

The Impact of Planning Circular 1/06 on Gypsies and Travellers in England

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EXECUTIVE SUMMARY

This brief report examines the impact of Planning Circular 1/06 on the delivery of sites for Gypsies and Travellers. It is part of ongoing analysis of planning appeal data gathered over three tranches of research activity. Initial findings and thoughts are published early in this report as part of a quick response to the draft National Planning Policy Statement – Consultation on planning for traveller sites - which was published by Secretary of State Eric Pickles on 13th April 2011.

Methodology of the Research

The research involved examination of 100% planning *appeal* cases during three tranches and four distinct research periods:

	Time frame	Number of cases
Period 1	1 st November 2005 – 31 st January 2006 (Tranche One – pre Circular 1/06)	75
Period 2	1 st February – 30 th April 2006 (Tranche One – post Circular 1/06)	54
Period 3	1 st February 2007 – 20 th January 2009 (Tranche Two – ‘embedded Circular’)	231
Period 4	27 th May – 31 st December 2010 (Tranche Three – post revocation announcement)	45
		405

Findings

Although a wide range of factors was considered across all cases, which were decided upon by a number of different Planning Inspectors, three key areas seemed to be discussed most:

1. Unmet evidenced need and lack of alternative sites
2. Weighing up impact on the Green Belt
3. Health, education and other personal circumstances

The Planning Circular 1/06 research found that the number of permissions given at appeal increased substantially (from 40% prior to implementation of Circular 1/06 to 70% during the ‘entrenched period’ of implementation of the Circular).

The majority of permissions given during this ‘entrenched period’ were temporary permissions. Inspectors’ discussion on reasons for decisions showed that weight was given to evidenced need for more sites and lack of alternative accommodation. Appeals were being allowed on a temporary basis to stop the gap.

Since the Secretary of State's announcements to revoke Regional Strategies and Planning Circular/ 1/06 there has been an impact on the number of temporary permissions allowed at appeal. Inspectors' decision reports show that the revocation announcements were considered and in some cases, weight was given to this.

Whilst there is clear evidence that Circular 1/06 did have a positive impact on the number of permissions (albeit temporary) given for Gypsy and Traveller sites, this should not be seen as a system skewed to advantage Gypsies and Travellers. Instead the Circular levelled the playing field for this traditionally disadvantaged group.

Key Recommendations

1. Equality Impact Assessments should be undertaken on the cumulative effect of the combined loss of Regional Strategy targets for pitch requirements, together with the withdrawal of Circular 1/06 and the reduction in available government grant funding for site development.
2. Government should consider retaining the word 'normally' in the guidance on consideration of site applications in Green Belts. This would allow decisions to be made on a case by case basis and where it is the most appropriate and least contentious location for a site: Green Belt could be considered as an option.
3. The Government should not remove the obligation for councils to undertake GTAAs specifically from the Planning Guidance, as this may mean councils do not update and use this source of evidence but instead rely on other sources – such as count data – which are not so robust.
4. Government should retain the imperative for Planning Inspectors to give 'substantial weight' to unmet evidenced need and lack of alternative accommodation, in Planning Guidance.
5. Whilst cuts to Government grant for sites fall within a wider context of cuts, the Government should be mindful that there is a *business case* for funding sites to negate spend on dealing with unauthorised encampments and developments. There is a *social case* for facilitating sites to enable Gypsies and Travellers to access healthcare and education.
6. Alternative approaches to site provision, where appropriate, should be supported and facilitated by the Government through matching development funds from charitable organisations, for recyclable grants for schemes such as Community Land Trusts. Currently applications for funding are made through the Traveller Pitch Funding Stream of the HCA National Affordable Housing Programme; it may be appropriate to make additional funding available for this innovation.
7. Care should be taken in political debate on Gypsy and Traveller issues to avoid stoking contentious and discriminatory rhetoric in the popular press and in community debates on site provision.

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1. Introduction

1.1 This brief report takes us on a journey of Planning Circular 1/06 and its impact on the delivery of sites for Gypsies and Travellers. It is part of ongoing analysis of planning appeal data gathered over three tranches of research activity and is intended to form the basis of a journal article. However, the initial findings and thoughts are published early in this report as part of a quick response to the draft National Planning Policy Statement – Consultation on planning for traveller sites - which was published by Secretary of State Eric Pickles on 13th April 2011.

1.2 It is of academic interest to examine the impact of planning policy and a separate paper will examine the findings within a theoretical framework. However, for the purposes of responding to the consultation on planning for traveller sites this report will present the findings without the theoretical context relating to power relations within the planning system. It is vital though, to consider how planning policy impacts on particular minority ethnic groups such as Gypsies and Travellers¹.

2. A Quick History of Gypsy Planning Policy

2.1 There have been ongoing attempts to address Gypsy and Traveller housing needs through legislation. In 1960, the Caravan Sites (Control of Development) Act caused the closure of many stopping-places used by Gypsies and Travellers as they moved around the country. However, the 1968 Caravan Sites Act later created the statutory duty of local authorities ‘to provide accommodation on caravan sites for gypsies residing in or resorting to their areas’. This effectively created a duty for councils to design, build and manage sites. There was also recognition at this time that it may be necessary to accept the establishment of sites in protected areas, such as the Green Belt. Unfortunately there was a severe policy implementation gap which meant that sites were not delivered as the Act intended. The Cripps report of 1977 *Accommodation for Gypsies: A report on the workings of the Caravan Sites Act 1968* identified a number of obstacles to new site provision; key among these is the importance of public opinion.

2.2 In 1993 the Conservative government announced its intention to introduce legislation to reform the Caravan Sites Act (1968). In 1994, the Criminal Justice and Public Order Act repealed many of the legal duties to provide sites. Planning Circular 1/94 was introduced with a purpose to facilitate Gypsies and Travellers to provide their own private sites. The Circular 1/94 bases its rationale on the “[recognition] *that many gypsies would prefer to find and buy their own sites to develop and manage. More private sites should release pitches on local authority sites for gypsies most in need of public provision.*”²

¹ This is an ‘umbrella term’ which does not denote the range of different ethnic and cultural groups. Romany Gypsies, Irish Travellers and Scottish Gypsies are recognised under race relations legislation. Different definitions of Gypsies and Travellers are used in planning law, housing and equalities.

² Paragraph 4, Circular 01/94: Gypsy Sites and Planning

2.3 Circular 1/94 also reversed previous guidance that in some cases development would need to be on open land. Section 13 states that “As a rule it will not be appropriate to make provision for gypsy sites in areas of open land”.

2.4 Looking back at the aims of Circular 01/94 against the actual outcomes of meeting need for sites, then this was clearly a policy failure – new sites were not built in any great number.

2.5 It is interesting to note though, the difference of opinion between the Conservative Government in 1994 and the Conservatives in the Coalition Government in 2011, on the need for a planning framework to govern site development. Paragraph 10 of Circular 01/94, introduced by the Conservative Government, says:

It is important that policies for gypsy site provision are set out clearly in development plans to avoid any potential for disagreements with the settled population which might otherwise arise because of inappropriate location or inadequate explanation of proposed development. With such policies in place in plans, there will be more certainty for all concerned when planning applications are determined by local planning authorities or appeals are considered by the Secretary of State.

2.6 The Coalition Government in 2011 does not seem so concerned about the ‘potential for disagreements with the settled population’ in its plans to replace Planning Circular 1/06; trusting that Localism and Neighbourhood Planning will resolve even contentious planning debates for small developments.

2.7 Political and legislative debate over the Criminal Justice and Public Order Act (1994), which took away the duty from local authorities to provide sites, continues. The former Office of the Deputy Prime Minister (ODPM), Planning, Local Government and the Regions Select Committee published a report in November 2004, calling for a duty to provide sites to be reinstated. The Government response in early 2005 was that it did not feel that a duty was needed, but it set up a *Gypsy and Traveller Task Group on Site Provision and Enforcement*, (chaired by Brian Briscoe, former Chief Executive of the Local Government Association). Their report (2007) supported the legislative framework of the time. However, they suggested that more momentum was needed around delivering site provision.

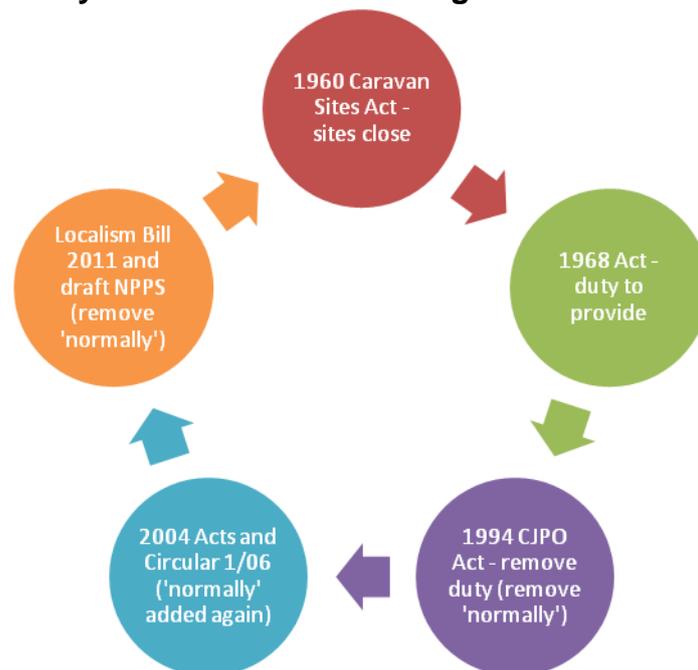
2.8 Two pieces of legislation in 2004 effectively placed duties on local authorities to assess needs and include sites in development plan documents - this should have resulted in the provision of more Gypsy and Traveller sites. The Housing Act (2004) and the Planning and Compulsory Purchase Act (2004) effectively required local authorities to assess the needs of Gypsies and Travellers and, via the Regional Planning Body, to include how this need would be met in local development plans. Section 225 of the Housing Act 2004 stated that:

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.

2.9 Two years later, Circular ODPM 1/2006 was published to replace Circular 1/94; it provided fresh guidance for deciding on planning permission for new sites and it allowed for potential for considering Green Belt with the insertion of the word 'normally'. Paragraph 49 of Circular 1/06 states that: "*There is a general presumption against inappropriate development within Green Belts. New gypsy and traveller sites in the Green Belt are normally inappropriate development, as defined in Planning Policy Guidance 2..*". Evidence from research below shows that in some cases Planning Inspectors did find cases which were not 'normal' and where other factors outweighed the protection of Green Belt.

2.10 There has been a tug of war over the word 'normally' in planning guidance which allows for some discretion in considering site applications in the Green Belt: 1960 – out, 1968 – in, 1994 – out, 2006 – in, and now in 2011 it looks to be on its way out again.

Figure One – The Cyclical Nature of Planning Guidance



3. Methodology and rationale for the Circular 1/06 planning research

3.1 When Circular 1/06 was first introduced on 1st February 2006, to replace previous planning circular 1/94, the Traveller Law Reform Group (chaired by Lord Avebury) wanted a piece of work to analyse the initial impact. Research over a six-month period was undertaken to achieve this (which was subsequently referred to in the Briscoe Task Group report, 2007³). This was followed up by a larger period of research to attempt to substantiate the emerging trends demonstrating the impact of Circular 1/06 on the provision of Gypsy and Traveller sites. More recently, a period of analysis was undertaken to see whether the announcement by Secretary of State Eric Pickles on (1) the revocation of Regional Strategies and (2) the announcement to replace Circular 1/06 had an impact on Planning Inspectors decisions.

3.2 The research involved examination of 100% planning *appeal* cases during the research periods – it did not include planning cases resolved at council level. The database of the Planning Inspectorate allows access to full reports in all cases and is centrally managed. It is more of a challenge to correspond with each and every planning authority at local level to ensure 100% of cases to be available for research analysis. Nevertheless, beyond this report, the researcher will attempt to examine a case study of planning decisions taken at local authority level.

3.3 The research took place over three separate tranches of analysis covering four distinct time periods:

Period 1: 1st November 2005 – 31st January 2006 (Tranche One – pre Circular 1/06)

Period 2: 1st February – 30th April 2006 (Tranche One – post Circular 1/06)

Period 3: 1st February 2007 – 20th January 2009 (Tranche Two – ‘embedded Circular’)

Period 4: 27th May – 31st December 2010 (Tranche Three – post revocation announcement)

3.4 Over the entire research process a total of **405** planning cases were analysed:

Period 1: 75

Period 2: 54

Period 3: 231

Period 4: 45

³ Communities and Local Government (2007) *The Final Report to Ministers of the Task Group on Site Provision and Enforcement (Chaired by Sir Brian Briscoe)*, London: CLG

4. Initial findings across the three tranches of research

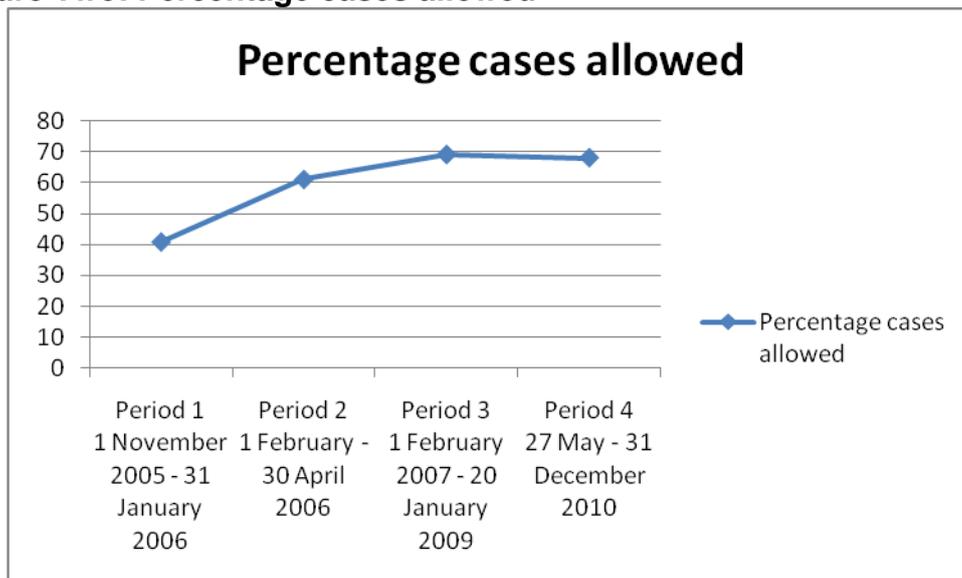
4.1 There was a perception prior to Circular 1/06 that Gypsies and Travellers were disadvantaged in the planning system and that, proportionately, more applications for Traveller sites were refused than there were refusals for bricks and mortar planning applications in the wider community. There was a hope that Circular 1/06 would redress the balance and give a more even footing to applications for sites.

4.2 Therefore one of the measures to establish the success or otherwise of Circular 1/06 was the number of cases allowed by Planning Inspectors at appeal. Examining the 405 cases across the four distinct research periods it is possible to see an upward trend in appeal cases allowed. The figure below shows the percentage of cases allowed in each period starting from a position of 40% before Circular 1/06 rising to a peak of 70% in period 3 (the established phase of implementation of Circular 1/06). Period 4 shows a slight tailing off (the period after the Secretary of State's announcement on the Circular and on revocation of Regional Strategies) but there now needs to be more research following the actual publication of the draft National Planning Policy Statement consultation on planning for traveller sites, in April 2011, to determine the full effect.

	Period 1 1 November 2005 - 31 January 2006	Period 2 1 February - 30 April 2006	Period 3 1 February 2007 - 20 January 2009	Period 4 27 May - 31 December 2010
Allowed	26	29	143	29
Part	5	4	17 ⁴	2
Dismissed	44	21	71	14

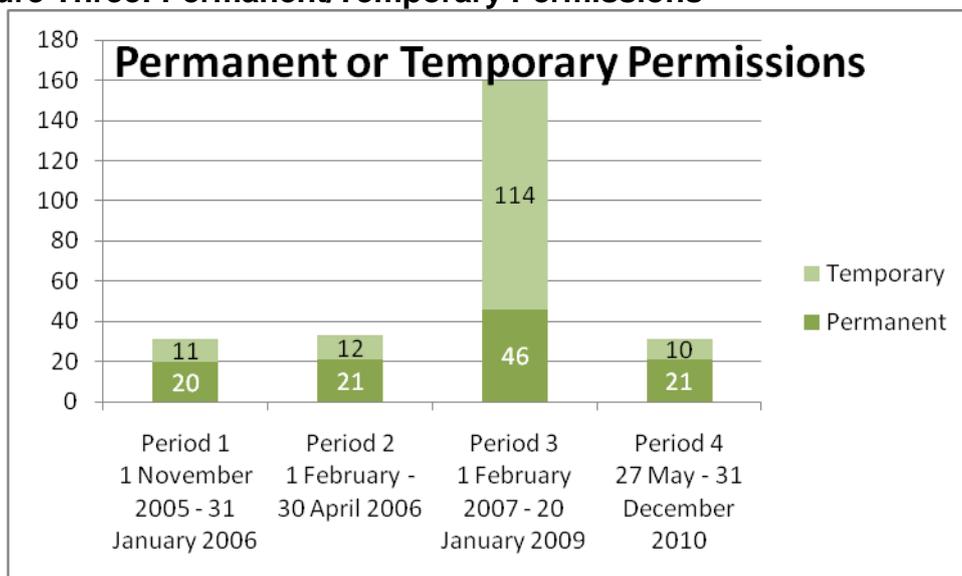
⁴ Of these 17 cases part allowed – there were 2 cases where it was not absolutely clear from the summary whether the permission was permanent or temporary. In these 2 cases there has been an assumption that the part permission was permanent.

Figure Two: Percentage cases allowed



4.3 Looking at decisions across the four periods in more detail, one can see that whilst there was an increase in permissions overall, the proportion of temporary to permanent permissions did change over the research period.

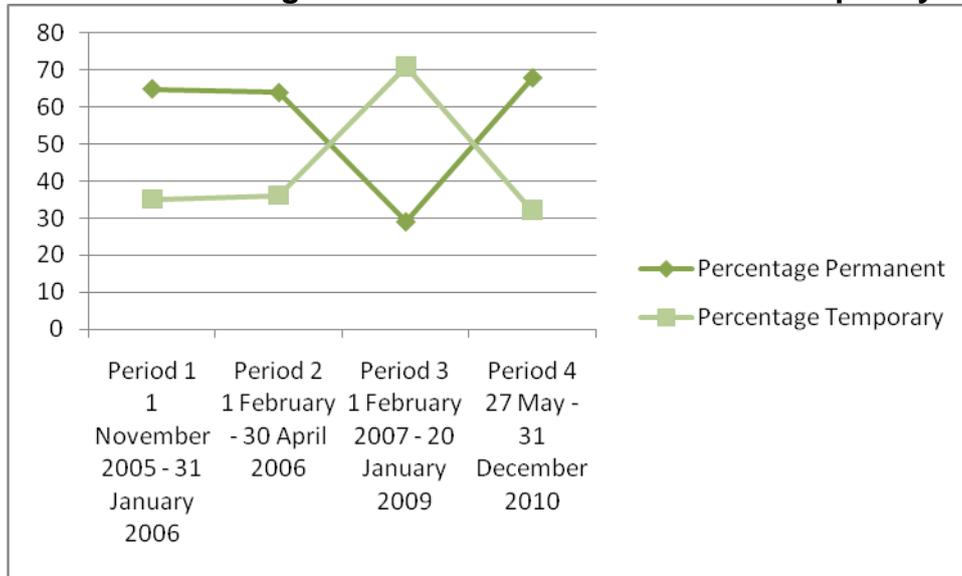
Figure Three: Permanent/Temporary Permissions



4.4 The graph over the page at figure four shows the trend changes across the four periods. In periods 1, 2 and 4 the dominant type of permissions being allowed are permanent. However during period 3 (which we can consider as the 'entrenched' period of Circular 1/06) there is a complete reversal with more temporary permissions, proportionate to the total number of permissions in the period, being allowed. Looking at Circular 1/06 in isolation may lead up the wrong path of analysis – this trend reversal makes more sense when considering the Regional Strategy targets for new pitches to meet evidenced need and the anticipation of Inspectors that temporary permissions could act to fill a gap until the development plan documents

incorporated pitch requirements and ultimately lead to more sites being developed by councils. Regional Strategy targets have been revoked in the Localism Bill before their true effectiveness in the delivery of new sites could have been measured. The announcement of their revocation may, in part account for the return to permanent permissions as the dominant mode of appeals being allowed in the most recent period of study.

Figure Four: Percentage of Permissions – Permanent/Temporary



5. Tranche One Findings

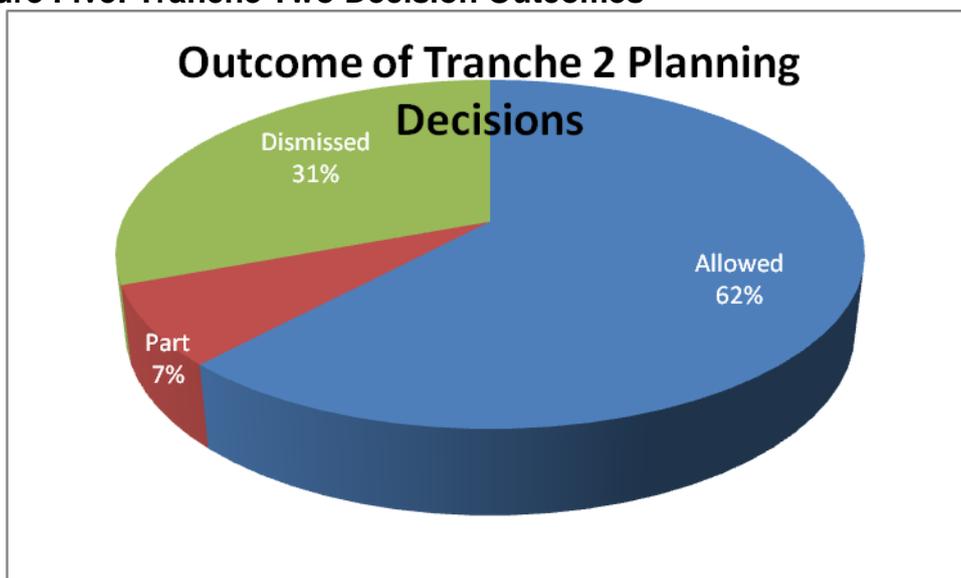
5.1 Between the two research periods in tranche one (129 planning appeal cases - 75 pre Circular 1/06 and 54 post) the number of allowed appeals increased by approximately 20% (from 34.7% to 53.7%) and the number of dismissed appeals decreased by 20% (from 58.7% to 38.9%). In summary, of the 54 decisions made after the implementation of Circular 1/2006 on 1st February, 33 cases were given permission, with a similar trend of temporary permissions to the period before the circular (a small rise from 55% of permissions being temporary to 57% after February 2006 perhaps gave a hint of the growing trajectory in this area). The findings showed that of the total appeals allowed 23 were temporary and 41 were permanent.

5.2 It was also interesting to note that despite the difference in number of appeal decisions being made between the two periods, the number of allowed permissions was relatively constant (31 and 33 respectively) suggesting that in the initial period after implementation of Circular 1/06 there was a rise of appeals allowed proportional to the total number of cases.

6. Tranche Two Findings

6.1 Two hundred and thirty one (231) planning appeal cases in England were analysed. The cases represent 100% of planning appeals heard from 1st February 2007 to 20th January 2009 (a full two-year period). The outcome of these 231 cases is shown in Fig. 5 below:

Figure Five: Tranche Two Decision Outcomes



6.2 At first glance, the positive picture is of appeals allowed (143) far outweighing appeals dismissed. However, analysis of those 143 applications allowed, showed that 108 were given temporary permission ranging from two to five years – often with the conclusion from the Inspector that this will provide accommodation in the interim, whilst councils identify and provide sites through the Regional Strategy.

Use of temporary permissions

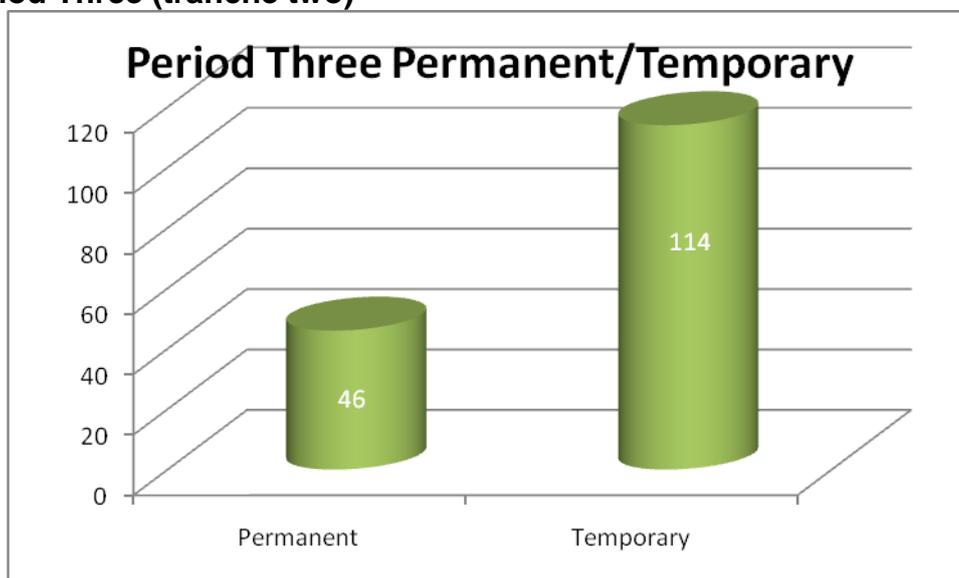
6.3 Circular 1/06 paragraphs 45 & 46 deal specifically with the use of temporary conditions in the granting of planning permission (with reference to Circular 11/95 paragraph 110). Basically, the Circular allows the use of temporary permission to be considered. Paragraph 46 states that:

“Such circumstances may arise, for example, in a case where a local planning authority is preparing its site allocations DPD. In such circumstances, local planning authorities are expected to give substantial weight to the unmet need in considering whether a temporary planning permission is justified.”

6.4 This paragraph in Circular 1/06 clearly had an impact on the use of temporary permission. The findings show a reversed trend for the proportion of temporary and permanent permissions given during period

three of the research, compared with other periods of study. The numbers of permissions just for this period of research are shown in the figure below.

Figure Six: Number of Temporary and Permanent Permissions in Period Three (tranche two)



6.5 The graph above shows absolute numbers of cases. If we consider the changes in percentage terms there is a 21% increase (from 55% prior to Circular 1/2006) to 76% of permissions being given on a temporary basis in the two year period 2007-2009. This figure, of itself, paints a more complex picture in practice with headline figures showing sites being allowed, but a little below the surface the answer is a lot more temporary in solution.

6.6 Whilst the trend in tranche two was one of proportionately more temporary permissions being given than permanent, there were of course exceptions to the trend and differences of opinion between different Inspectors on the appropriateness in the use of temporary permissions. Three cases from the tranche two set of research are discussed, briefly, below to exemplify this.

Case 62 (June 2008)

6.7 Temporary 5 year permission was granted for a site, but with strict conditions including personal named permission of those who could occupy, along with a requirement to return the site to its previous condition at the end of the period. One of the key reasons in the decision was the lack of alternative sites and the delay to the Development Plan Document process. In this case the Inspector found that 'other material considerations' (general need for Gypsy sites, accommodation needs of occupants, lack of alternative sites, and personal circumstances) did not outweigh the 'substantial' harm to the Green Belt sufficiently to justify permanent permission (para. 78) but in considering temporary permission said that: "*On the evidence available to me, there appears to be an immediate general need for additional gypsy caravan sites within the District. However, new sites are not likely to come forward until 2011 as part of the DPD process*

and the present shortage of sites to meet this unmet need should be given considerable weight in this appeal" (para 71).

6.8 This case was one where it was called in by the Secretary of State who agreed with the decision of the Inspector to give temporary planning permission. However, there was some discussion in the decision on the issue of 'prematurity'⁵:

"[The Secretary of State] agrees that the harm to the Green Belt and the countryside should be weighed against the evidence of needs and personal circumstances of the occupants of the site..., the absence of alternative gypsy caravan sites within the District and a general need for more sites within the District, County and Region to provide accommodation" (para. 11).

6.9 The Secretary of State seems to agree that the absence of sites and a general need for more sites is a mitigating factor. In the district where this particular case was heard, the Secretary of State had already directed the authority to submit a Development Plan Document (DPD) to follow strategic planning procedures and yet in her agreement with the decision to case 62 did not raise ad-hoc planning permissions on individual sites as necessarily running counter to that strategic process.⁶

6.10 Whilst the Secretary of State said the principle of 'prematurity' should not be held against the planning case in this instance, there is some degree of variability in the use of ad hoc planning permissions outside of the DPD process, to meet existing accommodation need for Gypsy and Traveller sites.

Case 38 (August 2008)

6.11 In case 38, there was reference made to the previous case (62); indeed its geographical location was in the same area and also in the Green Belt. Case 38 was only heard two months after the previous case and the issues of shortage of alternative accommodation and delay to the DPD process were also considered. Whilst the lack of alternative accommodation 'weighed in favour of the appellants' it seems there was not the 'substantial weight' attached to this aspect, that there was in the earlier case 62.

⁵ This is the notion that individual permissions should not be given 'ad hoc' in advance of the more strategic approach of the DPD process.

⁶ However, in case 63, in Barnsley, she agreed with the Inspector on the principle of ad-hoc permissions outside of the DPD process, but stopped short of agreeing with him that 'prematurity' should weigh against the proposed development. *"For the reasons given in IR47-48⁶, the Secretary of State agrees with the Inspector that the ad hoc release of individual sites would run counter to the proper planning process and that the proposed development would be substantial... However, having had regard to the current need for gypsy sites.. and the failure of existing local planning policies to provide sufficient numbers of sites, the Secretary of State does not agree with the Inspector that prematurity is an issue which should weigh in balance against the proposed development in this case"* (paras 14-15).

6.12 This case was also one called in by the Secretary of State who agreed with the decision the Inspector gave to dismiss the appeal and deny even temporary planning permission.

Case 80 (February 2008)

6.13 One of the more unusual reasons for giving little weight to the consideration of temporary permission due to lack of alternative sites was given in case 80. The Inspector said:

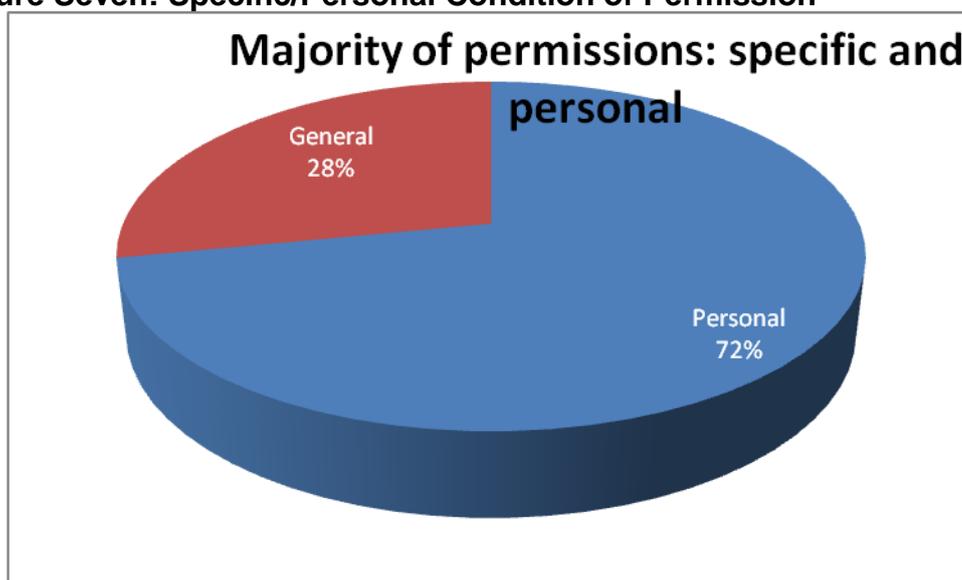
“I have given consideration to the possibility of a temporary permission. The parties thought that a period of three years would be reasonable. The process of identifying and allocating specific plots of land is in its very early stages... and appears to have already been delayed. Indeed, for the reasons given in paragraph 17, I am not confident that new sites would become available by 2011. Such a condition would therefore not follow the advice in paragraph 45 of Circular 01/06”.
(para 35).

6.14 This appears to be an unusual and counter-intuitive interpretation of the planning Circular; if council plans are delayed then a longer temporary period could be given, say five years, rather than dismissing the appeal altogether.

Additional conditions attached to planning permissions

6.15 In tranche two, the majority of permissions allowed (72%) were specific and personal to the appellant and their family. 115 cases out of a total of 160 allowed or part allowed were personal permissions with the names of those allowed to occupy the site very clearly stated in the conditions for the permission. The remaining cases although classed as ‘general’ still required the site to be occupied by Gypsies and Travellers rather than any wider use.

Figure Seven: Specific/Personal Condition of Permission

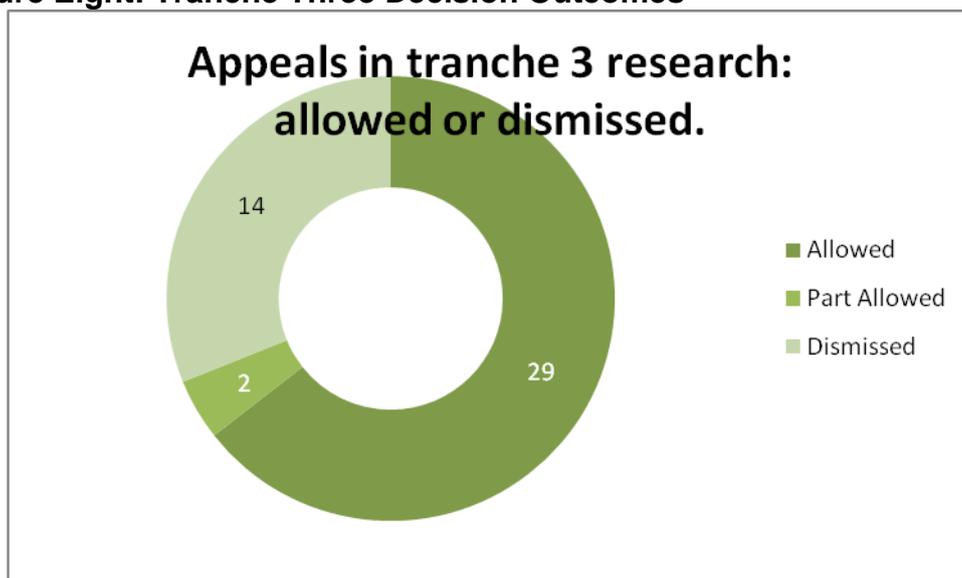


6.16 These findings from tranche two demonstrate that appeals were being allowed and temporary permissions were being given during this period (2007 – 2009) to fill a gap in lack of provision until the results of targets in Regional Strategies were embedded in local development plan documents and sites were actually provided to meet evidenced need.

7. Tranche Three

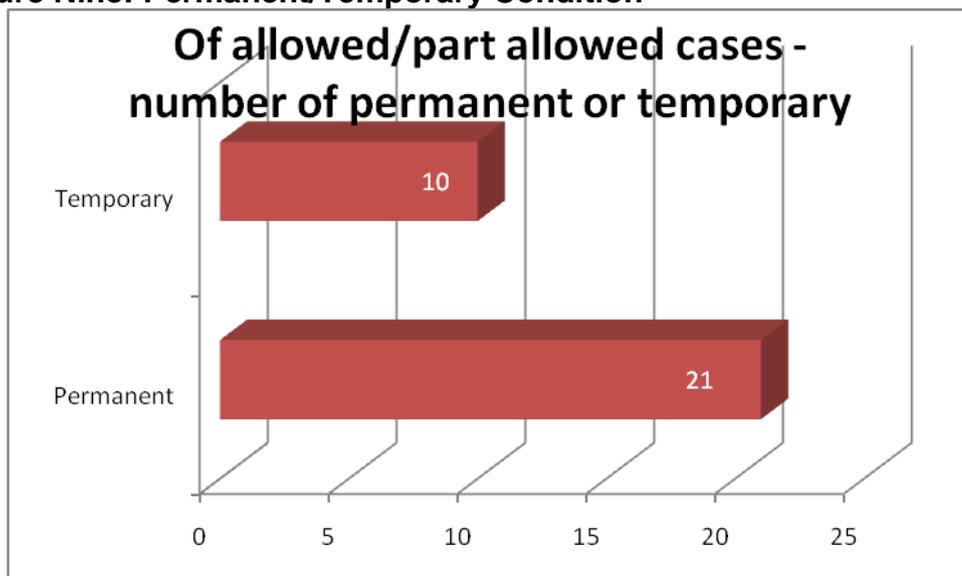
7.1 Forty five (45) planning appeal cases were examined dating from the Secretary of State's initial letter announcing his intention to abolish Regional Strategies (27th May 2010) to 31st December 2010. The aim of this third tranche of analysis of planning appeal decisions was to establish what impact the announcements had on Planning Inspectors' decisions, to see whether the abolition of Regional Strategies and Circular 1/06 would have an impact on the delivery of new sites to meet need. The majority of cases were allowed or part allowed and there was little difference in planning permissions given between this period (four) and the previous period of time (three).

Figure Eight: Tranche Three Decision Outcomes



7.2 The distinction between permanent and temporary permission in this tranche of research took a distinct turn back (as seen in the table over the page at figure nine), where more permanent permissions were given than temporary.

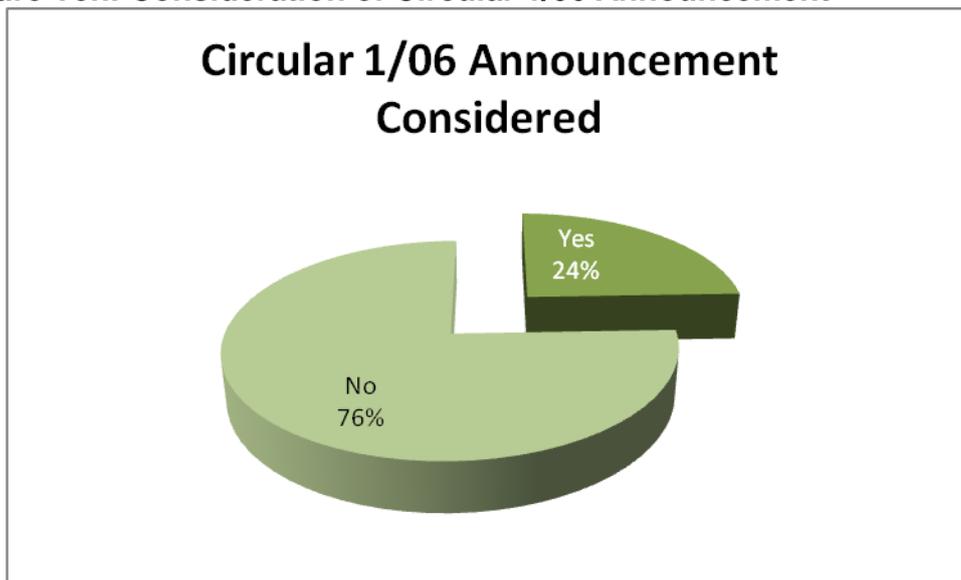
Figure Nine: Permanent/Temporary Condition



7.3 There are a number of possible reasons for this return to previous trend on permanent/temporary permissions and there is no explicit reasoning in the Inspectors' reports that the impending changes in planning regulation resulted in the decision to give permanent permissions. There needs to be more work to identify links between appeal cases to show examples where a recent appeal may have a history in a previous appeal case and where previously temporary permissions may have been given, evidenced need has not since been met and so the subsequent Inspector's decision may have been to grant permanent permission. In one case (PINS 2122649) the council had accepted the GTAA evidenced need for 32 pitches and made representations to the Inspector that 24 pitches had since been provided. However the Inspector had said that 6 of the said pitches were due to temporary permission and suggested that temporary permission did not count towards unmet need and so discounted the 6 from the 24. Such reasoning suggests that the temporary condition of previous permissions, even when not directly linked to the appellant in this case, was part of the consideration of the Inspector, and presumably formed the basis of the rationale for giving permanent permission in this instance, which, following the reasoning of the Inspector, would count towards unmet need.

7.4 In the preliminary analysis, the 45 decision reports were analysed to see how many contained mention of the Secretary of State's announced intention to abolish Circular 1/06 – just under one quarter of them did.

Figure Ten: Consideration of Circular 1/06 Announcement

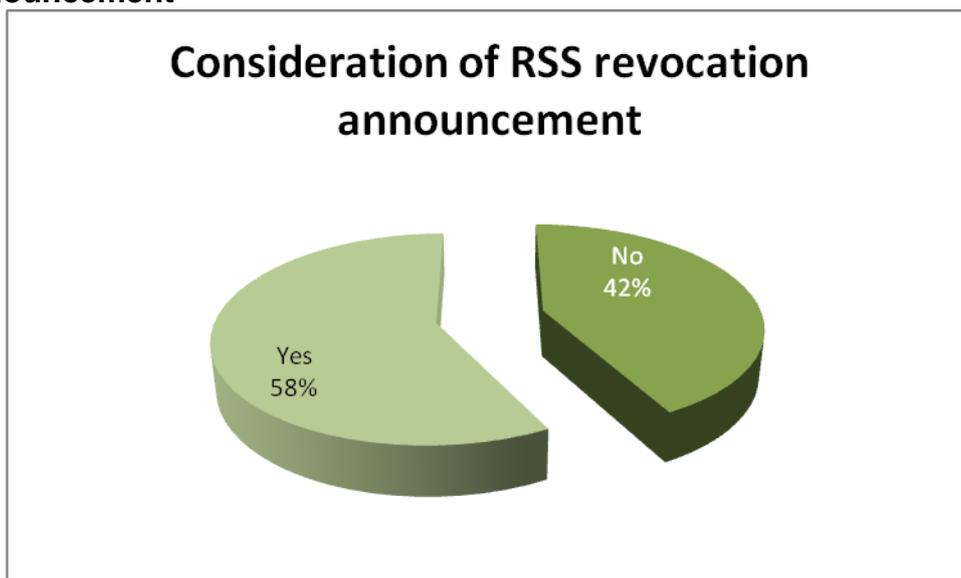


7.5 However there was inconsistency in the weight given by Planning Inspectors to the announcement. For example, of the 11 cases (24%) examined in more detail – four were clear that although an announcement had been made, the Planning Circular 1/06 was still in force. For example: (Pins 2128783) “*There was agreement between the parties at the hearing that the weight the Circular can be afforded at this stage is not diminished*”.

7.6 Five Inspectors’ decisions said that material consideration of the Secretary of State’s announcement must be made and some weight attached. The two remaining were decisions called in by the Secretary of State himself and there was very clear weight attached to the intention to revoke the Circular.

7.7 The analysis also looked at whether material consideration had been given to the announcement revoking Regional Strategies:

Figure Eleven: Consideration of revocation Regional Strategy announcement



7.8 Of the 26 decisions (58%) that had considered the Secretary of State's announcement, there were again varying degrees of weight given. There was also some confusion at one period, in Autumn 2010, because of the first judgement in the CALA Homes case⁷ which ruled that the revocation of Regional Strategies had been unlawful; however a subsequent judgement reversed that.

7.9 Where Planning Inspectors discussed the revocation of Regional Strategies and pitch requirements, they often referred to Gypsy and Traveller Accommodation Assessments (GTAA) as still best evidence of need on which to base planning decisions.

7.10 The Government should be mindful that in removing GTAAs specifically from the Planning Guidance, that this may mean councils do not update and use this source of evidence but instead rely on other sources – such as count data – which are not so robust.

⁷ *R (Cala Homes (South) Limited) Secretary of State for Communities & Local Government (No. 2) [2011] EWHC 97*

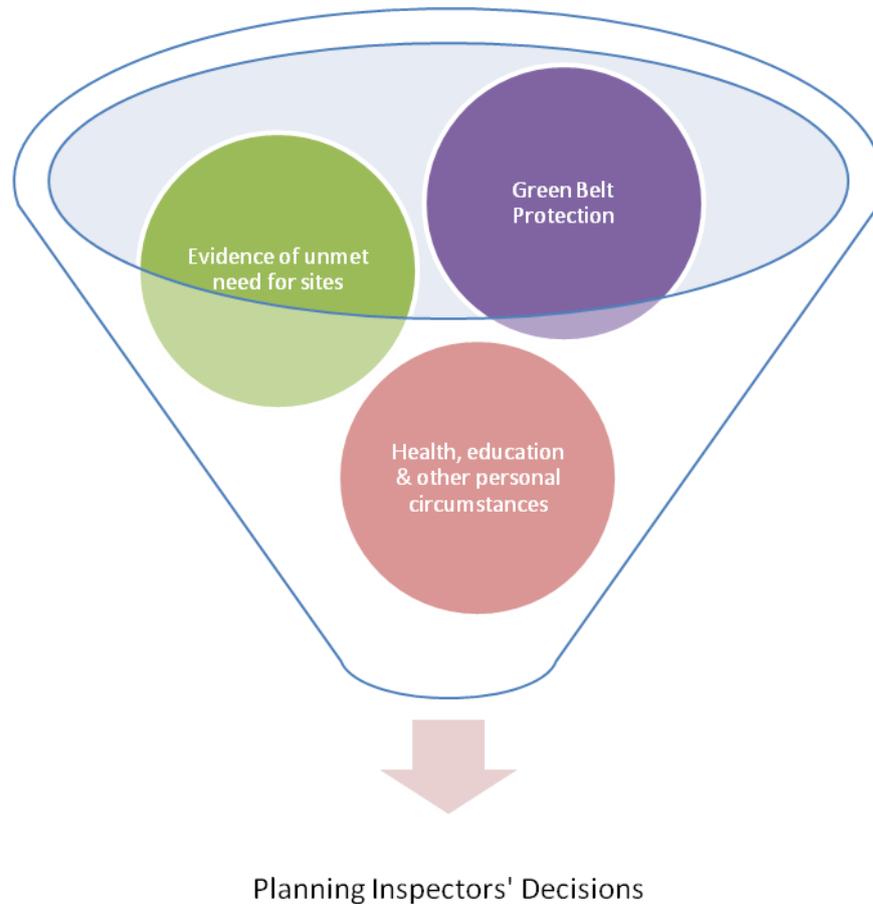
8. Themes and Issues arising from analysis of the stated main reason for the Planning Inspectors' decisions

8.1 A number of themes came out of the Inspectors' decision making process. The key themes in decision rationale across the 405 cases were:

- Impact on Green Belt or AONB
- Unmet need for sites in the area (evidenced by GTAA or Regional Strategy target figures)
- Health needs (and the imperative to be settled in a place to access medical care)
- Education needs (of children who wanted to access school)
- Gypsy and Traveller status (in some cases this was considered in great detail and there were examples where the Inspector found the appellant did not meet the definition under planning guidance)
- Other personal circumstances (including aversion to bricks and mortar)
- Highway safety (access from site onto road and potential increase in vehicles)
- Sustainability (whether the site was close enough to school, doctor, shops and whether excessive personal car use in remote areas would impact on environmental sustainability)
- Human Rights (if permission for site was not given, would this interfere with appellant's human rights, in particular Article 8 of the Act).
- Secretary of State announcements to revoke Regional Strategies and to replace Circular 1/06.

8.2 Although a wide range of factors was considered across all cases, which were decided upon by a number of different Planning Inspectors, three key areas seemed to be discussed most.

Figure Twelve: Key Factors in Assessing Planning Appeal Cases



8.3 In each case different aspects of the site and the circumstances were considered and in most cases clear rationale for decisions given. However, it was not clear from analysis across all of the cases, at what point personal circumstances, say, would surely outweigh protection of the Green Belt. For some Inspectors in some cases, protection of the Green Belt seemed sacrosanct, and for other cases there did seem to be a ‘tipping point’ at which the personal circumstances outweighed any harm to the Green Belt in granting temporary permission. Because each case is different, each must be judged on individual issues – but there is merit in further research, like this, which has an overview of decisions across all Planning Inspectors to see whether interpretation of the guidance is largely consistent and reasonable.

9. Recent proposed changes in the planning policy framework

9.1 There are two key changes affecting the planning policy framework in relation to Gypsy and Traveller sites:

- The Localism Bill 2011
- Draft National Planning Policy Statement - consultation on planning for traveller sites

9.2 The consultation on draft National Planning Policy Statement – planning for traveller sites, cannot be looked at in isolation to the Localism Bill (2011) and most particularly the revocation of Regional Strategies contained therein. Indeed the Royal Town Planning Institute said it “*must be embedded in legislation and needs to be on the face of the Localism Bill*”⁸.

The Localism Bill

9.3 The intended revocation of Regional Strategies is set out in the Localism Bill. It is intended that Neighbourhood Development Plans, and the Community Right to Build, will deliver the proposals in Core Strategies. There is a real concern though, not just in relation to Gypsy and Traveller sites, but more broadly across the housing sector, that the removal of the entire regional layer of the process will create a loss in the planned number of homes to be built to meet recognised housing need⁹.

9.4 The Localism Bill introduced by the Government in 2011 combines (Section 39) duty to hold a local referendum, (section 89) abolition of regional strategies, (sections 91 & 92) changes to local plans limiting the discretion of the Planning Inspectors to insert wording into local plans, and section 96/ Schedule 9 on neighbourhood planning – which effectively takes the wider framework away and could lead to conflict over the competing aims for shared spaces in communities¹⁰. Whilst the concept of neighbourhood planning could be a powerful enabler for Gypsy and Traveller site provision if there were enough supporters, the likelihood of local community support where there is not already a site and Gypsies are not already seen as part of the community, is low. Neighbourhood planning without a wider strategic framework will most likely disadvantage Gypsies and Travellers because of the public perception problem noted in 1977 by Cripps, and still not tackled by successive governments to this day.

⁸ Donnelly, M (2011) *RTPI calls for Localism Bill policy framework clause*, Planning Resource, 20th April, www.planningresource.co.uk/news/1066534

⁹ See further National Housing Federation (2011) *The Abolition of Regional Spatial Strategies – submission to the Communities and Local Government Select Committee from the National Housing Federation*, March 2011 AND Town and Country Planning Association, supported by JRF (2011) *Policy Analysis of Housing and Planning Reform*, March 2011 AND Building and Social Housing Foundation (2010) *Abolition of Regional Spatial Strategies, rapid impact assessment for the Midlands and North of England*, October 2010.

¹⁰ See further Richardson, J (2007) *Providing Gypsy and Traveller Sites: Contentious Spaces*, York: JRF and Richardson, J (2006) *The Gypsy Debate: can discourse control?*, Exeter: Academic Imprint

9.5 A recent panel held in the House of Lords on 3rd and 4th February 2011, as part of research for the Travellers Aid Trust asked expert witnesses to provide evidence on the impact of the Localism Bill on the provision of Gypsy and Traveller sites. A separate report from the panel is to be published; but from that panel evidence, the revocation of Regional Strategies issue was seen to be very much entwined with the announcement that Circular 1/06 would be replaced with 'light-touch' guidance.

9.6 In examining one of the factors considered by Inspectors – that of 'prematurity' (discussed in analysis of tranche two research) one can see how important the planning process under Regional Strategies has been. Whilst there was inconsistency interpreting the issue of prematurity on the outcome of individual cases, the broader planning framework was seen by Inspectors as important enough that ad-hoc permissions might be premature to the strategic approach. It is this interconnectedness between the regional framework and targets for pitch numbers (now being revoked in the Localism Bill) and the use of Circular 1/06 to facilitate sites (albeit many of them temporary) that must be carefully considered.

Draft National Planning Policy Statement- consultation on planning for traveller sites

9.7 In the Autumn 2010, the Government published its White Paper¹¹ which set out intentions to encourage 'locally driven growth' and this is linked to ideas set out in the Localism Bill (as discussed above) and to more specific suggested changes, such as consultation on a further change to Planning Circular guidance and the word 'normally' is to be removed. Paragraph 3.16 of the consultation refers to Policy E of the draft National Planning Policy Statement (2011), where it is proposed the word 'normally' is removed to leave the situation back at the 1994 point, and prior to that 1960, where a blanket rule that sites in Green Belt are 'inappropriate' governs decisions.

9.8 There is also a suggested change to not give "substantial weight" to current lack of accommodation (under transitional arrangements in paragraph 3.19 of the consultation). This is an area of inconsistency between Planning Inspector decisions, as per the evidence from the research; however in many cases Inspectors commented on the urgent unmet need and gave substantial weight to this which in some cases was enough to outweigh harm to the Green Belt. Without this term 'substantial weight', and in combination with the removal of the word 'normally', from the Green Belt guidance it is evident that a number of cases which would have been given permission under Circular 1/06 – will not succeed in the future.

9.9 The consultation also suggests removing specific reference to the need to have Gypsy and Traveller Accommodation Assessments and instead ask only for a 'robust evidence base'. It is not clear what exactly will count as

¹¹ HM Government (2010) *Local growth: realising every place's potential*, London: The Stationery Office

robust evidence in the absence of up-to-date primary data collection of need, such as through GTAA's. Through involvement in two large GTAA pieces of work, both with the methodology of involving community interviewers – it became apparent that the process of undertaking a GTAA (or similar such research using elements of co-production) ensures communication with a range of people in the community, perhaps already starting to mitigate the potential conflict and tension that can arise between communities when Gypsy and Traveller sites are debated.

Impact on Equality

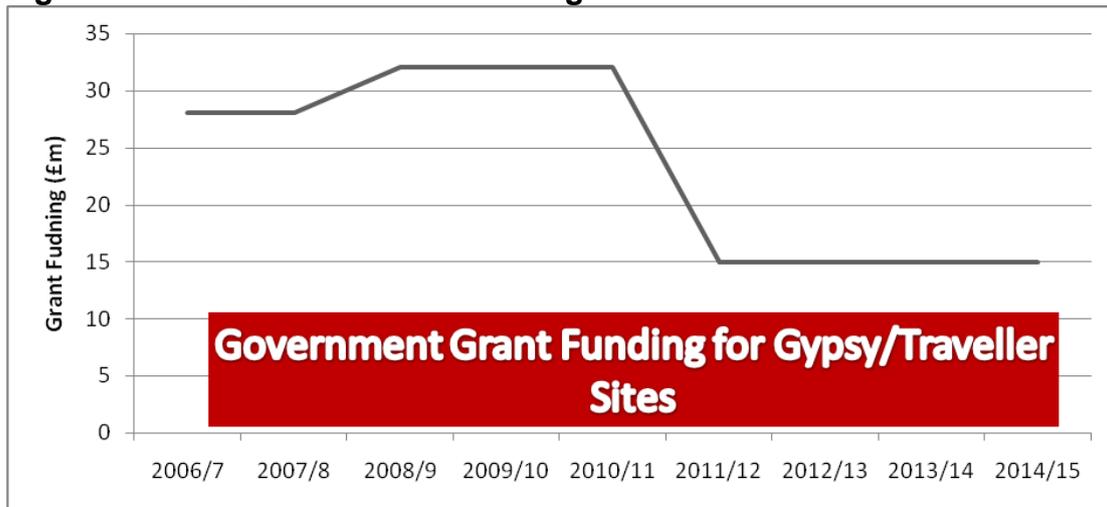
9.10 Equality Impact Assessments have been undertaken for the Localism Bill and for specific factors, such as the use of referenda, and Government has found no adverse impact. For the consultation on the National Planning Policy Statement (Planning for traveller sites) it was seen as necessary to undertake a detailed Impact Assessment regarding the replacement of Circular 1/06. The detail of the Equality Impact Assessment acknowledges that there may be a short term reduction of authorised sites, but refers to two key mitigating factors (1) Traveller Pitch Funding Stream as part of the HCA Affordable Housing Programme of £60m from 2011 – 2015, and (2) the New Homes Bonus – which has yet to be tested. When the very planning process which is supposed to lead Gypsy and Traveller site provision changes drastically, leaving a policy vacuum for some authorities, there will undoubtedly be an impact on the community. This is a very important issue to consider during the process of the Localism Bill and provides a counterpoint to the reassurances given in Equality Impact Assessments for the Bill that there will not be disproportionate affect on the Gypsy and Traveller communities in the revocation of Regional Strategy targets.

9.11 One further impact which, when combined with the revocation of Regional Strategies and the replacement if Circular 1/06, will impact on the provision of sites is funding available for site development. Since 2006 there has been a specific programme of funding, and it is creditable that the Government in 2011 has continued this.

- 2006 – 08 £56m (over 2 year period - £28m per year)
- 2008 – 11 £97m (over 3 year period - £32m per year)
- 2011 – 15 £60m (over 4 year period - £15m per year)

However, the amount available is reduced and there will be an impact.

Figure Thirteen: Government Funding



9.12 The Coalition Government's deficit reduction policy means that there are cuts to national pots of grant funding, as well as impacts down the line when local authorities cut Supporting People contracts, or reduce charity funding awards. Clearly, it is realistic in this context of rapid, front-loaded cuts that there will be cuts to funds relating to Gypsy and Traveller services and sites. However these cuts inevitably have a disproportionate effect on vulnerable groups¹². This report is not necessarily lobbying for additional funding, and is instead focused on the impact of the changes to the planning framework. But, in examining the cumulative impact of changes on already vulnerable groups, the sharp reduction in available funding for the provision of new sites, should be considered in any Equality Impact Assessments undertaken.

9.13 The government should consider conducting an Equality Impact Assessment on the cumulative effect of the combined loss of Regional Strategy targets for pitch requirements, together with the withdrawal of Circular 1/06 and the reduction in available funding.

9.14 It would appear that there has been an unfortunate waste of time over recent years with the discussion on prematurity of decisions – particularly where permission has not been given for sites. Planning decision makers, it seems, have been making decisions not to give permission because they were waiting for the results of the Regional Strategy and Development Plan Documents to manifest in practically providing more sites. In some cases temporary permissions were given as a stop-gap, but not all. It is now the case that the waiting was in vain for a strategic response and that more permanent permissions could have been given during the previous four year period 2006 – 2010. If allowed the time to take effect then Regional Strategy targets, in conjunction with other measures to change public perception and to dampen hostility, could have resulted in more sites being provided in a strategic approach.

¹² See further Richardson, J (Ed) (2010) *From Recession to Renewal: the impact of the financial crisis on public services and local government*, Bristol: Policy Press

Emerging initiatives to provide sites

9.15 In some areas Community Land Trusts (CLTs) are being considered as an option for providing Gypsy and Traveller sites. A pilot just started in the South West will use recyclable grant funding (the money is repaid by members of the CLT within a fixed period and so it can be used again to fund more provision) to help develop sites for Gypsies and Travellers. Development funding is important in supporting and facilitating the writing of a business plan, application for planning permission, application for loan, rules of governance and site plans.

9.16 Whilst this may not be an appropriate model in all circumstances, CLTs should be supported by local councils as an innovative alternative that may help to meet evidenced need for Traveller site accommodation.

10. Conclusions

10.1 The Circular 1/06 Planning Circular research found that the number of permissions given at appeal increased substantially (from 40% prior to implementation of Circular 1/06 to 70% during the 'entrenched period' of implementation of the Circular).

10.2 The majority of permissions given during this entrenched period were temporary permissions. Inspectors' discussion on reasons for decisions showed that weight was given to evidenced need for more sites and lack of alternative accommodation. Appeals were being allowed on a temporary basis to stop the gap in site provision.

10.3 Since the Secretary of State's announcements to revoke Regional Strategies and Planning Circular/ 1/06 there has been an impact on the number of temporary permissions allowed at appeal. Inspectors' decision reports show that the revocation announcements were considered and in some cases, weight was given to this.

10.4 Whilst there is clear evidence that Circular 1/06 did have a positive impact on the number of permissions (albeit temporary) given for Gypsy and Traveller sites, this should not be seen as a system skewed to advantage Gypsies and Travellers. Instead the Circular levelled the playing field for this traditionally disadvantaged group. In debates prior to the election in May 2010, and in discussion relating to the new draft National Planning Policy Statement consultation on planning for travellers sites. The Communities and Local Government press release (13th April, 2011) said: "*... the old planning rules created a perception of special treatment for some groups, undermining the notion of 'fair play' in the planning system and further harming community cohesion.*" This 'perception' was one of the barriers noted by Cripps back in 1977, and it seems that CLG has itself said that the Planning Framework changes are to be made to deal with a 'perception' of special treatment for Gypsies and Travellers – rather than an evidenced and actual special treatment.

10.5 Political discourse can be part of the problem in heightening community tensions. Announcements urging 'vigilance', such as the one made by Secretary of State Eric Pickles in the CLG press release¹³ perhaps do not help create feelings of community cohesion and harmony:

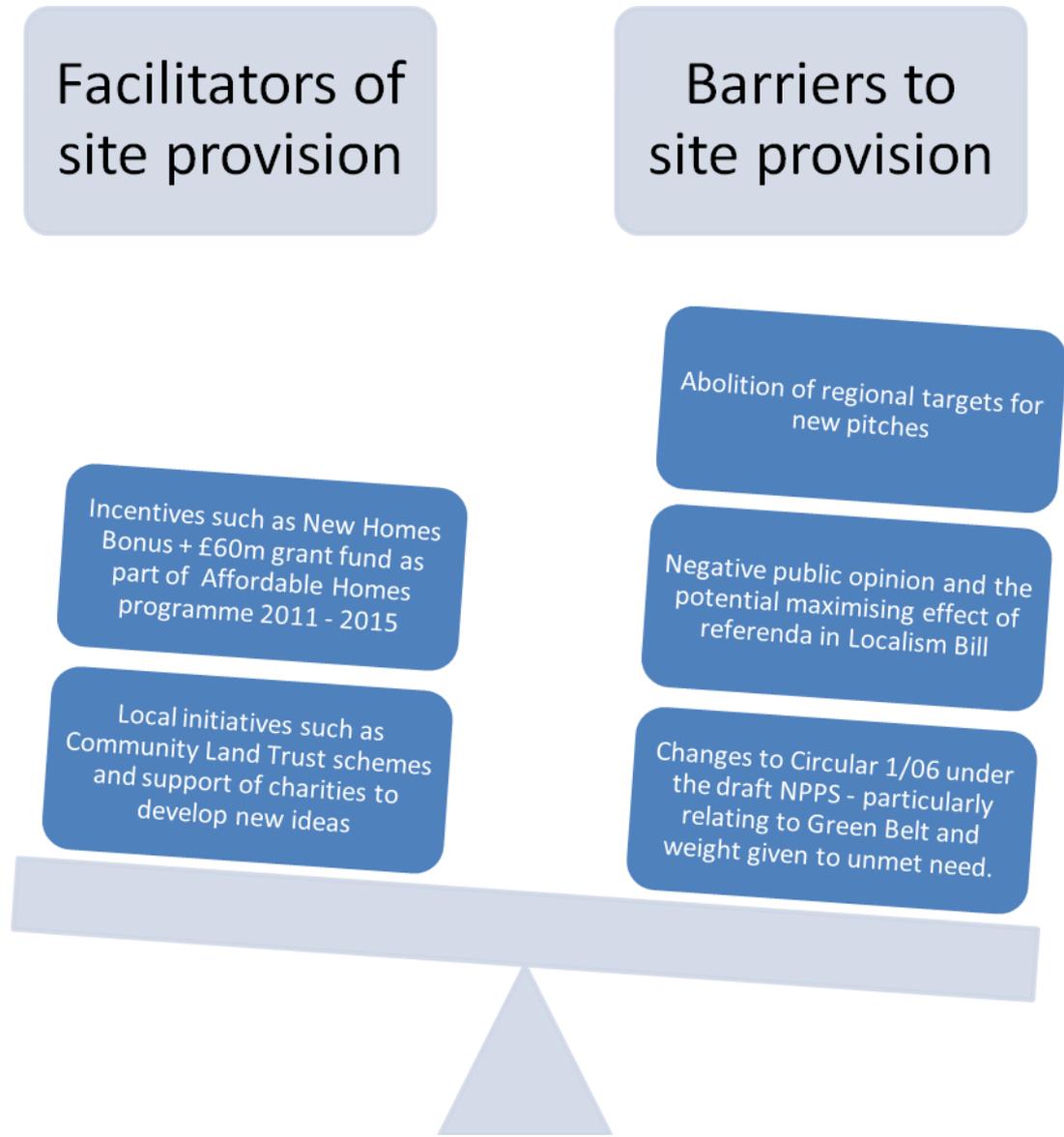
"A small minority may still try to abuse the system. Councils should be particularly vigilant over the extended Royal Wedding and Easter weekends to take firm action against anyone who tries."

10.6 Circular 1/06 and the targets for new pitches in the Regional Strategies were starting to address the severe shortage of Gypsy and Traveller sites in England. This recent progress has been halted by the proposed changes to

¹³ Communities and Local Government Press Release, 13th April 2011: *Eric Pickles: time for fair play for all on planning*, <http://www.communities.gov.uk/news/newsroom/1886974>

the planning framework and, although there are some mitigating factors, there are consequences for site provision.

Figure Fourteen: facilitators/barriers to Gypsy and Traveller site provision



11. Key Recommendations

11.1 Equality Impact Assessments should be undertaken on the cumulative effect of the combined loss of Regional Strategy targets for pitch requirements, together with the withdrawal of Circular 1/06 and the reduction in available government grant funding for site development.

11.2 Government should consider retaining the word 'normally' in the guidance on consideration of site applications in Green Belts. This would allow decisions to be made on a case by case basis and where it is the most appropriate and least contentious location for a site: Green Belt could be considered as an option.

11.3 The Government should not remove the obligation for councils to undertake GTAAs specifically from the Planning Guidance, as this may mean councils do not update and use this source of evidence but instead rely on other sources – such as count data – which are not so robust.

11.4 Government should retain the imperative for Planning Inspectors to give 'substantial weight' to unmet evidenced need and lack of alternative accommodation, in Planning Guidance.

11.5 Whilst cuts to Government grant for sites fall within a wider context of cuts, the Government should be mindful that there is a *business case* for funding sites to negate spend on dealing with unauthorised encampments and developments. There is a *social case* for facilitating sites to enable Gypsies and Travellers to access healthcare and education.

11.6 Alternative approaches to site provision, where appropriate, should be supported and facilitated by the Government through matching development funds from charitable organisations, for recyclable grants for schemes such as Community Land Trusts. Currently applications for funding are made through the Traveller Pitch Funding Stream of the HCA National Affordable Housing Programme; it may be appropriate to make additional funding available for this innovation.

11.7 Care should be taken in political debate on Gypsy and Traveller issues to avoid stoking contentious and discriminatory rhetoric in the popular press and in community debates on site provision.