

Report to Nuneaton and Bedworth Borough Council

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Date 18 December 2023

Planning and Compulsory Purchase Act 2004 (as amended)

Section 20

Report on the Examination of the Nuneaton and Bedworth Gypsy and Traveller Site Allocations Development Plan Document 2021-2037

The Plan was submitted for examination on 29th June 2022

The examination hearing was held on 27th October 2022

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Abbreviations used in this report

the Council	Nuneaton and Bedworth Borough Council
DPD	Development Plan Document
GTTSA	Gypsy and Traveller and Travelling Showperson Accommodation Assessment
MM	Main Modification
NPPF	National Planning Policy Framework
PPTS	Planning Policy for Traveller Sites
SAC	Special Area of Conservation

Non-Technical Summary

This report concludes that the Nuneaton and Bedworth Gypsy and Traveller Site Allocations Development Plan Document ('DPD') 2021-2037 provides an appropriate basis for addressing the accommodation needs of Gypsies and Travellers in the Borough, provided that a number of main modifications ('MMs') are made to it. Nuneaton and Bedworth Borough Council ('the Council') has specifically requested that I recommend any MMs necessary to enable the DPD to be adopted.

Following the hearing, the Council prepared schedules of proposed modifications and carried out sustainability appraisal and habitats regulations assessment of them. The MMs were subject to public consultation over a six-week period. I have recommended their inclusion in the DPD after considering the sustainability appraisal and habitats regulations assessment and all the representations made in response to the consultation on them.

The Main Modifications can be summarised as follows:

- Changes to ensure consistency with the adopted Nuneaton and Bedworth Borough Plan 2011-2031 (2019) and to clarify which policies are superseded;
- Amendments to Policy GT2 for effectiveness and to incorporate criteria from Policy H3 of the adopted Borough Plan (which is to be superseded);
- Additional criteria added to some site-specific policies;
- Some re-wording to improve clarity and effectiveness;
- A number of other modifications to ensure that the DPD is positively prepared, justified, effective and consistent with national policy.

Introduction

1. This report contains my assessment of the Nuneaton & Bedworth Gypsy and Traveller Site Allocations DPD in terms of Section 20(5) of the Planning and Compulsory Purchase Act 2004 (as amended). It considers firstly whether the DPD's preparation has complied with the duty to co-operate. It then considers whether the DPD is compliant with the legal requirements and whether it is sound. The National Planning Policy Framework ('the Framework') (paragraph 35) makes it clear that in order to be sound, a Local Plan should be positively prepared, justified, effective and consistent with national policy.
2. The starting point for the examination is the assumption that the Council has submitted what it considers to be a sound plan. The Nuneaton & Bedworth Gypsy and Traveller Site Allocations DPD, submitted in June 2022 is the basis for my examination. It is the same document as was published for consultation in January 2022.

Main Modifications

3. In accordance with Section 20(7C) of the 2004 Act the Council requested that I should recommend any main modifications ('MMs') necessary to rectify matters that make the DPD unsound and/or not legally compliant and thus incapable of being adopted. My report explains why the recommended MMs are necessary. The MMs are referenced in bold in the report in the form **MM1**, **MM2** etc, and are set out in full in the Appendix.
4. Following the examination hearing, the Council prepared a schedule of proposed MMs and carried out sustainability appraisal and habitats regulations assessment of them. The MM schedule was subject to public consultation for six weeks. I have taken account of the consultation responses in coming to my conclusions in this report.

Policies Map

5. The Council must maintain an adopted policies map which illustrates geographically the application of the policies in the adopted development plan. When submitting a local plan for examination, the Council is required to provide a submission policies map showing the changes to the adopted policies map that would result from the proposals in the submitted local plan. In this case, the changes to the policies map comprise the inset plans beneath policies GT3 and GT4 of the DPD.
6. When the DPD is adopted, in order to comply with the legislation and give effect to its policies, the Council will need to update the adopted policies map to include all the changes proposed in the DPD.

Context of the Plan

7. The Nuneaton & Bedworth Gypsy and Traveller Site Allocations DPD sets out policies relating to Gypsy and Traveller and Travelling Showpeople proposals, and also allocates sites for these purposes. It is intended to supersede Policy H3, and the third bullet point of Policy DS4, of the adopted Borough Plan. A DPD of this nature is also envisaged in Policy H3 of the Borough Plan.

Assessment of Duty to Co-operate

8. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council has complied with any duty imposed on it by Section 33A in respect of the DPD's preparation.
9. The DPD focuses on meeting the Borough's own needs and does not rely on neighbouring authorities to assist. Moreover, the Council has not been asked to help meet the needs of any neighbouring local planning authority. In this regard, the DPD is based on a strategy that seeks to meet the needs of the Borough only, which is consistent with the approach taken to Gypsy and Traveller and Travelling Showpeople sites in the adopted Borough Plan.
10. Prior to updating the 2016 Gypsy, Traveller, and Travelling Showperson Accommodation Assessment ('GTTSA'), the Council contacted all adjoining planning authorities to see if there was any interest in jointly commissioning this study. However, no such interest transpired and an update covering just Nuneaton and Bedworth was therefore commissioned. The subsequent 2021 GTTSA update was informed by feedback and input from neighbouring planning authorities as is set out at paragraphs 5.22-5.26 of that document.
11. In preparing the DPD, the Council consulted and actively engaged with neighbouring planning authorities as well as with Warwickshire County Council, who have responsibility for education, highways, transport planning, waste disposal, etc. The County Council also own and manage a Gypsy and Traveller site in the Borough.
12. No local planning authority or other prescribed body claim that the Council has failed to comply with the Duty. The Council has prepared a Duty to Cooperate Statement, and based on what is set out in this document, I am satisfied that where necessary the Council has engaged constructively, actively and on an on-going basis in the preparation of the DPD and that the duty to co-operate has therefore been met.

Public Sector Equality Duty

13. I have had due regard to the aims expressed in S149(1) of the Equality Act 2010. This has included my consideration of several matters during the examination, including the allocation of Gypsy and Traveller and Travelling Showpeople sites to meet identified need. The DPD also addresses the need of particular age groups within the travelling community by taking account of issues such as concealed households and future household formation. In addition, the DPD makes an allowance in its requirement for new pitches for those who have ceased to travel due to educational or health needs, or age.

Assessment of Other Aspects of Legal Compliance

14. The DPD has been prepared in accordance with the Council's Local Development Scheme. Consultation on the DPD and the MMs was carried out in compliance with the Council's Statement of Community Involvement.
15. The Council carried out a sustainability appraisal of the DPD, prepared a report of the findings of the appraisal, and published the report along with the DPD and other submission documents under Regulation 19. The appraisal was updated to assess the main modifications.
16. The Habitats Regulations Assessment Report (December 2021) sets out why an Appropriate Assessment is not necessary. In this regard, it finds that there is a general absence of impact pathways and there are significant distances from the proposed allocations to designated sites. Accordingly, no likely significant effects will result on either Ensor's Pool SAC or the River Mease SAC as a result of the DPD. Such a conclusion was also supported by Natural England. The Habitat Regulations Assessment of the MMs also concluded that they will not lead to likely significant effects on these SACs, either alone or in combination with other plans and projects.
17. The Development Plan, taken as a whole, includes policies to address the strategic priorities for the development and use of land in the local planning authority's area. It also includes policies designed to secure that the development and use of land contribute to the mitigation of, and adaptation to, climate change. Those policies are contained within the adopted Borough Plan.
18. Regulation 8(5) of The Town and Country Planning (Local Planning) (England) Regulations 2012 requires that where it is intended to supersede another policy in the adopted development plan, this fact must be stated and the superseded policy identified. **MM1, MM3, MM5, MM7, MM9, MM10, MM11, MM16, and MM17** ensure that the DPD complies with this requirement.

Assessment of Soundness

Main Issues

19. Taking account of all the representations, the written evidence and the discussions that took place at the examination hearing, I have identified a number of main issues upon which the soundness of the DPD depends. This report deals with these main issues. It does not respond to every point or issue raised by representors, nor does it refer to every policy criterion in the DPD.

Issue 1 – Whether the Council's overall strategy for meeting Gypsy and Traveller and Travelling Showpeople accommodation needs is justified and whether it is consistent with the adopted Borough Plan (2019).

20. The Strategy set out in the DPD is to fully meet the need for Gypsy and Traveller and Travelling Showpeople sites in the Borough. This is consistent with national planning policy and is a sound approach. In terms of the spatial distribution of sites within the Borough, 2 of the proposed Gypsy and Traveller allocations are intensifications of existing sites, and the third is close to an existing site. These are distributed across the Borough and are generally in more rural locations. The Gypsy and Traveller Site Assessment (2021) indicates that only 1 of these sites was put forward specifically to accommodate family members, and these sites would therefore be capable of meeting the identified need, which will largely arise from household growth and in-migration. No other potential sites were identified through either the Call for Sites, the GTTSAA process, or a review of Council owned sites. In these circumstances, I consider this approach to be sound.
21. The DPD proposes a requirement for the provision of 11 Gypsy and Traveller pitches over the plan period to 2037. This is based on meeting the overall 'cultural need' for pitches identified in the updated GTTSAA (2021), which includes need arising from those within the Travelling community who do not meet the Planning Policy for Traveller Sites ('PPTS') definition of "gypsies and travellers". In my view, this assessment is based on robust assumptions, including with regard to migration and need arising from those currently living in bricks and mortar housing. Whilst the GTTSAA states that turnover on an existing Council owned site could meet the identified shortfall in its entirety, there is no guarantee that these pitches will become available at the rate envisaged. Accordingly, the allocation of sites is necessary to ensure that need is met, and the requirement figure in Strategic Policy GT1 is therefore sound.
22. The DPD is intended to sit alongside the adopted Borough Plan and complement it regarding Gypsy and Traveller and Travelling Showpeople site allocations and policy. The submitted DPD proposed a hybrid approach to this whereby DPD Policy GT1 would effectively supersede parts of Borough Plan

Policies H3 and DS4, and DPD Policy GT2 would effectively add criteria to Borough Plan Policy H3. This approach would be confusing and unclear, and modifications are therefore necessary for effectiveness. This is addressed by **MM1, MM3, MM5, MM7, MM9, MM10, MM11, MM16, and MM17**, which ensure that the policies in the DPD will entirely supersede Policy H3 and the third bullet point of Policy DS4 in the adopted Borough Plan.

23. The submitted DPD proposes 2 site allocations that are currently within the Green Belt. In this regard, Policy DS7 of the adopted Borough Plan states that the remaining Green Belt will be protected by restricting development to only that which is considered by national planning policy to be not inappropriate development. It would therefore be inconsistent with the adopted Borough Plan to remove the proposed allocations in the DPD from the Green Belt at this stage. However, the Borough Plan is currently being reviewed, and this matter is therefore capable of being addressed as part of that review. As submitted, the DPD is unclear whether these allocations are proposed to be removed from the Green Belt, and this is remedied by **MM4, MM10, and MM12** which clarify that the allocations remain in the Green Belt. Subject to the MMs identified above, the DPD would be consistent with the adopted Borough Plan except where a DPD policy is intended to supersede an existing policy.
24. In terms of the monitoring arrangements, a number of detailed changes are also necessary for clarity and effectiveness, as is set out in **MM2 and MM15**.
25. Subject to the abovementioned MMs, the Council's overall strategy for meeting G&T accommodation needs is justified and consistent with the adopted Borough Plan.

Issue 2 – whether the proposed site allocations are justified and whether the DPD identifies a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against the requirement.

26. DPD Policy GT3 identifies 3 proposed site allocations for Gypsy and Traveller pitches. Sites GTSA1 and GTSA3 are intensification opportunities to existing consented sites that were identified in the GTTSAA. Both are currently under-utilised and are capable of accommodating additional pitches within the existing site boundary. The availability, capacity, and intension of the landowner to pursue intensification, were established through the GTTSAA, and I consider these assumptions to be robust.
27. With regard to site GTSA2, this is a mostly open site that does not currently contain any Gypsy and Traveller pitches. It is located on the B4109 and relates well to the existing pattern of development along the road. It is not subject to any other over-riding constraint. The site was put forward as a potential

allocation through the GTTSAA and its availability and capacity have been agreed with the landowner.

28. I consider each of the 3 site allocations identified under Policy GT3 to be suitable locations for Gypsy and Traveller pitches. Notwithstanding this, additional policy criteria for each of the allocated sites are necessary for effectiveness and to address soundness issues. These criteria relate to drainage, contamination, children's play provision, air quality and noise, which are addressed in **MM13**. Given the evidence regarding availability and landowner intentions to develop these sites, I also consider them to be deliverable. In addition, a windfall site for 3 additional pitches was approved in June 2022, and taken together, these sites will provide a 5-year supply on adoption of the DPD.
29. Separately, Policy GT4 safeguards the existing Travelling Showpeople site at Spinney Lane/Whittleford Road, Nuneaton for use by Travelling Showpeople. This is consistent with the recommendations of the GTTSAA and is a sound approach. However, several detailed changes to the policy wording are necessary for effectiveness, which is addressed in **MM14**.
30. In terms of transit provision, the GTTSAA recommended that the Council make use of negotiated stopping arrangements. In this regard, the Council has already made use of negotiated stopping in the Borough and has developed a standard agreement that both it and the Gypsies and Travellers in question sign in such circumstances. This includes the condition the site will be left in, the services that will be provided to it (refuse collection, portable toilets, etc), and includes a financial bond. The Council intends to roll out this approach going forward. In light of the evidence before me, including that given at the hearing session, I am satisfied that this is a sensible approach to transit provision and that the DPD is therefore sound in the absence of allocating sites for this purpose.
31. Subject to the abovementioned MMs, the proposed site allocations are justified and I consider that the DPD identifies a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against the requirement.

Issue 3 – Whether the proposed criteria-based policy is necessary, justified, effective, and consistent with national policy.

32. A criteria-based policy is necessary to ensure that the DPD is positively prepared, flexible, and to provide a basis for determining planning applications on Gypsy and Traveller sites not allocated in the DPD. In this regard, submitted Policy GT2 set out additional criteria that would have effectively supplemented adopted Policy H3 of the Borough Plan. For the reasons set out above, Policy GT2 should entirely supersede adopted Policy H3. Modifications are therefore

necessary to incorporate most of the criteria from adopted Policy H3 into Policy GT2, which is addressed in **MM10**.

33. As submitted, Policy GT2 sought to direct windfall Gypsy and Traveller pitches firstly to intensification opportunities on existing sites, then to extensions to existing sites, followed by sites within 1.6 km of services and facilities. However, it is not clear how this approach would have worked in practice, including how it could be demonstrated that expansion opportunities had been exhausted. Such an approach would also have excluded sites within the urban area from consideration until intensification and expansion opportunities had been ruled out. Moreover, it contained no reference to the proposed site allocations. Accordingly, further modifications in **MM6**, **MM8**, and **MM10** are necessary for effectiveness and to highlight those site types where new pitches / plots will be permitted, subject to compliance with other local and national policies.
34. Subject to the abovementioned MMs, I consider that the proposed criteria-based policy is necessary, justified, effective, and consistent with national policy.

Overall Conclusion and Recommendation

35. The DPD has a number of deficiencies in respect of soundness, for the reasons set out above, which mean that I recommend non-adoption of it as submitted in accordance with Section 20(7A) of the 2004 Act. These deficiencies have been explained in the main issues set out above.
36. The Council has requested that I recommend MMs to make the DPD sound and capable of adoption. I conclude that the duty to cooperate has been met, and that with the recommended main modifications set out in the Appendix, the Gypsy and Traveller Site Allocations Development Plan Document satisfies the requirements referred to in Section 20(5)(a) of the 2004 Act and is sound.

Thomas Hatfield

INSPECTOR

This report is accompanied by an Appendix containing the Main Modifications.