TCBGC - Gypsies and Travellers Policy Position Note

On the 15 January 2024 the Councils received the following request from the Inspector:

- **Regarding gypsy and travellers, has the Council considered the following judgement: Lisa Smith v SSLUHC [2022] EWCA Civ 1391 dated 31st October 2022, which is a judgement regarding the interpretation of the Planning Policy for Traveller Sites (PPTS) and the application of that policy to gypsies and travellers who have ceased to pursue nomadic lifestyles. In light of this Judgement does the Council consider if it is necessary to review their assessment of Traveller site needs?**

The case hinges on the change of the definition of 'gypsies and travellers' given in Annex 1 of the PPTS 2015. The definition was changed to exclude those who had inter alia permanently ceased travelling as a result of disability or old age (the "relevant exclusion").

It differs from the definition in the 2012 version as follows:

> *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 ~~or permanently~~, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.*

Following the judgment in the Court of Appeal in the case of Smith v SSLUHC & Ors, the government has reverted to the definition of Gypsies and Travellers used in the PPTS to that adopted in 2012, with this change applying from 19 December 2023, for plan and decision making. Notwithstanding this, para.230 of the revised NPPF deals with the transitional arrangements for the purposes of examining plans which states:

> *230. The policies in this Framework (published on 19 December 2023) will apply for the purpose of examining plans, where those plans reach regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (pre-submission) stage after 19 March 2024. Plans that reach pre-submission consultation on or before this date will be examined under the relevant previous version of the Framework in accordance with the above arrangements.*

CCC Section 2 Policy Summary and Background

The Colchester Gypsy and Traveller Accommodation Assessment (CGTAA) acknowledges the revised definition in section 1 of the assessment and identified the need for 2 additional pitches over the CGTAA period to 2033. Section 5.12 of the CGTAA went on to consider Gypsies and Travellers that did not meet the revised planning definition in an acknowledgement that the Council will still need to ensure arrangements are in place to properly address these needs, and the additional need was identified as being 13 pitches.

The Colchester Section 2 Plan identifies the overall need for 15 pitches, despite the change in definition only identifying a statutory need for two pitches over the Plan period. Although no direct site allocations are made in Section 2 for gypsies, travellers and travelling show people, policy DM11 does identify that an existing site at Severalls Lane can accommodate an additional 6 pitches, with the remainder met through strategic sites and allocations within the Garden Community.

TDC Section 2 Policy Summary and Background

The Tendring Gypsy and Traveller Accommodation Assessment (TGTAA) May 2017 acknowledges the revised definition in section 1 of the assessment and identified the need for 2 additional pitches over

the TGTAA period to 2033. Section 5.15 of the TGTAA went on to consider Gypsies and Travellers that did not meet the revised planning definition in an acknowledgement that the Council will still need to ensure arrangements are in place to properly address these needs, and the additional need was identified as being 3 pitches.

The Tendring Section 2 Plan identifies the overall need for 5 pitches, despite the change in definition only identifying a statutory need for two pitches over the Plan period. Policy LP9 identifies that this need can be met in full through sites that have already obtained planning permission and therefore did not allocate any specific sites for this purpose, and that that further longer-term provision will be met as part of the Garden Community.

DPD Submission Version - Extract from Policy GC1

> Part I: Provision for Gypsies and Travellers
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> A new site for the accommodation of Gypsies and Travellers will be delivered within the 'North Neighbourhood' to the south of the A120 and west of the new A120-A133 Link Road. A broad location is identified on the 'Policies Map'. The site will accommodate **18 pitches** which will count equally (nine pitches respectively) towards Tendring and Colchester Councils' projected need for such accommodation and will form an integral part of the wider Garden Community. The location and size of the site will be informed by the 'Strategic Masterplan' and subsequent Masterplans prepared by the developer, and shall be detailed as part of a relevant planning application.
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> The Gypsy and Traveller site will come forward in response to need.

DPD Submission Version - Glossary definition

> Gypsies and Travellers
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> 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" consideration will 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.

Conclusion

It follows that the Councils' assessment and need within both the Section 2 Plans and the DPD Submission Version allocation was based on the wider definition set out in the 2012 PPTS and includes those who have permanently stopped travelling.

On this basis, the Councils do not consider it necessary to review the CGTAA and TGTAA.

Whilst the Councils do not consider it necessary to review their assessment of Traveller need, to reflect the outcome of the judgement and the 19 December 2023 Government update to the PPTS (notwithstanding the transitional NPPF arrangements), the Councils consider that a change to the DPD Glossary definition within the Plan would be appropriate as follows:

> Gypsies and Travellers

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 *or permanently*, 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" consideration will 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.