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**PPTS August 2015 – Potential Implications for GTAA's**

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**Gypsy and Traveller Accommodation Assessments****ORS Briefing on the Implications of Changes to Planning Policy for Traveller Sites****August 2015**

*Please note that these are the current views of ORS on the implications of the changes to PPTS and clarification has not yet been sought from DCLG on our interpretation of the potential changes to the definition of Gypsies, Travellers and Travelling Showpeople in relation to undertaking GTAA's.*

**Background**

The recent changes to PPTS that were published on 31<sup>st</sup> August will now require a GTAA to determine whether households living on sites, encampments and in bricks and mortar fall within the new definition of a Gypsy, Traveller or Travelling Showperson. Only if they fall within the new definition will their housing needs need to be assessed separately from the wider population, as required by the Housing Act (2004).

There are a number of issues that will need to be considered when seeking to apply the new definition and this short briefing covers the views of ORS on these in relation to completing a GTAA.

**Conflicting Definitions of a Traveller**

It is our understanding there are now 3 definitions for a Gypsy, Traveller or Travelling Showperson. The PPTS (2015) definition, the Housing Act (2004) definition, and the Equality Act (2010) definition (which only applies only to Romany and Irish Travellers as an ethnic group).

In their response to the consultation on Planning and Travellers DCLG stated that *the Government will, when parliamentary time allows, seek to amend primary legislation to clarify the duties of local authorities to plan for the housing needs of their residents.* This should bring the Housing Act definition in line with the PPTS definition.

The key issue is that there will be Romany and Irish Travellers who no longer travel so will not fall under the Planning or Housing definition, but Council's may still need to meet their needs through the provision of *culturally suitable* housing under the requirements of the Equality Act.

We believe that this will now create a new category of Gypsy, Traveller or Travelling Showperson - *a Non-Travelling Romany or Irish Traveller* - that Council's will need to consider in terms of housing provision. The needs of households that fall within this category *will not necessarily* be assessed in a GTAA and will need to be assessed separately under the NPPF.

**The 'Planning Definition' in PPTS:**

*Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.*

*In determining whether persons are "gypsies and travellers" for the purposes of this planning policy, consideration should be given to the following issues amongst other relevant matters:*

- a) Whether they previously led a nomadic habit of life*

b) *The reasons for ceasing their nomadic habit of life*

c) *Whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances.*

### **The ‘Housing Definition’ in the Housing Act 2004**

Section 225: *Every local housing authority must, when undertaking a review of housing needs in their district under section 8 of the Housing Act 1985 (c. 68), carry out an assessment of the accommodation needs of gypsies and travellers residing in or resorting to their district...gypsies and travellers has the meaning given by regulations made by the appropriate national authority.*

The definition of Gypsies and Travellers as referred to at Section 225 of the Act is that set out for the purposes of planning by the Secretary of State for Communities and Local Government.

Therefore the definition of ‘gypsies and travellers’ for this purpose is specified in ‘The Housing (Assessment of Accommodation Needs) (Meaning of Gypsies and Travellers) (England) Regulations 2006’ (Statutory Instrument: 2006 No. 3190).

*The following definition of “gypsies and travellers” should now be used:*

*(a) persons with a cultural tradition of nomadism or living in a caravan; and*

*(b) all other persons of a nomadic habit of life, whatever their race or origin, including:*

*(i) such persons who, on grounds only of their own or their family’s or dependant’s educational or health needs or old age, have ceased to travel temporarily or permanently; and*

*(ii) members of an organised group of travelling showpeople or circus people (whether or not travelling together as such).*

### **The ‘Equality Act’ 2010 Definition**

*The courts have determined that Romany Gypsies and Irish Travellers are protected against race discrimination because they are included under the Protected Characteristics as an ethnic group. Culturally suitable housing should be provided for this group.*

### **Definition of Travelling**

One of the most questions that GTAAAs will need to address in terms of applying the new definition is *what constitutes travelling?* This has been determined through case law that has tested the meaning of the term ‘nomadic’.

R v South Hams District Council (1994) – defined Gypsies as “*persons who wander or travel for the purpose of making or seeking their livelihood (not persons who travel from place to place without any connection between their movements and their means of livelihood.)*” This includes ‘born’ Gypsies and Travellers as well as ‘elective’ Travellers such as New Age Travellers.

In Maidstone BC v Secretary of State for the Environment and Dunn (2006), it was held that a Romany Gypsy who bred horses and travelled to horse fairs at Appleby, Stow-in-the-Wold and the New Forest, where he bought and sold horses, and who remained away from his permanent site for up to two

months of the year, at least partly in connection with this traditional Gypsy activity, was entitled to be accorded Gypsy status.

In *Greenwich LBC v Powell* (1989), Lord Bridge of Harwich stated that a person could be a statutory Gypsy if he led a nomadic way of life *only seasonally*.

The definition was widened further by the decision in *R v Shropshire CC ex p Bungay* (1990). The case concerned a Gypsy family that had not travelled for some 15 years in order to care for its elderly and infirm parents. An aggrieved resident living in the area of the family's recently approved Gypsy site sought judicial review of the local authority's decision to accept that the family had retained their Gypsy status even though they had not travelled for some considerable time. Dismissing the claim, the judge held that a person could remain a Gypsy even if he or she did not travel, provided that their nomadism was held in abeyance and not abandoned.

That point was revisited in the case of *Hearne v National Assembly for Wales* (1999), where a traditional Gypsy was held not to be a Gypsy for the purposes of planning law as he had stated that he intended to abandon his nomadic habit of life, lived in a permanent dwelling and was taking a course that led to permanent employment.

It is our understanding that the implication of these rulings in terms of applying the new definition is that it will include those who travel but also have a permanent site or place of residence, but that it will not include those who travel for purposes other than work – such as visiting horse fairs and visiting friends or relatives. It will in our view not cover those who commute to work daily from a permanent place of residence.

It will also be the case in our view that a household where some family members travel for nomadic purposes on a regular basis, but where other family members stay at home to look after children in education, or other dependents with health problems etc. the household unit would be defined as travelling under the new definition.

Households will also fall under the new definition if they can demonstrate that they have ceased to travel temporarily as a result of their own or their family's or dependants' educational or health needs or old age. In order to have ceased to travel temporarily these households will need to demonstrate that they have travelled in the past. In addition households may also have to demonstrate that they plan to travel again in the future. These issues are covered later in this briefing.

### **Changes to Fieldwork Requirements**

In determining whether households fall within the new definition it is important that GTAA fieldwork is undertaken in a robust and inclusive manner, with efforts made to speak with households living on *all pitches and plots* in any given local authority area. Attempts to speak with every household is likely to increase the costs of site fieldwork but it is felt that robust and defensible evidence on household travelling characteristics can only be obtained by speaking with a member from each family directly. If this does not happen the determination of whether a household falls within the new definition is likely to be challenged.

Interviewers will need to follow an approach similar to what is being advocated by Welsh Government in their recent GTAA Guidance which requires interviewers to make a minimum of 3 attempts to complete a successful household interview before seeking information from a third party. The keeping of an Interview Log to record dates and times of unsuccessful visits, and reasons for a refusal to be interviewed is also recommended.

### **Qualifying Questions and Evidence to Support Travelling Status**

A series of *qualifying questions* will need to be asked during the more intensive household interviews to determine whether each household will fall under the new definition. There will be a need to ask questions to determine for example:

- » The ethnicity of households;
- » Whether they travel for nomadic purposes as defined by case law;
- » If they do not travel, whether they have travelled for nomadic purposes in the past;
- » Whether they have ceased to travel permanently or temporarily;
- » The reasons why they have ceased to travel temporarily; and
- » Whether and when they plan to resume travelling for nomadic purposes.

The responses to these questions should enable the new planning/housing and ethnicity definitions of Gypsies, Travellers and Travelling Showpeople to be applied to each household in the first instance.

One of the most difficult issues to address will be to evidence households that claim to have *ceased travelling temporarily* as a result of their own or their family's or dependants' educational or health needs or old age. This will need to include evidence that households have travelled in the past.

Example of evidence to support the new definition and households that claim to have ceased to travel temporarily could include:

- » Details of previous travelling by the applicant or by family members for the purpose of work could include originals or copies of family photographs.
- » Evidence to support household members ceasing to travel temporarily could include letters or reports from GPs or consultants; and Letters from head teachers and/or Traveller Education Officers.
- » Evidence to support not being able to travel due to a lack of sites or transit provision could include details of attempts to find alternative sites, including, for example, letters to local estate agents and evidence of enquiries to local authorities.
- » Evidence to support a nomadic way of life for work purposes could include records of work undertaken such as quotes and invoices; receipts for stays on transit sites; and details of enforcement of unauthorised encampments; and details of schools attended and GP registrations whilst away travelling.

The practical implications of this in relation to the fieldwork element of a GTAA will be whether this evidence actually needs to be produced or whether households will simply need to be asked if they would be able to provide evidence if requested at a later date.

### **Applying the Definition**

When the household survey is complete the outcomes from the qualifying questions will need to be used to determine the status of each household on each site. Decisions will need to be made whether it will be for a local authority, a third party undertaking the GTAA, or a combination of both, to make the final determination of whether households fall within the new definition.

It is highly likely that this will result in sites with a mixture of household statuses – even on smaller private family sites. We think that households will fall under one of 4 classifications that will determine whether their housing needs will need to be assessed in the GTAA.

- » Households that travel under the new definition – *Yes*
- » Households that have ceased to travel temporarily under the new definition - *Yes*
- » Households that do not travel under the new definition - *No*
- » Romany or Irish Travellers who do not travel under the new definition - *No*

In practical terms, a current GTAA may have a need for 100 pitches from new household formation over its local plan period. If 50% of these households do not meet the new definition of being a Traveller then it could be argued that the need from new household formation should fall from 100 to 50. However, this assumes that the children of current non-Travelling households will also not travel themselves in the future and will not have their needs from new household formation met. This is going to be very difficult to evidence in practice.

This also raises the question of who is responsible for assessing the needs of the 50 households who have been removed from the assessment of need in the GTAA. The Equalities Act requires that *Romany and Irish Travellers* are provided with *culturally sensitive* accommodation. It may therefore be that the GTAA will exclude 50 households on the grounds that they no longer meet the planning/housing definition of being Travellers, but the requirements of the Equalities Act mean that these households' ethnic status will still lead to the need to provide caravan pitches. These may be on park home sites rather than Gypsy and Traveller sites.

In practice it may be that the new definition has a very large impact on a small number of planning applications where households who no longer travel will not be deemed Travellers. However, for the existing population and sites it is unlikely the effect will be as dramatic as being envisaged. Given that the majority of Councils do not have 5 year land supplies for either housing or Gypsy and Traveller sites, it may simply be that planning applications are moved from being for Gypsy and Traveller sites to being for park home sites – using case law established by *Wenman v Secretary of State* Judgement and subsequent changes made to Paragraphs 49 and 159 in the NPPF in July 2015.

### **Paragraph 49**

*From today, those persons who fall within the definition of 'traveller' under the Planning Policy for Traveller Sites, cannot rely on the lack of a five year supply of deliverable housing sites under the National Planning Policy Framework to show that relevant policies for the supply of housing are not up to date. Such persons should have the lack of a five year supply of deliverable traveller sites considered in accordance with Planning Policy for Traveller Sites.*

**Paragraph 159**

*Planning Policy for Traveller Sites sets out how 'travellers' (as defined in Annex A of that document) accommodation needs should also be assessed. Those who do not fall under that definition should have their accommodation needs addressed under the provisions of the National Planning Policy Framework.*

**Conclusions**

As a result of the changes to PPTS ORS have identified that there are a number of key points that local authorities need to be aware of in relation to their GTAA:

- » It is unclear at the present time whether the changes will be applied retrospectively to GTAA's that have already been published and have been through a Local Plan Examination – however they will need to be taken into consideration when dealing with new planning applications and appeals. This will impact on the identification of a 5 year supply of deliverable Traveller sites as the level of need will be unknown without applying the definition to all households.
- » In the majority of cases it may be necessary to undertake new site fieldwork to gather up-to-date and robust information from each household on their travelling characteristics in order for the new definition to be properly applied for the purpose of assessing household need.
- » The definition of a *Traveller* and what constitutes *Travelling* appear to be clearly set out in case law. What local authorities will need to consider how to robustly apply the outcomes of the qualifying questions when determining whether a household has ceased to travel temporarily?
- » It is difficult at this stage to consider the future needs (new household formation) of the children of current non-travelling households as it will be very hard to evidence whether or not they will travel themselves in the future.
- » In short this will not reduce the number of households seeking to live on sites in caravans. Local authorities will still need to consider how to address the housing needs of Romany and Irish Travellers who do not travel but fall under the requirements of the Equality Act. For the remainder of those households who do not fall under the new definition local authorities will still need to consider how they should have their accommodation needs addressed under the provisions of the National Planning Policy Framework. These will most likely need to be met on park home sites as opposed to Traveller sites.
- » It is also important to note that the definition will need to be applied in a consistent manner to households living in caravans on sites and encampments, and for those living in bricks and mortar, as there is nothing in the definition that states that a household needs to live in a caravan or other mobile structure.
- » There are also likely to be practical implications in the reporting of GTAA's as the assessment will now need to be on a pitch-by-pitch basis, and may involve the publication of sensitive and personal information that may lead to issues with data protection requirements.