

Date: 13 August 2024

York Travellers Trust
C/O Abbie North and Caroline Hunter

By email

Dear York Travellers Trust

Thank you for your letter dated 24 July 2024 addressed to Councillor Claire Douglas, which I have been asked to respond on her behalf, regarding Policy H5 and the provision for the Gypsy and Traveller community in our new Local Plan. This letter summarises the Council's position, consistently with what was said at the Phase 5 examination hearing in March 2024, and which will inform the Council's own response to the Local Plan Main Modifications Consultation regarding Policy H5, which ends on 30 August 2024.

We have sought to directly answer questions by letter on 24 July and address correspondence sent to Officers via email from Abbie North.

1. What is your understanding of the *Kingston* Case on the Guildford policy, and the question about PPTS and non-PPTS need?

Before considering the *Kingston* case and the Guildford Local Plan specifically, it is important to record the following overarching matters:

- (1) The settled position under national policy is that a gypsy and traveller site is inappropriate development in the Green Belt. This is confirmed expressly by Policy E of PPTS in respect of sites for

gypsies and travellers falling within the definition in Annex 1 to the PPTS. See **Royal Borough of Kingston Upon Thames v Secretary of State** [2024] JPL 318 at [36]: sites for gypsies and travellers falling within the definition in Annex 1 to the PPTS are inappropriate development in the Green Belt irrespective of the provisions of the NPPF. However, this characterisation also applies to sites for gypsies and travellers falling outside of the definition in Annex 1 of the PPTS (as well as any other members of the community who wish to site caravans or mobile homes for residential purposes) because the siting of a caravan for residential purposes is a material change in the use of land (i.e. development, applying s. 55 of the Town and Country Planning Act 1990) which does not fall within any of the exceptions in paras. 89 and 90 of the NPPF - and thus is inappropriate development in the Green Belt: see **R. (Timmins) v Gelding BC** [2015] PTSR 837 per Richards LJ at [30] – [31] and **Royal Borough of Kingston upon Thames v Secretary of State**, above, at [40].

- (2) For essentially the same reasons, the exception in the penultimate bullet point of para. 89 of the NPPF concerning affordable housing for local community needs does not change the analysis. Para. 89 is concerned only with the construction of new buildings: see the opening words to that paragraph ‘*the construction of new buildings*’ and **Timmins** at [30].
- (3) It is settled that the siting of caravans for residential purposes (whether for occupation by gypsies and travellers or by other members of the community) is a use of land, not the construction of buildings: see **Measor v Secretary of State** [1999] J.P.L. 182 where the Deputy Judge rejected the contention that a mobile caravan was a building having regard to factors of permanence and attachment. This was applied by Forbes J in **Massingham v Secretary of State** [2002] EWHC 1578 (Admin).
- (4) It follows that the siting of caravans by gypsies and travellers or any other person is not within the penultimate bullet point of para. 89, although this may be subject to whether the caravans have ceased to be mobile and have become permanent fixtures applying the approach set out e.g. in **Skerritts of Nottingham Ltd v Secretary of State (No.2)** [2000] JPL 1025.

The Guildford Local Plan

The York Travellers Trust rely on the approach in policy H3 of the Guildford Local Plan [EXCYC133]. That policy allows for the provision of small-scale affordable housing developments in the Green Belt, “*which can include pitches for Gypsies and Travellers not meeting the Planning Policy for Traveller Sites definition of a gypsy or traveller*” where certain provisions are met, is supported.

This policy is inconsistent with national policy because that policy proceeds on the basis that sites for gypsies and travellers outside the definition in Annex 1 to the PPTS are not inappropriate development. This is erroneous, as is explained above. Sites for gypsies and travellers outside the definition in Annex 1 to the PPTS (as well as any other members of the community who wish to site caravans or mobile homes for residential purposes) are inappropriate development. The emerging local plan would be unsound if it included a policy which proceeded on the basis that sites for gypsies and travellers outside the definition in Annex 1 to the PPTS were not inappropriate development

The **Kingston** case

The **Kingston** case is consistent with the analysis above.

In the **Kingston** case the Inspector erred in law by concluding that a site for gypsies and travellers (within the definition in Annex 1 to the PPTS) was not inappropriate development in the Green Belt because it fell within the exception in paragraph 150(e) of the NPPF (2021).

In concluding that the Inspector had so erred in law, Lieven J held that residential uses, including a site for gypsies and travellers, do not fall within the exception in paragraph 150(e) of the NPPF (2021): see paragraphs 36 – 37 of the judgment.

The reasons given by Lieven J in the **Kingston** case demonstrate that the Guildford policy was wrongly considered to be sound and should not have been adopted.

This matter was the subject of our oral submissions at the hearing into Phase 5 matters, in March 2024 and what is set out above is consistent with those submissions.

2. What are the Council's intentions regarding the future s.106 money, i.e. are you expecting it to be spent on the 10 pitches coming through H5a at Clifton and Osbaldwick? In our view this is not legally allowable.

The Executive report (March 2024) *Delivering additional Gypsy and Traveller Accommodation and improving existing facilities*¹ makes clear the Council’s intentions regarding funding and delivery of new pitches and sites improvements at existing Council owned sites.

In this, a distinction is made between the works to be undertaken and how this will be funded.

Table 2 of the Executive report shows that it is the Council’s intention to only use S106 monies for non-definition traveller pitches as follows:

Table 2: new Gypsy and Traveller pitch provision to be delivered by the council including estimated costs, funding type and timescales

Works	Estimated cost	When	Funding type
10 'definition' additional pitches	£1.5m	Complete March 2027	Borrowing and grant funding
13 'non-definition' additional pitches	£1.95m	12 pitches by March 2027 at a cost of £1.8m, 1 pitch in following 5 years at a cost of £150k	Borrowing until S106 payments are received

The accompanying explanation for this is set out in paras 24 and 26 of the report, which state (bold is our emphasis):

24. The latest evidence of gypsy and traveller pitch need states that 13 pitches are required to meet non-definition and undetermined need by March 2027. The Council has secured or is in the process of securing S106 contributions to deliver 13 Gypsy and Traveller pitches. In November 2022, the Planning Inspectors examining the Local Plan requested that the Council provide detail about where it expects these funded pitches to be located in order that they could be satisfied that there is a

¹ <https://democracy.york.gov.uk/mglIssueHistoryHome.aspx?lId=71943>

deliverable strategy for meeting the 5-year need. In response, it was confirmed that there is physical capacity for the site at Osbaldwick to accommodate these additional pitches, recognising that no other site could be identified at that time. Importantly however, this does not preclude the Council from delivering these pitches on alternative sites that may later be identified and found to be appropriate within the policy framework of the Local Plan.

26. Executive are asked to note the intention to forward fund investment in the creation of additional pitches to meet the identified need described above. The table below summarises a potential investment scenario related to the provision of additional pitches. However, it should be noted that these are high level cost estimates and approval of a detailed business case will be sought once plans and costs are further developed.

Executive endorsed this approach, which was subsequently submitted to the Inspectors for their consideration as part of the Council's Hearing Statement to Phase 5 matters, heard in March 2024 [EX/CYC/135² and EX/CYC/135a³].

3. Are our S106 agreements requiring delivery of Gypsy and Traveller provision/ commuted sums legally enforceable?

Yes. Where the delivery of Gypsy and Traveller provision and/or commuted sums are secured as a planning obligation pursuant to section 106 of the Town and Country Planning Act 1990 then they are legally enforceable. The Council can enforce such a planning obligation by a claim for an injunction under section 106(5) of the Town and Country Planning Act 1990.

4. What is happening with the current ST4 application? We have already objected to the application, because the Applicant has not:

- a) demonstrated that the provision of pitches on-site is not viable; and**
- b) demonstrated that no alternative land is available to the developer for their provision.**

The application for Strategic Site ST4: Land at Hull Road' was considered by the Council's Planning Committee A on Thursday 1 August, application 15/00166/OUTM. As set out in the Officer Report to committee, the recommendation was for approval, subject to agreement

² <https://www.york.gov.uk/downloads/file/9567/ex-cyc-135-executive-report-14-march-2024>

³

of a S106 agreement (including £300,000 for off-site provision of two pitches for Gypsies and Travellers) and referral to the Secretary of State. Following consideration and debate, the application was approved in accordance with this recommendation. This decision will be published via the Council's Planning Committee A meeting pages:

<https://democracy.york.gov.uk/ieListDocuments.aspx?CId=1029&MId=14524&Ver=4> .

As part of the meeting, officers updated members on matters raised since publication, including a supplementary policy response from the Council's Strategic Planning Policy team regarding Policy H5 (annexed to this letter), information submitted by the applicant regarding a site search undertaken and objection comments received from York Travellers Trust regarding the lack of policy compliance with policy H5.

In this supplementary note, it is acknowledged that the approach taken by the applicant was not wholly consistent with Policy H5 in the emerging Local Plan, as proposed to be modified (in 2023 and/or 2024) which concurs with the view of York Travellers Trust.

However, also relevant to this was timing of the submission and preparation of the application over the evolving policy landscape and the weight that can be afforded to the policy in accordance with para 49 of the National Planning Policy Framework. It was confirmed that at this time, the weight to be given to this policy was 'limited' given that there continue to be objections to the policy approach and are currently out to consultation on proposed modifications proposed by the Inspectors to make it 'sound'. Therefore, the policy position concludes that:

The commuted sum offered in lieu of on-site delivery is, however, acceptable in this context of limited policy weight. It is consistent with the approach taken in decisions on other strategic sites where developers have progressed applications ahead of Local Plan adoption.

During discussion, it was acknowledged that the trigger for enabling significant weight to be applied to policy will be the adoption of the Local Plan.

5. Rolling supply of Gypsy and Traveller provision

The Council's submitted evidence to the Local Plan Examination has sought to demonstrate the delivery of sites at the request of the Inspectors. Our paper EX/CYC/121a (December 2022) profiles the Council's understanding of delivery of pitches across the portfolio of

Strategic Sites and remains relevant to the delivery of policy requirements.

Additionally, in the Council's Executive report (March 2024) *Delivering additional Gypsy and Traveller Accommodation and improving existing facilities* a commitment was made to undertake a further site search to continue the Council's commitment for accommodation for the gypsy and traveller community.

VI. To establish a workstream to identify and assess alternative sites to support Gypsy and Traveller Accommodation using a benchmarking approach of the proposed Osbaldwick site expansion and the associated health and social outcomes using a suite of site selection criteria (to be agreed by Executive) against any alternative windfall sites across the identified developable area in the Local Plan that may emerge at a later date and reporting of that exercise to Executive prior to the commencement of the expansion of the Osbaldwick site.

Reason: To ensure that the Council's commitment to meeting pitch requirements as set out in the Local Plan is appropriately met. The Local plan identifies that up to 1800 windfall sites for housing are likely to become available during the plan period. Therefore **there may be alternative delivery options that may offer long-term advantages to meeting growing Gypsy and Traveller needs. Alternative sites have not been identified during the previous Local Plan site search for Gypsy and Traveller accommodation, but this does not mean they will not exist in the near future.**

6. Gypsy and Traveller provision as Affordable Housing

In her email of 12 July, Abbie North makes reference to the *Wenman* case and how gypsy and traveller pitches constitute a 'species of housing'. Following, there is presented a rationale as to why it follows that it could be construed as affordable housing.

The Council acknowledges that pitches can be delivered as affordable, subject to them being run by a registered social provider and meeting the affordable housing definition in the NPPF.

Any proposal of that nature would still be assessed as a new provision of a pitch, in accordance with PPTS. As explained above, pitches relate to a change in the use of land and do not constitute the '*construction of buildings*'. Consequently, locations within the Green Belt are still inappropriate as set above, regardless of whether they comply with the affordable definition.

7. Conclusion

We trust the information we have provided is helpful and informative for York Travellers Trust response to the current Local Plan Main Modifications Consultation.

As we progress with the Council's programme of delivery and development of supplementary guidance to support the Local Plan policy approach, we are keen to work with you constructively to inform the process. Officers will be in touch directly to discuss how this can be progressed and we look forward to working with you.

Additionally, and you may be already aware, the government are currently consulting on *Proposed reforms to the National Planning Policy Framework and other changes to the planning system*⁴. As part of this, they ask specific questions in relation to traveller provision (Questions 32 and 33). Consultation closes on 24 September 2024. The Council is preparing a response to the consultation for which we will draw on our experience in providing for traveller accommodation needs.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ian Floyd', is centered on the page. The signature is fluid and cursive.

Ian Floyd
Chief Operating Officer

⁴ <https://www.gov.uk/government/consultations/proposed-reforms-to-the-national-planning-policy-framework-and-other-changes-to-the-planning-system>

MEMORANDUM

From: Strategic Planning Policy Team
To: Development Services
Ext: 01905 552255
Date: 1 August 2024
Our Ref: FP9/2024
Your Ref: 15/00166/FULM - Hull Road

In response to the Local Plan inspectors in December 2022, the Council confirmed [in EX/CYC/121a]:

- that further modifications to part b of Policy H5 (dealing with provision on strategic sites) would better secure on-site provision and ensure financial contributions could only be agreed in very limited circumstances.
- That it was negotiating on-site provision as part of the determination of the application on ST4, but included an equivalent financial contribution in its forecasting to calculate the likely maximum number of pitches that would need to be delivered via these payments. Pitches funded through s106 were indicated to be located on the Council's Osbaldwick site.

At that time, outstanding matters were being resolved and it was expected that the application on ST4 would progress to committee early in 2023 – ahead of completion of consultation on the latest modifications and Local Plan adoption. Officers therefore anticipated a financial contribution being secured on ST4 in recognition that, should the application progress as expected, the weight of Policy H5 that would apply at the point of determination would be “limited”. Indeed, these calculations were carried forward into the report presented to Members at the March Executive, in which the forward funding of s106 receipts was agreed as part of an overall £5.25m investment.

Whilst progress with the application has been protracted, it has now overtaken the process of Local Plan adoption and is presented to members at a time when consultation on main modifications to Policy H5 is ongoing.

Notwithstanding the limited weight that can be applied to Policy H5, Strategic Planning Policy considers that this application is not wholly compliant with its requirement to provide two pitches on-site (or on an alternative site), unless satisfactory justified:

- There is no justification for not designing the pitches into the scheme.
- The site search undertaken in September 2023 focussed on specific land with existing gypsy and traveller use. It did not consider the appropriateness of any other available land that may have been suitable.

The commuted sum offered in lieu of on-site delivery is, however, acceptable in this context of limited policy weight. It is consistent with the approach taken in decisions on other strategic sites where developers have progressed applications ahead of Local Plan adoption.