

York Travellers Trust

Hearing Statement

Matter 1 - Provision for Gypsies and Travellers

February 2024

A. Introduction

1. This Hearing Statement builds on and should be read alongside previous submissions on behalf of York Travellers Trust ('YTT'), including our response to the Main Modifications Consultation ('MMC')¹ in March 2023 and 'Annex A'.² Reference is made to further hearing statements and consultation responses as appropriate.

2. Without relevant and effective modifications to overcome the known constraints of the draft Green Belt, the Local Plan will fail to meet the overarching objectives of sustainable development and is not sound.

3. The Councils search for suitable sites has been undermined by the inappropriate application of the 'exceptional circumstances' test to the task of defining the Green Belt boundaries for the first time. The Plan makes no suitable allocations, and provides no 'rolling supply.'

4. We will propose policy modifications to guide a new 'site selection process' to identify sufficient land to meet need for the first 5 years of the plan, and sustainably thereafter.

5. Subject to these modifications and the agreement of a clear timetable for the identification of land, we would invite the Inspectors to provide a partial report, indicating that the Plan is sound as far as its wider Policies are concerned and to recommend that they are given significant weight in planning decisions, pending the adoption of the Plan when specific allocations for Traveller sites have been made.

B. YTT's Answers to the Inspectors' Questions

Q1.1 How does the recent change to the planning definition of 'Gypsies and Travellers' affect the structure and precise wording of draft Policy H5?

6. The Council declined to update the GTANA following *Lisa Smith*³ on the basis that the Local Plan would treat those Gypsies and Travellers who do and those who do not meet the PPTS definition in the same way.⁴ The total assessed need for these groups over the first 5 years of the Plan was for 23 pitches. Land was removed from the Green Belt to ensure sufficient space was available to deliver 17 of those pitches at Osbaldwick.

7. In the context of serious questions about the suitability of that site for expansion, the Council now seeks to rely on the PPTS (2015) definition to discharge its obligations toward those who have ceased travelling permanently for reasons of old age; ill health, or education, and thereby reduce the number of allocations required in the first 5 years of the Plan to 10.⁵

¹ <https://www.york.gov.uk/downloads/file/8992/60-mh-planning-obo-york-travellers-trust-redacted>

² <https://www.york.gov.uk/downloads/file/9375/ex-oth-39a-ytt-response-annex-a>

³ December 2022 Doc – response to November letter.

⁴ See paragraphs 7.1 – 7.8 of Annex A, the ...

⁵ Paragraph 2.22 CYC October 2023.

8. The change to the definition in Annex 1 of PPTS (2023) means that the Local Plan must provide a strategy to meet all of the need assessed under the GTANA without discrimination in order to be sound.

9. This requires the Council to identify specific allocations for the first 5 years (equating to at least 26.5 pitches) and a ‘rolling supply’ of land to meet all assessed throughout the Plan period thereafter.

10. The distinction in Policy H5 between those who do and those who do not meet the PPTS definition is contrary to national policy and is discriminatory. It should be deleted.

11. Policy H5(a), which deals with allocations, must identify specific, deliverable sites to provide at least 26.5 pitches.

12. Policy H5(b) must be modified to ensure that provision may be made effectively, and at appropriate times.

Q.1.2 Does draft Policy H5, and the Plan as a whole, make adequate provision for the future needs of Gypsies and Travellers?

13. No.

14. We have discussed the GTANA (2022) in previous submissions,⁶ and will not rehearse our analysis here, other than to confirm our view that Policies SS1 and H5 are based on a significant underestimation of need. An updated needs assessment is required as a matter of urgency.

15. Regardless of the robustness of the GTANA, draft Policy H5 and the Local Plan as a whole fail to make adequate provision for the future needs of Gypsies and Travellers on the Councils own terms.

16. Without specific allocations and relevant policy modifications to overcome the known constraints of the Green Belt, the Plan is incapable of delivering sustainable sites.

17. All parties have been aware of the need to develop an appropriate exception site policy for Traveller sites for some years.⁷⁸ The evidence base confirms that if the Local Plan is to deliver Traveller sites at all, it is inevitable that they will come forward from land which is currently designated Green Belt.⁹

⁶ WHERE??

⁷ Consultation response on Green Belt; Inspectors’ letter December

⁸ See paragraphs 5.3-6.15 of the MM consultation. We set out part of the history of this issue at paragraphs 1.8 – 1.17 of Annex A.

18. The Council's recognition of the 'very special circumstances' that exist across York is expressed clearly in its own planning decision on the expansion of Osbaldwick:¹⁰

*'the shortfall in the number of currently-available pitches, the requirement to identify suitable sites and the difficulty in finding suitable sites within the settlement limit constitute very special circumstances that outweigh harm to the green belt. The principle of extending the site as proposed is therefore acceptable.'*¹¹

19. The purpose of planning policy is to contribute to the achievement of sustainable development. To this end, PPTS requires that *'planning authorities should ensure that Traveller sites are sustainable economically, socially and environmentally'*¹² by implementing *'fair, realistic and inclusive policies'*¹³ which take local circumstances into account¹⁴ to guide development toward the most sustainable locations.

20. Adequacy of provision is defined in terms of the availability of a range of site types and tenures in sustainable locations, with sufficient access to health, educational and social services and facilities.¹⁵

21. National policy requires that: *'When drawing up or reviewing Green Belt boundaries local planning authorities should take account of the need to promote sustainable patterns of development'* and *'ensure consistency with the Local Plan strategy for meeting identified requirements for sustainable development.'*¹⁶

22. Instead, the Council appears to have misapplied the 'exceptional circumstances' test¹⁷ to define the inner Green Belt boundaries for the first time, effectively screening out vast swathes of the area from the search for sustainable sites.¹⁸

23. The Council's proposals of December 2022 brought into relief the manifest failure of the Plan to provide policies that are capable of bringing forward the required land to meet the future needs of Gypsies and Travellers; and the compound harm that would impact on current and future generations as a result.

24. Even if the Osbaldwick site was fit for expansion of the scale proposed over the next 5 years (which we reject); the policy failure that has left no other option for the delivery of sites will persist.

¹⁰

¹¹ Committee Report - https://planningaccess.york.gov.uk/online-applications/files/B44D2584D587A0FCA83DDA07EF203981/pdf/13_02704_GRG3-MAIN_COMMITTEE_REPORT_24.10.13.-1452191.pdf

¹² PPTS paragraph 13.

¹³ PPTS Paragraph 4(g)

¹⁴ Paragraph 10 NPPF

¹⁵ Paragraph 4 PPTS

¹⁶ paragraphs 84 and 85 NPPF, respectively

¹⁷

¹⁸ Including the policies under which planning officers negotiate s106 obligations.

25. The *only* land that this Plan will make available over the whole Plan period is at the site at Osbaldwick.¹⁹

26. In order to achieve the objectives of sustainable development and make provision for sufficient land to develop Traveller sites to meet a range of socio-economic need, the Local Plan will need to include effective policy which reflects and adapts to the particular characteristics of the area to guide development towards the most sustainable locations.

27. The principle of sustainable development proceeds from a recognition that the ability of future generations to meet their own needs is contingent on the needs of the present being met. Ensuring that children are able to access education, health and social services and facilities from secure homes is fundamental to ensuring that they are able to meet their needs in the future. These requirements are reflected in national and international human rights law and are embedded in Policy B PPTS. In any decision where Article 8 ECHR Rights are engaged, the best interests of the children should be a primary consideration.

28.. The first part of Policy H5 is concerned with '*safeguarding existing supply*' and indicates that proposals which '*fail to protect existing Gypsy and Traveller sites will not be permitted.*'

29. The Council concedes in its evidence that the existing provision is not fit for purpose.²⁰ In light of the clear warnings of officers that its expansion will exacerbate existing issues and worsen conditions for existing residents,²¹ any decision to facilitate that expansion will be directly contrary to the objectives of the policy.

30. Suggested amendments to the Policies will be submitted with this statement. We would welcome a request from the Inspectors to provide further written submissions to finalise proposals after the Hearing.

Q 1.3 Are the existing local authority sites, and specifically the site at Outgang Lane, Osbaldwick, suitable for the further expansion expected?

31. No. As above, the scale of expansion 'expected' will depend on the (in)ability of the rest of the Local Plan to deliver appropriate sites.

32. As Policy H5 is currently drafted, it is reasonable to expect the expansion of the Osbaldwick site by up to 17 pitches *during the first 5 years of the Plan period*, (and/or a commensurate under-provision), and the continuous expansion of the site throughout the lifetime of the Plan.

33. We set out our views on the proposed expansion of the Osbaldwick site in previous submissions: in particular, section 8 of MMC response and throughout Annex A.

¹⁹ .(See paragraphs in MM section 8 discrimination)

²⁰ See Emails; also paragraphs ?? - Osbaldwick 2014 Tom Brittain email // 2023 Louise Waltham Email

²¹ See Emails; also paragraphs ?? - Osbaldwick 2014 Tom Brittain email// 2023 Louise Waltham Email

34. The current Labour Administration made representations in support of YTT's submissions, opposing the proposals to increase the number of pitches on existing sites, and citing the need to keep sites '*small and manageable*' to ensure good living conditions.²²

35. Evidence provided following FoI requests and discussed in Annex A demonstrates very clearly that senior leaders of the Council and officers responsible for the management of the Osbaldwick site also share our serious concerns.

36. The Council concedes that the suitability of the Osbaldwick site for expansion will depend on the resolution of serious issues²³ and continues to rely on the previous PPTS 2015 definition to minimise the extent of the expansion required. Yet even by its own assessment the Osbaldwick site is not 'deliverable.'

37. To be considered 'deliverable', sites should be '*available now, offer a suitable location for development, and be achievable with a realistic prospect that development will be delivered on the site within 5 years.*'²⁴

38. The Council has confirmed for the Examination that the methodology used to exclude both of the sites now proposed for expansion from the site selection processes in 2014 was '*based on robust and credible evidence that is proportionate*'²⁵

Significantly, there is no evidence that either site has been assessed against objective site selection criteria since then.

39. Why then, we ask, has the Council opted for expansion of the Osbaldwick site? It may be that the answer lies in a misunderstanding. We note that Mr Ferris told the Executive Committee:²⁶ '*the inspectors themselves, [...] required us to specifically identify that there was capacity at Osbaldwick & Clifton to provide the sites we need.*'

Q 1.4 Is the approach of draft Policy H5 to the provision of pitches on strategic sites soundly based?

40. No. We refer the Inspectors to sections 4 to 6 of our MMC response in March 2023 which sets out our position as to the soundness of the Plan in this respect.

²² Labour Response to Main Modifications Consultation, March 2023 -

<https://www.york.gov.uk/downloads/file/9027/886-york-labour-party-redacted>

²³ 2.22 October 2023 CYC

²⁴ Footnote 4 PPTS

²⁵ See Paragraph 8.27 MM Consultation March 2023; paragraph 4.11.10 CYC Hearing Statement: Phase 2: Matter 4.

²⁶ 26th January 2023 - whilst recommending to the meeting to decide to proceed with MMC. Council transcript on Examination page.

41. Policy H5(b) does not ‘*seek to meet objectively assessed development and infrastructure requirements,*’ but rather the Council’s need to demonstrate a ‘*satisfactory rolling supply of pitches over the Plan period*’²⁷ in order to adopt the Plan.

42. There has been no evidence-based assessment of the suitability (or viability)²⁸ of the Policy to meet the accommodation needs of Gypsies and Travellers; and its ‘pro-rata’ approach to pitch distribution suggests that it was devised to delegate, rather than solve the problem. There is no functional relationship between the numbers of pitches required and numbers of houses.

43. As expressed by other respondents to the consultation:

*‘The proposed amendments to Policy H5 of the Local Plan seek to place a greater burden on the developers of strategic sites to deliver the Council’s housing requirements for Gypsies and Travellers, on account of the Council being unable to allocate specific sites to meet these needs at this late stage of the Local Plan process.’*²⁹

44. YTT maintains that the implementation of policies in the NPPF in the Local Plan to meet locally assessed need for affordable culturally appropriate accommodation for Travellers is consistent with national policy.

45. As confirmed in *Wenman v SSCLG*:³⁰

‘The words "housing applications" in para.49 should not be interpreted narrowly so as to be restricted to applications for planning permission to construct bricks and mortar houses. The NPPF s.6 was intended to cover homes and dwellings in a broad sense..’

46. However, having adopted and implemented policies of NPPF to meet a relevant, objectively assessed need, the Council’s reliance on Policy E PPTS to justify excluding³¹ this specific kind of provision from access to the GB2 exception site policy, and thereby preventing the policy from meeting its own objectives, is discriminatory.

Q 1.5 Specifically, is the sequential approach to provision of pitches on-site, off-site and the approach to financial contributions in lieu sufficiently robust to ensure that new pitches required to meet needs, come forward at appropriate times?

47. No. Policy H5 cannot bring forward a supply of sites at appropriate times.

48. The Local Plan is required to bring forward at least 26.5 pitches in the first 5 years. The ‘trajectory’ provided at ‘*figure 2*’³² presents the Council’s projections for delivery for this

²⁷ November Letter

²⁸ Paul Butler; paragraph 3.1.

²⁹ Paul Butler MMC for ST7 - <https://www.york.gov.uk/downloads/file/9018/594-paul-butler-planning-obo-landowner-st7-redacted>

³⁰ [2015] EWHC 925 (Admin), 2015 WL 1786081

³¹ Including primarily so-called ‘non definition Travellers’

³² <https://www.york.gov.uk/downloads/file/8695/ex-cyc-121a-provision-of-gypsy-and-traveller-etc>

element of the need, via s106 contracts associated with major strategic sites.³³ It is described as *'broadly aligned'* with the rolling 5 year need. Closer analysis reveals the uncertainty of the extent of *'broadly'*.

49. If Policy H5(b) is able to make any significant contribution to the provision of Traveller sites, it will need to secure commuted sum payments and provide policy to make land available for their use.

50. If the policy flaw that thwarted negotiations for the otherwise achievable on-site delivery of 13 pitches so far³⁴ could have been resolved with the use of *'stronger words'*, it is difficult to understand why they were not used sooner; before the Council had been forced back to the position in which it started, with obligations to deliver sites and no way to find land.

51. If revised wording does succeed in persuading developers to agree to deliver pitches on-site to obtain planning permissions, it does not automatically follow that it will be successful in persuading them to develop sites. Planning decisions elsewhere give some indication of the extent of the time and resources that may be expended by developers on creative compliance strategies to avoid building sites.

52. A s106 contract in Basingstoke,³⁵ for example, obliges developers to proceed through a sequence of separate planning applications for the design and delivery of 2 Traveller pitches. Timing is linked to the phased delivery of 750 houses and associated infrastructure via trigger points embedded in the otherwise unrelated process. The applicants have obediently submitted 3 separate applications over several years, each of which the LPA was compelled, by policy, to refuse. There is no indication that the pitches will be provided.

53. Consultation responses from house builders, developers, strategic site promoters, throughout the course of the Examination Process in York strongly indicate that they are as keen to avoid any obligation to deliver pitches on their housing developments as those in Basingstoke. We see no reason why they would not deploy similar tactics.

54. For those developers who are able to demonstrate that on-site delivery is unviable due to site constraints, progression through the next stage in the sequence will require nothing more from them than to refer the Council back to over a decade of its own evidence. Alternatively, the Council must concede that it has itself, not conducted a *'robust search process'* for land.³⁶

Q 1.6 If provision of new pitches as part of the development of the Strategic Sites is to be provided off-site, directly, or through the vehicle of financial contributions, how are these pitches proposed to be provided, where will they be provided, and when?

³³ Paragraph 4.6?? Trajectory December 2022 CYC.

³⁴

³⁵ https://planning.basingstoke.gov.uk/online-applications/files/51C83C55ACB025E9C337F035B47B42AC/pdf/15_04503_OUT-S106-2912471.pdf

³⁶ SEE

55. Policy H5(b) is likely to secure commuted sum payments from developers at best, but the Plan as a whole leaves no option for their use other than for the continuous expansion of the site at Osbaldwick.

56. This is unsustainable and unacceptable, and the Plan is not sound.

57. Policy modification should recognise that the provision of affordable, culturally appropriate accommodation for Gypsies and Travellers to meet locally assessed need is a legitimate function of national planning policy. The Councils proposals to provide for Gypsies and Travellers through NPPF policies that are designed to deliver affordable housing at scale will only function effectively if they are consistently and equally applied.

Q 1.7 Does the recent change to the planning definition referred to above affect Policy H6 and its supporting text too?

57. YTT recognises that Show People have accommodation needs that are different, in particular ways to the needs of Gypsies and Travellers.

58. To the extent that the policy modifications discussed above are helpful and applicable to the provision of accommodation for Show People, they should be applied to Policy H6.

Conclusion

59. When the last Local Plan was adopted in York in 1954; the first of the Caravan Sites Acts³⁷ had yet to be passed. Travelling families could still rely on free access to common land and relative peace from regulatory control on their home plots. In the 7 decades that have passed since, generations of Gypsies and Travellers have weathered progressive restrictions on their freedom to continue a nomadic habit of life. The first Local Plan for over 70 years in York will be adopted in the wake of the criminalisation of trespass.

60. Research suggests that many Traveller Sites were established on the margins of towns and cities, by default to (issues) rather than design, with more than half just whatever bit of land somebody could get, and some are still operating. So the whole business of how sites came about and where they were, is really nothing to do with proper planning.... A shown that (Traveller sites are disproportionately built on rubbish dumps.) half suffered from environmental problems relating to adjoining land or activities such as major roads, rubbish tips, sewage and industry.

61. The Local Plan process does not require the LPA to provide land for Traveller sites, either of its own or via contracts with third parties. It requires it to implement fair, sustainable policy to ensure that sufficient land is reasonably available at appropriate times to those who need it.

³⁷ [...]

62. Effective policy will create opportunities and resources for those who *do* want to develop Traveller sites to do so, rather than onerous and unachievable obligations for those who do not.

63. Sustainable policy will construct Traveller sites as solutions, rather than problems. To give the young people living in York today better options for tomorrow.