcement cases where the Gypsy/Travellers concerned may have no other sites to relocate to. However, as a matter of principle Article 8 rights are also able to be engaged even though the applicant is not yet on site, for instance where an applicant is currently living on the roadside. Again, there is relevant case law on this point (See **Appendix 1: Relevant Case Law**, page 49).

Equalities

The *Equality Act* 2010 expanded the race equality duty in section 71 of the *Race Relations Act* 1976 to include other 'protected characteristics'. These include age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation (referred to in the act as 'protected characteristics'). It also introduced the **Public Sector Equality Duty** (PSED). This requires public authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between people with a protected characteristic and people without. This duty includes, amongst others, Local Authorities, the Directorate for Planning and Environmental Appeals (DPEA) and SEPA.

30. See Chapman vs. UK (2001) 33 E.H.R.R. 18

It is important to note that Scottish Gypsy/Travellers are recognised as an ethnic group for the purposes of the *Equality Act 2010*³¹, and as such the Public Sector Equality Duty (PSED) is of relevance³². Irish Travellers and Romany Gypsies have also been found by the courts in England to be ethnic minorities for the purposes of the legislation³³. Therefore, the decision maker has to have due regard to the need to advance equality of opportunity for this group, including equal access to suitable accommodation.

In addition to the race equality point, it is important to note that where a Gypsy/Traveller is older or has a disability, the PSED duty is also applicable.

Best Interests of the Child

As a matter of law, there is a requirement for decision makers to treat the best interests of any children affected by a decision to grant/refuse planning permission or to issue/uphold an enforcement notice as 'a primary consideration'. The requirement comes from Article 3(1) of the *UN Convention on the Rights of the Child* (UNCRC) and is considered by the European Court of Human Rights to be part and parcel of the consideration of Article 8 rights in any case where a decision of a public body will affect children. There is relevant case law on this point (See **Appendix 1: Relevant Case Law**, page 49).

Also of some significance is the *Children (Scotland) Act 1995*, which places legal duties on Local Authorities with regards to the welfare of children, including the need to '*have regard so far as practicable to each child's religious persuasion, racial origin and cultural and linguistic background*'. When considering Gypsy/Traveller planning applications, there is therefore a duty to consider the impact of decision-making on any children which will be affected by the outcome of that decision.

6 | Gypsy/Travellers and Development Management

In practical terms the application of the best interests of the children principle to Gypsy/Traveller cases covers matters such as the ability of the children to develop and maintain friendships; the children's interests in being protected from social isolation and the necessarily traumatic experience of eviction; and the adverse implications for health and safety implicit in roadside living. In considering an application for a Gypsy/Traveller site, planning officers should look beyond their traditional consultees, seeking views from colleagues in housing, education, health and social work departments.

Housing

The *Housing (Scotland) Acts* of 2001 and 2010 both recognise the particular accommodation needs of Gypsy/Travellers, within the overall statutory responsibilities of Local Authorities to provide accommodation for a range of groups in society. The latter Act explicitly states that the definition of 'housing services' includes *'the provision and management of sites for gypsies and travellers [sic], whatever their race or origin'*.

31. Employment Tribunals (Scotland) Case No: S/132721/07 23rd June 2008

32. Equality Act 2010, Section 149

33. Commission for Racial Equality [CRE] vs. Dutton 1989 WL 651202 and O'Leary & others vs. Allied Domecq and others: CL 950275-79 29th August 2000 (unreported), Central London County Court

Decisions and conditions

Planning officers who have been delegated the decision of whether to grant permission to a Gypsy/Traveller application should ensure that they maintain close contact with the applicants, and be direct and honest about any potential issues or areas where additional information could impact upon the outcome.

On granting permission, care must be taken to cover in detail all relevant material, including the role of planning conditions and building regulations, and any extra requirements, such as obtaining caravan site licences. Arranging a meeting in addition to issuing a decision notice could ensure that the applicants are made fully aware of the meaning of the decision and their other responsibilities.

Scottish Government Circular 4/1998: states that *'Unless the permission otherwise provides, planning permission runs with the land and it is seldom desirable to provide otherwise. There are occasions relating, for example, to strong compassionate or other personal grounds, where the planning authority is minded to grant permission for the use of a building or land for some purpose which would not normally be allowed. In such a case the permission may be made subject to a condition that it shall enure only for the benefit of a named person - usually the applicant'*. Gypsy/Traveller applicants are frequently subject to challenging personal circumstances and their applications may involve proposals which would not normally be granted permission, such as the use of Green Belt land. While Personal Permissions are often not ideal, they should be seriously considered if it can enable further Gypsy/Traveller accommodation to be developed.

Temporary permissions can create uncertainty and should be avoided wherever possible. If applications are acceptable in planning terms then permanent permission should be granted. However, if there is significant planning harm which is not outweighed by material considerations such as the personal circumstances of the applicants to the extent that a permanent personal consent can be granted, then a temporary consent should be considered. Temporary permissions may also be appropriate if the Development Plan does not have any Gypsy/Traveller policies to assess such applications against, or if there are some operational concerns that are to be monitored in practice, e.g. access, impact on traffic.

If, despite any attempts to amend the application, the decision is for refusal, the planning officer needs to give clear and understandable reasons for that. Communicating these to the applicants personally would likely provide the applicants with a greater sense of having been given fair consideration than an impersonal letter of refusal alone.

Enforcement

It is important that planning policies and the decision-making process are respected by all members of the community, and it is right that Local Authorities take action when development has taken place which does not have planning permission. However, Circular 10/2009 (Planning Enforcement) notes that: 'Planning authorities have a general discretion to take enforcement action against any breach of planning control if they consider such action to be expedient, having regard to the provisions of the development plan and any other material considerations. It may be in some instances that it might be advantageous not to pursue enforcement action' (Circular 10/2009 para. 7).

6 | Gypsy/Travellers and Development Management

Before taking enforcement action it is advisable to serve a planning contravention notice in order to gather information. Of particular relevance will be the material considerations that we have already noted above. It is also recommended that a human rights questionnaire should be used to take into account specific issues with regard to Gypsy/Travellers (see **Appendix 3: Wiltshire Council's Human Rights Questionnaire**, page 72, as an example). However, it is important that officers go through the form in person given the lack of literacy of some members of the community.

Having gathered the relevant information, a proportionality assessment in the context of Article 8 needs to be undertaken (See **Human rights** section, page 38). In short, this will determine the form of action taken. Where it is possible that the development could be made acceptable by the granting of planning permission, with or without conditions, the Planning Authority should consider inviting the Gypsy/Travellers concerned to submit a planning application before formal enforcement action is taken. Planning Authorities also have the power to issue a notice requiring the submission of a retrospective application. If this is not feasible, the enforcement action should be proportionate to the circumstances of the Gypsy/Travellers concerned.

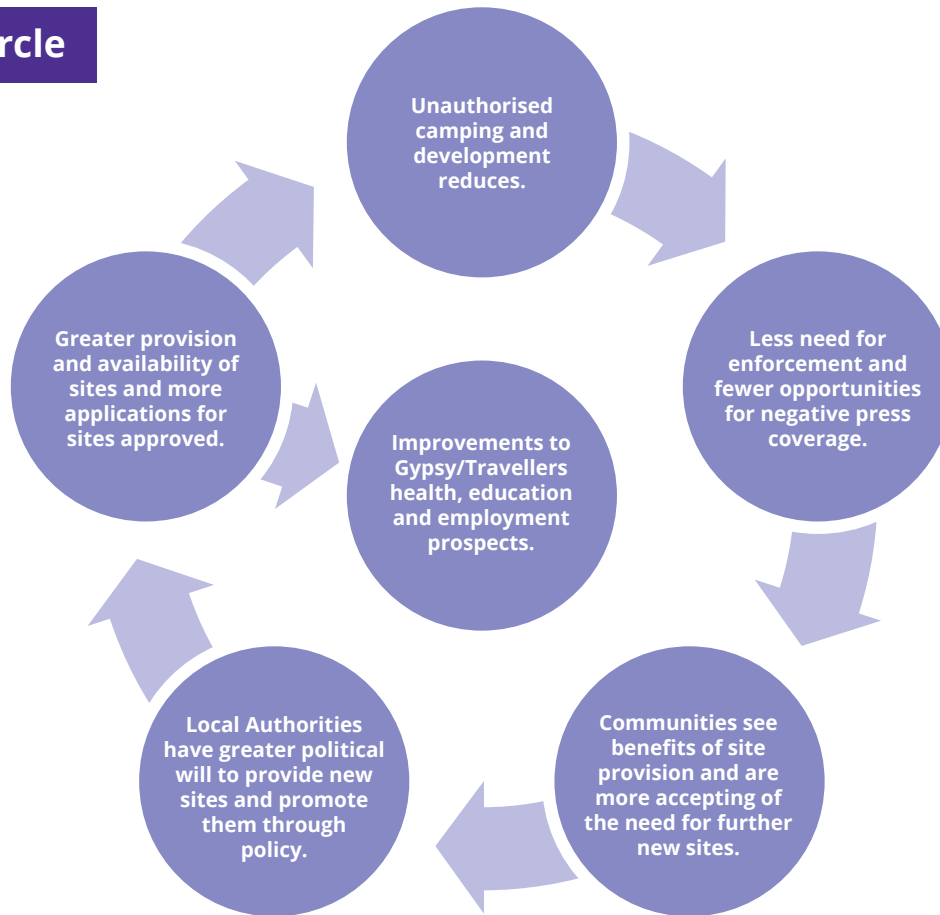
7 | The benefits of Gypsy/Traveller sites

As a result of the under-provision of sites, whether public or private, there are ongoing issues with Gypsy/Travellers camping on land which they do not own (unauthorised encampments) or developing their own land without planning permission (unauthorised developments). When unauthorised sites are discovered, those resident will be asked to submit an application for Retrospective Planning Permission. Should this be refused, enforcement action including eviction proceedings may follow.

Dealing with such cases costs time, money and effort for all concerned: Local Authorities, landowners, the police, courts and Gypsy/Travellers themselves. It creates negative impressions of the Gypsy/Traveller community as a whole, a problem often exacerbated by media coverage. This fuels community tensions, and ensures that Gypsy/Travellers will continue to lose out on equal access to public services and opportunities in areas such as employment and education.

The solution is to increase the supply and range of authorised sites, both public and private. The most obvious benefits of this are to provide secure accommodation, which should result in a reduction in unauthorised sites, and with it the source of much of the ill-feeling directed at the Gypsy/Traveller community. The wider benefits are that secure accommodation allows Gypsy/Travellers access to public services, amenities and opportunities for work, education and recreation. In time this contributes to reducing inequality within society, narrowing the gap between the settled community and Gypsy/Travellers and providing overall improvements in community relations (See *Virtuous Circle* diagram, next page).

Virtuous Circle



7 | The benefits of Gypsy/Traveller sites

As well as the very real improvements to community relations and equality of opportunity, investing in accommodation for the Gypsy/Traveller community can produce financial benefits. While public site provision presents some upfront construction and ongoing maintenance costs, it can also, in time, translate into significant savings for Local Authorities and police as enforcement, clean-up and other associated costs decline. By way of example, Bristol City Council used to spend an average of £200,000 per year on enforcement and clean-up. Following development of a residential and transit site, at a cost of £425,000, those enforcement costs declined dramatically to only around £5,000 per year³⁴. The savings can then be used more productively and to the benefit of the local community. Furthermore, new sites can be a source of revenue, through payments for socially rented accommodation, and through council tax charges for private sites³⁵.

Policies for private site development allow demand to be met as and when it emerges, with the Local Authority acting as facilitator rather than provider. The costs to Local Authorities are therefore minimal. Furthermore, development of more private sites can free up space in public sites and therefore help to address overcrowding and excess demand.

34. Department for Communities and Local Government, *'Local authorities and Gypsies and Travellers: a guide to responsibilities and powers'* (2007)

35. Brown, P. (2015) *'Developing Successful Site Provision for Scotland's Gypsy/Traveller Community'*, EHRC



8 | Summary

This guide has attempted to increase awareness of Gypsy/Traveller culture and how it impacts upon the planning system. It has considered the range of issues that Gypsy/Travellers face and the legal and policy obligations of Local Authorities. It has offered guidance for improving professional practice in development planning and management to meet the needs and expectations of Gypsy/Travellers living in Scotland. Overall it has attempted to demonstrate the considerable benefits to society as a whole which can result from a positive and constructive approach to meeting the needs of the Gypsy/Traveller community.



Photo: Graham Noble

Appendix 1: Relevant Case Law

Human rights

In 1998 the European Convention of Human Rights (ECHR) was incorporated into UK law by the *Human Rights Act* 1998. The parts of the Act that are of particular relevance for Gypsy/Traveller planning issues are Articles 8 and 14.

The leading case relevant to Gypsy/Travellers is that of *Chapman vs. UK*³⁶, which concerned an enforcement case in Hertfordshire, England. There was no question of the statutory 'gypsy status' of the applicant. The ECtHR held the following:

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

74 The Court finds therefore that the applicant's right to respect for her private life, family life and home are an issue in the present case.'

36. (2001) 33 E.H.R.R. 18

Appendix 1: Relevant Case Law

In summation, the Court found that;

'96...the vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in arriving at the decisions in particular cases. To this extent there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way of life.'

As a matter of principle Article 8 rights are also able to be engaged even though the applicant is not yet on site, for instance where an applicant is currently living on the roadside. The relevant case law on this point is Rafferty and Jones vs. SSCLG and North Somerset DC³⁷.

Equalities

Section 149 of the *Equality Act* 2010 sets out the Public Sector Equality Duty (PSED):

- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Appendix 1: Relevant Case Law

- (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).
- (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
 - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- (4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
 - (a) tackle prejudice, and
 - (b) promote understanding.

Appendix 1: Relevant Case Law

- (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.
- (7) The relevant protected characteristics are:
 - age
 - disability
 - gender reassignment
 - pregnancy and maternity
 - race
 - religion or belief
 - sex
 - sexual orientation
- (8) A reference to conduct that is prohibited by or under this Act includes a reference to:
 - (a) a breach of an equality clause or rule;
 - (b) a breach of a non-discrimination rule.
- (9) Schedule 18 (exceptions) has effect.”

The English Court of Appeal in *R (on the application of Baker) vs. Secretary of State for Communities and Local Government and the London Borough of Bromley*³⁸ held that the Planning Inspectorate is subject to the duty when determining planning and enforcement appeals. The obligation to address this duty was explained by Gilbert J in the English High Court in *R (Moore) vs. Secretary of State for Communities and Local Government (Equality and Human Rights Commission intervening)*³⁹.

Appendix 1: Relevant Case Law

Scottish Gypsy/Travellers have been recognised as an ethnic group since 2008 as a result of an employment tribunal decision⁴⁰, therefore the PSED is applicable. Irish Travellers and Romany Gypsies have also been found by the courts in England to be ethnic minorities for the purposes of the legislation⁴¹.

Best Interests of the Child

The Supreme Court case of ZH (Tanzania) v SSHD is the lead judgment on this point.

In the ZH case, Baroness Hale explained the source of the requirement and referred to the UN guidelines which explain that best interests are not just about health and education. Indeed, in Gypsy/Traveller cases the best interests of children will also include matters such as the ability of the children to develop and maintain friendships; the children's interests in being protected from social isolation and the necessarily traumatic experience of eviction; and the adverse implications for health and safety implicit in roadside living.

38. (2005) EWCH 1435.

39. (2015) EWHC 44 (Admin)

40. Employment Tribunals (Scotland) Case No: S/132721/07 23rd June 2008

41. Commission for Racial Equality [CRE] v Dutton 1989 WL 651202 and O'Leary & others v Allied Domecq and others: CL 950275-79 29th August 2000 (unreported), Central London County Court

42. (2011) UKSC 4

Appendix 1: Relevant Case Law

Baroness Hale held that treating the best interests of children as ‘a primary consideration’:

‘26... did not mean (as it would do in other contexts) that identifying their best interests would lead inexorably to a decision in conformity with those interests. Provided that the Tribunal did not treat any other consideration as inherently more significant than the best interests of the children, it could conclude that the strength of the other considerations outweighed them. The important thing, therefore, is to consider those best interests first’.

In his own judgment, Lord Kerr arguably took the point a stage further in stating:

*‘46 It is a universal theme of the various international and domestic instruments to which Lady Hale has referred that, in reaching decisions that will affect a child, a primacy of importance must be accorded to his or her best interests. This is not, it is agreed, a factor of limitless importance in the sense that it will prevail over all other considerations. It is a factor, however, that must rank higher than any other. It is not merely one consideration that weighs in the balance alongside other competing factors. **Where the best interests of the child clearly favour a certain course, that course should be followed unless countervailing reasons of considerable force displace them.** It is not necessary to express this in terms of a presumption but the primacy of this consideration needs to be made clear in emphatic terms. What is determined to be in a child’s best interests should customarily dictate the outcome of cases such as the present, therefore, and it will require considerations of substantial moment to permit a different result.’* [Author’s emphasis]

The second relevant Supreme Court case is *Zoumbas vs. Secretary of State for the Home Department*⁴³. The Supreme Court considered the exercise that has to be undertaken when the best interests of children are being looked at by public bodies (in that case, regarding extradition). Lord Hodge held the following:

‘10 (1) The best interests of a child are an integral part of the proportionality assessment under article 8 ECHR;

Appendix 1: Relevant Case Law

- (2) *In making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration;*
- (3) *Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant;*
- (4) *While different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play;*
- (5) *It is important to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations;*
- (6) *To that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an article 8 assessment; and*
- (7) *A child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent.*

These principles arise from the United Kingdom's international obligations under the United Nations Convention on the Rights of the Child, and in particular article 3.1 which provides:

'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'

1. (2013) UKSC74

Appendix 1: Relevant Case Law

Lord Hodge continued:

'13 We would seek to add to the seven principles the following comments. First, the decision-maker is required to assess the proportionality of the interference with private and family life in the particular circumstances in which the decision is made. The evaluative exercise in assessing the proportionality of a measure under article 8 ECHR excludes any 'hard-edged or bright-line rule to be applied to the generality of cases': EB (Kosovo) vs. Secretary of State for the Home Department [2009] AC 1159, per Lord Bingham at para 12. Secondly, as Lord Mance pointed out in H(H) (at para 98) the decision-maker must evaluate the child's best interests and in some cases they may point only marginally in one, rather than another, direction. Thirdly, as the case of H(H) shows in the context of extradition, there may be circumstances in which the weight of another primary consideration can tip the balance and make the interference proportionate even where it has very severe consequences for children...'

In conclusion, it is essential that the decision maker has the children's best interests at the forefront of their mind at all times and addresses these issues in a substantive manner.

Appendix 2: Four Gypsy/Traveller appeal cases

These summarised cases are taken from the records of the Directorate for Planning and Environmental Appeals, spanning the years 2009-2014.

(1) Planning appeal reference: **PPA-100-2051**

- Site address: Former Waterworks, Standing Stones, Dyce, Aberdeen, AB21 0HH
- Application for planning permission ref. no. P130119 dated 28 January 2013 refused by notice dated 10 December 2013.
- The development proposed: Partly in retrospect: Proposed change of use to establish two permanent Gypsy/Traveller pitches (with provision for 6 caravans) and associated ancillary units, surfacing, fencing, landscaping and site servicing.
- Date of appeal decision: 12 May 2014

Decision

The appeal was allowed and conditional planning permission granted.

Summary of reasoning

The planning application was refused on the grounds of inadequate drainage and a lack of facilities, the council making reference to policies H2 and H6 of the Aberdeen Local Development Plan 2012 (ALDP). Policy H2 relates to

Appendix 2: Four Gypsy/Traveller appeal cases

development or changes of use within Mixed Use Areas. Policy H6 indicates that sites for Gypsies and Travellers should provide a residential environment and will be supported, in principle, subject to certain criteria being met.

The appeal site is located immediately to the west of Kirkhill Industrial Estate. The site lies outwith the area designated for business and industry (BI1) on the City Wide Proposals Map in the ALDP and within the area designated as Greenbelt (NE2). The Reporter did not consider, therefore, that policy H2 of the ALDP was directly relevant to the consideration of the proposal.

The site was formerly used as a water pumping station, cleared of buildings and structures in 2008. It is bounded to the north and west by woodland and by agricultural land to the south. It was the subject of a proposal for a single dwelling house in 2010, planning permission for which was refused on the grounds of contravention with green belt policy and close proximity to existing industrial uses. A subsequent appeal (PPA-100-2025) was dismissed in March 2011 on the grounds that the proposal contravened green belt policy and that other material considerations did not justify an exception to this policy. The appellant subsequently purchased the site and has occupied it since around October 2012.

The Reporter's site inspection confirmed that the site was occupied by one chalet and three auxiliary caravans. A utility unit providing toilet, shower etc. had been erected, served by a septic tank and soakaway. The site is surrounded by a boundary wall and a fence had been erected on top of the wall in parts. The site had also been surfaced in gravel with some shrub planting round the periphery. The proposed layout was for two main pitches comprising a principal chalet/caravan, each with a utility unit and two auxiliary caravans (a total of six caravans). The layout plan also included an additional touring or visitor caravan stance and a total of four vehicle parking spaces.

Appendix 2: Four Gypsy/Traveller appeal cases

No reference was made in the decision notice to the site's location in the green belt or to the applicability of green belt policy. Policy NE2 of the ALDP restricts new development to certain uses and makes no mention of Gypsy/Traveller sites. However, the Reporter noted that national policy in SPP potentially allows for otherwise non-compliant uses, subject to need and the unavailability of other sites. The officer's report on the proposal submitted to the Planning Development Management Committee suggested that both these tests were met, but the council argued that the shortage of pitches in Aberdeen did not justify a departure from the ALDP. Whilst the council accepted that there was a pitch shortage for Gypsy/Travellers in Aberdeen, they considered that a matter for the Local Development Plan and not for an appeal. The Reporter considered the main point here to be that the proposed development did not come within any of the categories of development permitted by policy NE2.

The appellants considered that paragraph 3.48 of the ALDP and policy H6 provided a clear policy basis for the assessment and determination of individual sites, including the scope for justified exceptions to established policy. Paragraph 3.48 of the ALDP related to the outcome of a study of accommodation needs for Gypsies and Travellers in the Grampian area. This report recommended the development of 1-2 small informal sites and the provision of privately developed sites. Policy H6 of the ALDP and the SPG on Gypsy and Travellers sites seek to deliver such sites. The Reporter considered the proposal to be consistent with the objectives of paragraph 3.48 and the aims of the related SPG approved in January 2013. It was noted that the council's Local Housing Strategy Service welcomed the proposed development as it would alleviate pressure on current Gypsy/Traveller provision.

Appendix 2: Four Gypsy/Traveller appeal cases

In considering the provisions of policy H6 of the ALDP, the Reporter stated that the main issues to consider were whether:

- adequate access was available to local services and schools
- the development could be made compatible with the character and appearance of the surrounding area
- the development made provision for essential infrastructure such as water, sewage disposal and electricity
- the site will be properly managed.

The Reporter found no fundamental road safety objections to the proposed development, and that the availability of public transport was adequate for the type of development proposed. It was noted that many new residential developments in the countryside are more remote from public transport and also that the site was more accessible by public transport to community facilities than other Gypsy/Traveller sites in the area.

The site comprised a brownfield site bounded by a wall and bordered by woodland. Some soft landscaping has been undertaken and further landscaping/planting within the site would be possible. The Reporter determined that the proposed development would have limited landscape and visual impact on the surrounding area.

SEPA objected in principle to the use of private foul drainage and surface water systems on the grounds that the proposal did not comply with its policy and guidance for new developments within or close to the settlement boundary, identified in local plans, to connect to the public sewerage system. The appellant's 'Drainage Recommendation Report' identified the nearest main sewer connection on the other side of the industrial site but the landowner was unwilling to allow such a connection. An alternative route approximately 1km in length was not considered financially viable. Percolation tests on the site showed that a sub-surface soakaway system

Appendix 2: Four Gypsy/Traveller appeal cases

had in fact been constructed to meet the requisite standards set out in the Building (Scotland) Regulations 2004. Policy NE6 of the ALDP allows for private foul drainage systems for individual properties outwith the public sewerage area, and connection to the public sewer is only a pre-requisite of significant development. Accordingly, the Reporter concluded that the proposed private foul drainage system complied with policy NE6. Furthermore, the appellant's 'Drainage Recommendation Report' had set out how flood risk would be met by a soakaway system, and the Reporter was satisfied that the council's fears regarding flooding were unfounded.

The Reporter felt that there was no reason to believe that the site would not be managed properly, with development having been undertaken competently and the site acceptably maintained.

Policy H6 also requires sites for Gypsies and Travellers to provide a residential environment. In this respect, concerns had been raised about the proximity of the adjoining industrial estate and Aberdeen Airport and to the high levels of noise. The appellants were satisfied that noises had not impacted their habitation and that it was actually less noticeable than that experienced at a previous site. The Reporter was satisfied that noise levels experienced at the site are not incomparable with levels experienced in other residential locations in the area.

The Reporter noted that the council's SPG on Gypsy and Travellers sites states that 'Sites should not be identified for Gypsy and Traveller use in locations that are inappropriate for ordinary residential dwellings, unless exceptional circumstances apply'. The officer's report on the proposal that was submitted to the Planning Development Management Committee considered that the identified need and unavailability of alternative sites constituted exceptional circumstances in this case.

Appendix 2: Four Gypsy/Traveller appeal cases

The Reporter concluded that the proposal complied with policy H6 in the ALDP. While it did not accord with policy NE2 (Green Belt), it was argued that granting planning permission was still justified by the proposal's compliance with SPP, with policy H6, and with the associated SPG. The Reporter was also content with the proposed drainage arrangements. Permission was granted on condition that foul drainage and SUDS schemes be submitted for approval, along with plans for boundary treatment and landscaping.

(2) Planning appeal reference: **PPA-300-2011**

- Site address: Land at Doohill, Easter Coxton, Elgin, Moray IV30 8QR
- Application for planning permission (partly retrospective) ref. 10/00503/APP dated 23 March 2010 refused by notice dated 10 March 2011
- The development proposed: Change of use to 6 permanent gypsy traveller pitches and associated works
- Date of appeal decision: 28 July 2011

Decision

The appeal was dismissed and planning permission refused.

Appendix 2: Four Gypsy/Traveller appeal cases

Summary of reasoning

The Reporter noted that the Moray Structure Plan policies 1(e) and 2(e) and Moray Local Plan policy IMP1 aim to encourage low impact well-designed development in the countryside to support local communities and to protect the Elgin 'Countryside around Towns' designation from inappropriate development. Local plan policy E10 stipulates the type of acceptable development within the 'Countryside around Towns' area, aiming to protect the area's special character and preserving the distinction between town and countryside.

The character of the surrounding area comprises open fields of rolling farmland and woodland/forestry interspersed with single/small groups of houses and farmsteads. Local plan policy IMP1 states that new development should be sensitively sited, designed and serviced appropriate to the amenity of the surrounding area, and that the scale, density and character of the development must also be appropriate to the area.

The appeal site has a partial screening of trees against the B9103 road. Pitches for touring caravans/trailers would be accompanied by single storey chalets and utility rooms for toilets and laundries. Individual pitches would be protected by fencing and walls.

The Reporter felt that although works had not been completed, the removal of trees and the cluster of ancillary buildings, access and parking arrangements made the site appear intrusive in the landscape, particularly from the public road to the southeast. Screening fencing would itself appear intrusive, and hedging or trees would take a considerable period to become effective. It was also noted that activity on the site would deviate from and contrast with the established agricultural character of the area. It was felt that the development had, and would continue to have a negative impact on that undeveloped character, contrary to structure plan policies 1(e) and 2(e), and local plan policies E10 and IMP1.

Appendix 2: Four Gypsy/Traveller appeal cases

The Reporter was also concerned about the cumulative impact on the character and appearance of the landscape that could result from the precedent the development could set. It was argued that the council would find it very difficult to defend the landscape character and appearance against sprawl and the coalescence of developments because the parameters of acceptability would have been diluted or undefined.

The Reporter assessed Local Plan policies H11 and H12, which deal with Residential Caravans and Sites and Travelling Persons' Sites respectively. Policy H11 refers to the needs of travelling people but restricts caravan development to cover emergency situations or for temporary use only. Policy H12 requires the council to identify sites, which will be considered in the context of the applicable policies; it does not deal with evaluating sites or the circumstances of this appeal. The Reporter argued that neither policy dealt effectively with proposals for Gypsies /Travellers who wish to set up a permanent residential site on their own land and that the provision of only council owned sites would place an unreasonable restriction on the form of housing tenure. In any event, the council has no permanent sites available. The Reporter concluded that despite this policy vacuum, the lack of supplementary guidance, and the lack of council approved sites, the proposal would be an unacceptable departure from the development plan policies.

In considering other material considerations, *SPP* was taken to place the onus on the Local Authorities for the provision of suitable sites, whether council controlled or private, but it says nothing about unauthorised developments. The *Guidance Notes on Site Provision for Travelling People* (1997) suggest that proposals should be 'sympathetically considered' and accepts that the result of the site selection process may lead to sites that are 'the least unacceptable' to the settled community. It was argued that Local Plan policy H12 went only some way to meeting the national policy but the lack of council provision does not necessarily over-ride other policy considerations. The *Ninth and Final Report of the Advisory Committee on Scottish Travelling People* (2000) makes

Appendix 2: Four Gypsy/Traveller appeal cases

a number of recommendations, including councils' obligations on methods of dealing with unauthorised encampments, but again, does not deal with unauthorised developments. The Scottish Government's *Guidelines for Managing Unauthorised Camping by Gypsies/Travellers in Scotland* (2004) was seen to add little to the policy vacuum within the development plan. The main thrust of *Planning for Gypsy and Traveller Caravan Sites* (ODPM publication 2006) is geared towards planning for sites rather than dealing retrospectively with unauthorised developments. Its advice was not directly applicable in Scotland although it provides useful information about good practice. The Reporter felt that the council's approach to this development accords with that general principle.

The Reporter acknowledged the lack of a council approved local site, or adequate policies to cover the circumstances of the appellants, but felt that these matters should be considered through the development plan process rather than through individual planning decisions. The Reporter also acknowledged the rights of Gypsy/Travellers to enjoy a private and family life and to have a choice of land tenure. It was however argued that there was no evidence of other rural sites being exhaustively researched or considered. While it was conceded that the site had some benefits, these were felt not to outweigh the harm to the character and appearance of the surrounding countryside.

The Reporter concluded that there is a balance to be struck between the rights of Gypsy/Travellers to enjoy a private and family life, against the need to protect the amenity of the surrounding area and the characteristics of the local environment. It was felt that in this case the development did not comply with the provisions of the development plan, and the material considerations were not sufficient to outweigh that finding; therefore planning permission was refused.

Appendix 2: Four Gypsy/Traveller appeal cases

(3) Planning appeal reference: **P/PPA/150/70**

- Site address: land at Gartlove Farm, Forestmill, Clackmannanshire FK10 3PZ
- Application for planning permission 08/00249/FULL dated 22 August 2008 refused by notice dated 13 November 2008
- The development proposed: change of use to establish private permanent gypsy/traveller household pitch
- Date of appeal decision: 1 April 2009

Decision

The appeal was allowed and conditional planning permission granted. This permission was both temporary (5 years) and restricted to the appellant and her immediate family.

Summary of reasoning

The Reporter stated that the determining issues were whether the loss of industrial or employment land was acceptable, and whether any perceived deficiency in development plan provision for the needs of Gypsy/Travellers should assume overriding importance. It was also noted that the appellants' rights under the European Convention on Human Rights and associated legislation, in particular to have respected their right to family life, should be considered.

Appendix 2: Four Gypsy/Traveller appeal cases

The Reporter accepted that the development plan provisions pointed towards maintaining the planned industrial use of the land rather than to sanction the change of use proposed. However, it was argued that there was no evidence that the industrial land supply was so critical that the loss of the land involved in the appeal would be significant. The Reporter was confident that, were there currently any shortage of industrial land, the relevant data would be available and would have been drawn to their attention.

The Reporter rejected the argument that the proposed change of use would have an adverse impact on the operation and development of neighbouring businesses, primarily because there is an existing Gypsy/Traveller site in the vicinity of the industrial estate, with no discernible negative impact. Road safety concerns were similarly rejected on the grounds that such problems would have already become apparent.

The Reporter determined that the needs of Gypsy/Travellers were not well accommodated in terms of the extant development plan, nor in the local housing strategy, which were both effectively silent on such matters. Furthermore, the local planning authority had nothing complementary to the development plan in the way of policy or practice for evaluating the issues generated by applications such as that being appealed.

The Reporter acknowledged the Scottish Government's Guidance Notes on Site Provision for Travelling People (1997) as a material consideration, and accepted that the European Convention on Human Rights requirement that the appellants' right to family life to be respected, and that that this was a material consideration. The Reporter also highlighted the decision of the English Court of Appeal in *Secretary of State and Others vs. Chichester Borough Council* (2004) EWCA Civ 1248, which considered sound a planning inspector's taking into account the local planning authority's failure to implement national planning guidelines on the provision of private Gypsy sites when determining questions about the future use of such private sites which had been occupied without prior planning permission.

Appendix 2: Four Gypsy/Traveller appeal cases

The Reporter concluded that while the proposal was in conflict with the development plan, the other material considerations were sufficient to outweigh this. Temporary permission was granted, during which time it was argued the planning authority should be able to devise and include in the relevant development plan appropriate policies for assessing private Gypsy/Traveller sites, including any application to renew the permission in question. The condition restricting occupancy was based on the appellants' personal issues and potential hardship rather than any measured wider need for Gypsy/Travellers' pitches at that location.

(4) Planning appeal reference: **P/PPA/250/838** and Enforcement Notice appeal reference: **P/ENA/250/107**

- Site address: Yard 2A, Cartmore Industrial Estate, Lochgelly, Fife, KY5 8LL
- The development proposed: Use of Class 5 industrial land as a permanent site for travelling persons
- The alleged breach of planning control: The above change of use (with two caravans, a toilet block, boundary fences and surfacing) without planning permission
- Date of appeal decisions: 25 March 2009

Decisions

Both appeals were allowed, with the enforcement notice quashed and conditional planning permission granted. This permission was both temporary (5 years) and restricted to the appellant and her immediate family.

Appendix 2: Four Gypsy/Traveller appeal cases

Summary of reasoning

The Reporter identified the most relevant policies from the Fife Structure Plan 2002 as SS1, H6 and T1. The first of these sets out the council's approach to the development strategy for settlements, directing development to appropriate sites identified in local plans. The second policy presumes against proposals which would result in the housing land requirement being exceeded, but allows for exceptional cases such as brownfield development, even special needs housing on greenfield sites. The third of these policies supports development which is sufficiently accessible by transport modes other than the private car, where there is sufficient road capacity and where road safety would not be prejudiced.

Additionally, the most relevant policies in the Cowdenbeath Area Local Plan were BE2, BUS1, BUS3 and T1. The first only supports development within settlements which conforms to the local policy coverage. The next two allocate the industrial estate in question in response to demand from local businesses. Finally, policy T1 in briefest summary requires new development to be safely accessed by foot or cycle, in particular with safe routes to schools and public transport nodes.

Other material considerations are listed as: (i) the balance of the policy background, (ii) the alternative long and short-term futures of the site, (iii) the scope for conflicts of use, (iv) the characteristics of the present and likely traffic mix, and (v) the fundamental rights of the appellant and family as members of the Gypsy/Traveller community.

The Reporter reasons that as the Cartmore Industrial Estate was laid out specifically for industrial and business uses, residential occupation would be at odds with those business allocation policies covering the site. In addition policy T1 in each plan is a source of conflict given the likely mix of domestic and industrial traffic, and the

Appendix 2: Four Gypsy/Traveller appeal cases

resultant long term prejudice to pedestrian safety. While the Reporter acknowledges that the Council's position with regard to these points is generally sound, they consider the lack of any development plan policy which accommodates the possibility of Gypsy/Traveller sites in the local plan area to greatly reduce the weight which can be attached to that area of conflict.

The Reporter considered the difficult economic circumstances of the time to limit any potential harm to strategic employment land posed by the appeal proposal, and that in any case the policy safeguarding such land did not prevent a temporary solution to the needs of the appellant and family being reached.

The Reporter also recognised other policy and guidance which was of relevance, including *SPP* and the *9th Term Report of the Advisory Committee on Scotland's Travelling People*, the latter having carried weight with the council in previous applications in the absence of relevant development plan policies.

The Reporter noted that the council had simultaneously been of the opinion that there was no evidence that additional provision was required and that their investigation of that situation was ongoing, and that it was currently looking for a number of temporary sites. These positions were seen to be contradictory.

The industrial site was described as being characterised by little activity and a number of vacant units. As such, the potential to compromise the employment land status of the site and the risks posed by traffic were considered to have been minimised. It was argued that a temporary permission would allow the level of demand and activity to be reviewed at a later point.

The Reporter highlighted the importance of human rights, in particular the right to a private and family life in Article 8 of the European Convention of Human Rights. They also recognised that the failure of the appeals would cause a degree of personal hardship.

Appendix 2: Four Gypsy/Traveller appeal cases

In conclusion, while the Reporter acknowledged that the development was at odds with the development plan, this fact was of limited weight since that development plan made little provision for the accommodation needs of Gypsy/Travellers. Such conflict as arises was fully overpowered by other material considerations which justified a temporary and personal planning permission.

Appendix 3: Wiltshire Council's Human Rights Questionnaire

You are asked to provide the following information, to enable any and all claims you may wish to make under Human Rights legislation to be fully considered by this Local Planning Authority when determining either your planning application, and/or whether or not to commence any enforcement action/injunctive or other proceedings.

I would recommend that you seek independent professional advice from either a solicitor or experienced planning agent before acting upon this request. You do not have to provide this information, although this is your opportunity to put forward to the Council any information you would wish to be taken into consideration.

This information will only be used for the above purpose, although it must be available for public inspection on any planning application file, and may also be referred to in any report that may be made to Committee, which would also be available to the public.

Should you have any information of a confidential nature, such as personal medical information, that you would not wish to be made public, I would ask that you so indicate on this questionnaire, and submit the information on a separate sheet. That information will be dealt with in the strictest confidence.

Any information provided may be the subject of enquiries to verify.

- 1. Please state full names and dates of birth of all adults and children occupying this site. (Use separate sheet of paper if necessary)*
- 2. Please state the names of the current school, or nursery, attended by each child named above, the date they first attended the school/nursery, together with a contact name, and telephone number if known, at each school or nursery.*

Appendix 3: Wiltshire Council's Human Rights Questionnaire

3. *Are you in contact with the Gypsy/Traveller Education Service?*

Yes/No. If yes, please give a contact name and telephone number if known.

4. *Please provide the names and addresses of any previous schools/nursery attended, by any above named child, including dates attended.*

5. *Please give details of any special educational needs of any child named above, and details of the related tuition in respect of these needs.*

6. *Who owns the land on which you are currently living? (Include address and telephone number if known of any owner).*

7. *What date did you take up occupation of this site?*

8. *Why did you decide to occupy this site?*

9. *Where were you living/staying immediately prior to taking up occupation of this site? Give address, dates of occupation, and reason for leaving this site.*

10. *Give addresses of, dates of occupation, and reasons for leaving all previous sites where you have lived/stayed in past 5 years.*

11. *Have you applied to reside on any Council owned site?*

Yes/No. If yes, please give names and address of site, and the name and telephone number of any Council official with whom you have had contact about this.

Appendix 3: Wiltshire Council's Human Rights Questionnaire

12. *Have you made any other enquiries about alternative sites?*

Yes/No. If yes, please give details of where and when.

13. *How long do you intend to remain on this site?*

14. *If you are required to vacate this site, where will you relocate your caravans/family?*

15. *Do you have any family association with other persons in this locality? (i.e. in this Council area, or adjoining Council area).*

Yes/No. If yes, please give names, family relationships, and addresses of any such person.

16. *How many mobile homes, and/or caravans, (including touring caravans) do you have on this site?*

17. *How many motor vehicles, including cars, vans and lorries do you have on this site?*

18. *Please provide name and address of any Doctor with whom you or any other member of your family are registered.*

19. *Please provide details of any medical condition, which either you or any member of your family, is currently being treated for, including any pregnancy of a female occupant.*

20. *Please provide names and address of any hospital that you or any member of your family is currently attending.*

21. *If necessary would you give your consent to contact either the above Doctor or hospital to verify the information you have provided?*

Yes/No.

Appendix 3: Wiltshire Council's Human Rights Questionnaire

22. *Do you claim Gypsy status? (Because you claim a nomadic way of life?)*

Yes/No. If yes, please give details of your claim.

23. *What is the nature of your employment, and that of any other adult named above? (Give name and address of any employer).*

24. *Please provide any other information you would wish to be considered.*

Signed:

Dated:

Useful Contacts

PAS

3rd floor, 125 Princes Street
Edinburgh
EH2 4AD

Planning advice: 0845 603 7602

Email: office@pas.org.uk

Website: www.pas.org.uk

Other organisations who work with Gypsy/Travellers

Article 12 in Scotland

PO Box 7182
Montrose
DD10 9WW

Phone: 01674 674086

Email: respond@article12.org

Website: www.article12.org

MECOPP

172 Leith Walk
Edinburgh
EH6 5EA

Phone: 0131 467 2994

Email: info@mecopp.org.uk

Website: www.mecopp.org.uk