

# Interim Findings on the Maldon District Local Development Plan

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an Inspector appointed by the Secretary of State for Communities and Local Government

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## Introduction

1. This document contains my Interim Findings on the soundness of the housing policies of the Maldon District Local District Plan (the Plan) at this stage of the Examination. This is not my Report under Section 20(5) of the Planning & Compulsory Purchase Act 2004. My findings concentrate on one key and fundamental aspect of soundness, namely the Plan's policy H6 for the provision of travellers' accommodation. The Plan was submitted for examination on 25 April 2014, and the housing and legal compliance hearings were held between 20 January and 4 February 2015.
2. The Council described the Plan as "*a single local development plan for the Maldon District*" (SD08). It deals with most of the District's development and infrastructure requirements in the one plan, apart from two exceptions. These are rural allocations where a later plan would allocate 420 homes out of the total of 4,430 homes in policy S2, and a later plan for traveller site allocations flowing from policy H6.
3. I held an Exploratory Meeting in July 2014 where I expressed concern about the outdated evidence base for traveller pitches and the lack of any allocations for them until later in the plan period (in paragraph 5.48 of the Plan). There were other concerns including: the methodology of the Plan's full objective assessment of housing need; the amount and rate of housing delivery; whether infrastructure could be delivered on time; the viability of the allocated housing sites; whether sufficient detail was given about the housing allocations and associated development management policies; and unclarity about the proposals for employment based on an out-of-date evidence base, with similar concerns for the retail proposals.
4. The Examination was then suspended at the Council's request, and it submitted new evidence during August and September 2014 to deal with most of my concerns. Having reviewed the new housing evidence, I decided in October 2014 to hold the housing and legal compliance hearings. The Council asked me to hold the hearings of the housing policies first because of the need to resolve how housing need in the District was to be met.
5. Since the Exploratory Meeting, the Council has been working proactively with the developers of the strategic housing sites allocated in the Plan by inviting the submission of planning applications on them, and by the production of draft Masterplans on the Garden Suburb sites at North Heybridge and South Maldon. As a consequence, the Council has already granted planning permission on sites allocated in policy S2 (c) and (g) and a S2 rural site at North Fambridge. It has applications submitted and pending on sites S2 (a),

- (e), (i) and (j). Other applications on sites S2 (d), (f), (h) and (k) are expected to be shortly submitted. The only other allocated site is S2 (b) for 300 homes. The Council has also granted planning permissions on a number of other sites which are not allocated in the Plan. Its housing land supply position is, therefore, rapidly improving.
6. The starting point for the examination is the assumption that the Council has submitted what it considers to be a sound plan. The basis for my examination is the Pre-Submission Plan of January 2014 (SD01).
  7. In accordance with section 20(7C) of the 2004 Act the Council requested that I should, where possible, recommend any main modifications to rectify matters that make the Plan unsound.
  8. In summary, my findings are that policy H6 (Provision for Travellers), and thus the Plan, is unsound and that I cannot rectify this through recommending main modifications or by suspending the Examination to give time for the Council to resolve the unsoundness. This conclusion is reinforced by my consideration of the Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010. I explain my reasons for these findings below, and also the options now available to the Council, which are to either withdraw the Plan or to receive a formal report from me under Section 20(5) of the 2004 Act recommending non-adoption.
  9. Given that this is a fundamental obstacle to further progress on the Plan I deal solely with policy H6 in these Interim Findings. Additionally, it will take time for another Local Plan to be completed, during which the planning and other circumstances are likely to have changed. Therefore, I do not consider that it would be relevant or helpful to make any comments now on the other housing and legal compliance matters because they would soon be overtaken by events.

## **Policy H6 – Provision for Travellers**

### **Policy H6 – as submitted**

10. The submitted policy sets out in its first table the number of permanent pitches required over most of the plan period, namely 64 pitches by 2019 and 70 pitches by 2027. The table also identifies 58 pitches as a "*LDP allocation*", although paragraph 5.47 of the Plan clarifies that these are existing pitches. The policy's second table lists these 58 existing pitches, which it calls "*designated*" sites. The policy goes on to set out four sequential criteria for considering proposals for new provision and then, lastly, a further four criteria for the assessment of proposals for traveller provision.
11. Paragraph 5.48 of the Plan explains that the policy's identified need will be met by considering proposals through the development management process using the policy's sequential criteria. In addition, it says that the Council will review the allocation and requirement for pitches "*during the plan period at an appropriate time in the future when new evidence becomes available*".
12. The evidence for policy H6 was primarily based on a 2009 Gypsy and Travellers Accommodation Needs Assessment (GTAA) (EB007) and on a critical analysis of a trend-based 2013 update by the Council (EB073).

13. There are no 'saved' policies in the Council's present 2005 Maldon District Replacement Local Plan concerning gypsies or travellers.

### **Policy H6 – new evidence and suggested modifications**

14. Following the Exploratory Meeting, in August 2014 the Council submitted a new GTAA, dated July 2014, undertaken by the Essex Planning Officers Association (EB007b) but which involved the Council (paragraph 1.3). Table 83 of the 2014 GTAA identified a need for 32 additional Travellers pitches between 2013 and 2028 as compared to the policy's indication of a need for 12 additional pitches by 2027 (70 required minus 58 existing = 12 additional pitches). At that time the Council said that it would "*require more time to consider the conclusions and implications*" of the 2014 GTAA. It also suggested modifications to delete the policy's pitch requirements (i.e. the deletion of the first table and associated explanatory text) because these had "*been superseded by the GTAA*", and a clarification that the Council would "*undertake a formal/focussed review of policy H6 in 2016 to identify an appropriate provision for Travellers in accordance with the NPPF and associated guidance.*"
15. The Council confirmed in October 2014 that its reference to "*more time*" was to the formal review of policy H6 in 2016, and that the 2014 GTAA represented "*the latest and most robust evidence*" on pitch requirements. It also said that it would "*need to consider and take into account local circumstances and evidence*" on the 2014 GTAA as well as a possible change in the national planning definition of Travellers.
16. The Council suggested before the hearing that policy H6 should be modified to make clear that a proposal would have to be consistent with relevant national policy and guidance. At the hearing the Council told me that it had objections to the 2014 GTAA. It subsequently set these out and said that they had not been satisfactorily resolved and so further work on the 2014 GTAA was needed before an adequate evidence base could be presented. I explain more about these objections later.
17. At the time of the hearing the suggested review of policy H6 (paragraph 5.48) was not included in the January 2014 Local Development Scheme (LDS) [SD09], but the Council subsequently included it in March 2015 as a separate Traveller Development Plan Document (i.e. a Local Plan). Its LDS now says that work on this Local Plan will commence early this year, with submission expected in late 2016 and adoption anticipated in early/mid 2017.
18. After the hearing, the Council suggested further modifications to make clear that the "*designated*" sites in the policy were the identification of already existing sites, and to alter the two sets of policy site criteria by moving the sequential criteria to the end and to indicate that they form a "*preferred*" sequential approach.

## **The soundness of policy H6**

### **Planning policies**

19. Paragraph 4 of the National Planning Policy Framework (the NPPF) says that it should be read in conjunction with the Planning Policy for Traveller Sites (the PPTS) and that plan preparation for travellers "*should also have regard to the*

*policies in this Framework (i.e. the NPPF) so far as relevant."* Paragraph 1 of the PPTS says that it should be read in conjunction with the NPPF.

20. The NPPF says that Local Plans should identify and meet objectively assessed housing needs (paragraphs 14 and 17's third core principle). It goes on to say at paragraph 158 that a Local Plan should be "*based on adequate, up-to-date and relevant evidence.*" NPPF paragraph 159 requires local planning authorities (LPAs) to have a clear understanding of housing needs in their area and to address the need for all types of housing. Footnote 34 to this paragraph says that the PPTS sets out how travellers' accommodation needs should be assessed.
21. Paragraph 182 of the NPPF says that I should assess, amongst other matters, whether the Plan is 'sound', three of the criteria for which are:  
  
*"Positively prepared - ... based on a strategy which seeks to meet objectively assessed development and infrastructure requirements ...";*  
*"Justified – based on proportionate evidence";* and  
*"Consistent with national policy – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework."*
22. The PPTS says at paragraph 4 that the Government's aims in respect of traveller sites are "*for LPAs to ensure that their Local Plan includes fair, realistic and inclusive policies*", "*to address under provision and maintain an appropriate level of supply*", ... and ... "*to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure.*"
23. Paragraph 6 of the PPTS says that LPAs should "*use a robust evidence base to establish accommodation needs to inform the preparation of local plans.*" And paragraph 8 says that LPAs "*should set pitch targets for gypsies and travellers ... which addresses the likely permanent and transit accommodation needs of travellers in their area, working collaboratively with neighbouring LPAs.*"
24. In producing a Local Plan, paragraph 9 of the PPTS says that it should:  
  
*"a) identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of sites against their locally set targets"* and  
  
*"b) identify a supply of specific, developable sites or broad locations for growth, for years six to ten and, where possible, for years 11-15."*
25. Paragraph 10 of the PPTS says that there should be criteria based policies to guide both land supply allocations and, where there is no identified need, applications for proposals. Both sets of criteria "*should be fair and should facilitate the traditional and nomadic life of travellers while respecting the interests of the settled community.*"
26. Paragraph 153 of the NPPF makes clear that the Government's preferred approach is for each local planning authority to prepare a single Local Plan for its area. Additional Local Plans should only be used where clearly justified.
27. The Government consulted late last year on proposed changes to the national planning policy and guidance on travellers. The consultation proposed to

change the planning definition of travellers so that it would not include those who have ceased to travel permanently. The Council said that this change could potentially have implications for the District's requirements for additional pitches in the future. However, the Government has not yet responded to the consultation and I do not have any assessment of its potential impact on the 2014 GTAA need figures. Therefore, I can give little or no weight to this possible national policy change.

### **Soundness assessment and conclusions**

#### *The policy's sequential criteria*

28. The sequential criteria in the policy require allocations and proposals to seek locations firstly in, or attached to, existing sites either through intensification or expansion, then to seek locations within settlements and strategic growth areas, and only then could any other suitable site be considered.
29. The sequential criteria are so strict that they would, in effect, prevent any planning application being granted permission on a site other than those in the first three criteria because it would be very difficult and time consuming for an applicant to successfully prove that none of the sequentially preferred locations were available. It would also make finding sites to allocate for travellers very difficult. I am doubtful that sites would be found in strategic growth areas given the advanced stage they have already reached, and that finding sites within settlement boundaries could similarly be difficult because this Plan tightly defines those boundaries.
30. For these reasons I conclude that the policy's sequential criteria are not fair or reasonable and that they would not facilitate the traditional and nomadic life of travellers (PPTS 10). Therefore, this aspect of policy H6 is not sound as it is not consistent with national policy in PPTS 10.
31. However, I consider that it would be possible for me to recommend a main modification to rectify this unsoundness. The Council's suggested main modifications on them would have made these policy criteria sound.

#### *The policy's evidence base and allocations*

32. At the hearing the Council said that it had not had a direct role in the production of the 2014 GTAA and that it had some objections to it. However, the Council said that it had no better figures and that the 2014 GTAA represented the latest available evidence on the policy. The Council's hearing statement on policy H6 and the 2014 GTAA said that it "*accepted that there is likely to be a higher gypsy need in the District than previously identified, hence a need to allocate new gypsy sites*" (paragraph 9.3).
33. After the hearing the Council clarified what its objections were to the 2014 GTAA. These were, in summary, that the figures of the movement from bricks and mortar to pitches and the assumption about rates of household formation were too high and did not reflect the situation locally in the District; that the waiting list figures were inaccurate, too high, and again did not reflect the situation locally in the District; and that the figures assumed public sites were fully used and would not contribute to supply in the future, which was incorrect.

34. I asked the Council how its objections might affect the need figures in the 2014 GTAA, but I did not receive sufficient information to enable me to accurately assess the overall impact. But it does seem that the objections, if correct, could reduce the 2014 GTAA need figures for the District. The Council said that further work on the 2014 GTAA was necessary before it could be satisfied that it had an adequate evidence base to present for examination, and that it wished to take into account findings from both the 2014 GTAA and its own objections to it when preparing the future Traveller Local Plan (LP).
35. As I have said, the policy's permanent pitch numbers for traveller provision were based on out-of-date evidence and cannot be relied upon, and the Council has asked me to recommend their deletion. Although there is now a submitted up-to-date 2014 GTAA which has been prepared collaboratively with neighbouring LPAs, the Council told me that it is inaccurate and requires further work. Whilst I conclude that the 2014 GTAA shows that more traveller pitches are required to be allocated in addition to those in the policy (as the Council acknowledged) there are unresolved question marks over its methodology and results.
36. The figures that I have seen all indicate that there is a past unmet need (because the 2014 GTAA need figures start from 2013) which should be met now and also a future increasing need, both of which require site allocations. In the context of traveller need in Essex, Maldon's new pitch provision requirement is higher than eight other LPAs (out of total of 14 LPAs) in the contested 2014 GTAA (Table 83). Thus, my sense of traveller need is that it is not large in numerical terms, but that a clear need exists. This is not contested by the Council which has accepted, as I said, that there is likely to be a higher need than previously identified in the submitted policy H6.
37. I consider that the policy is not justified because it is not properly based on proportionate evidence which is trustworthy and accurate. The evidence base of this policy's traveller provision is not adequate because it does not include robust or up-to-date evidence which establishes the accommodation needs of travellers as required by the NPPF (14, 17 and 158) and the PPTS (6). The Council therefore does not have a clear understanding of housing needs in its area, contrary to paragraph 159 of the NPPF.
38. The consequence of this is that the Plan does not address the need for all types of housing (NPPF 159), and the pitch numbers that it sets out in policy H6 for travellers are incorrect (PPTS 8). The Plan does not identify a supply of specific deliverable traveller sites sufficient to provide five years' worth of sites, or identify a supply of specific, developable sites or broad locations for growth, for years six to ten and, where possible, for years 11-15 (PPTS 9). Policy H6 is not, therefore, consistent with national policy.

*Justification for an additional Local Plan*

39. The Plan proposes to deal with traveller provision by reviewing the allocation and requirement for pitches during the plan period. The Council said during the Examination that this would be done by an additional Traveller LP as set out in its LDS. Therefore, I next consider whether this additional Local Plan is clearly justified (NPPF 153 and Planning Practice Guidance [PPG] ID 12-012).

40. The PPG gives as examples of additional Local Plans a separate site allocations document or an Area Action Plan, both of which would flow from the evidence and guiding policies contained in an overall single Local Plan and would thus be discrete areas of additional, consequential, detailed work. The Planning Inspectorate has accepted the submission of Core Strategies for examination on the basis that work on them has already been started and that any additional Local Plans, such as a site allocations document, would be securely founded on the Core Strategy's evidence and strategic guiding policies.
41. The Council said that this additional Local Plan was necessary for two reasons. Firstly, because it would take considerable time to review the latest evidence, to consider its implications, and to undertake further site assessment work and local consultations if new allocations are required. And secondly, flowing from the first reason, the Council therefore did not wish to delay further the adoption of other important strategic policies in the Plan such as housing growth and infrastructure delivery (paragraph 9.6 of its policy H6 Statement).
42. The first reason is a tacit acknowledgement by the Council that it has not complied with national policy in the production of the submitted Plan. The Council has not produced adequate, up-to-date and relevant evidence on traveller provision. Consequently, it does not have a clear understanding of housing needs in its area and the Plan does not address the need for all types of housing. The Plan does not set out robust targets or pitch numbers to guide a later additional Local Plan.
43. Provision for travellers is an important and vital component of this Plan because it deals with housing provision in the District. The failure to produce a Plan which is positively prepared, justified, and consistent with national policy on traveller provision is not the "clear justification" required by national policy for additional Local Plans in accordance with NPPF 153. This failure cannot be used as a justification for a later additional Local Plan.
44. The Council further explained at the hearing its second justification for a later additional Traveller LP. It said that delaying the Plan would not be in the public interest due to the consequential delay in meeting the need for market and affordable homes. It referred to the court case of *Grand Union Investments Ltd v Dacorum Borough Council*<sup>1</sup> as setting out the importance of having a Local Plan in place to take uncertainty out of the system even though a housing need assessment had not been properly completed. In that case, the examination had concluded that the housing needs for the settled community had not been fully assessed for the plan period, but that the assessment and allocations that were in the Plan were sufficient to meet the need until a review took place. The Court agreed with that approach.
45. The Dacorum case can be distinguished from the present case on its facts. This is because, firstly, it dealt with the market and affordable housing land needs for the settled community and not with travellers' housing needs. And, secondly, because in Dacorum there were sufficient allocations to last until later in the plan period by which time, if the allocations turned out to be inadequate, the review would have been completed. In this case there are no

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<sup>1</sup> *Grand Union Investments Ltd v Dacorum Borough Council* [2014] EWHC 1894 (Admin) (12 June 2014)

allocations of sites for travellers which will cover the period until the Traveller LP has been completed.

46. I am not convinced that there is a public interest which provides a clear justification for an additional Travellers LP for three main reasons. Firstly, the public interest is determined by the Government which has set out its policies on national priorities taking account of economic, environmental, social and other factors. The Government has decided that Local Plans should meet objectively assessed needs (NPPF 14). For housing needs in Local Plans, LPAs should have a clear understanding of all the various elements of those needs and address them, and this includes the housing needs of travellers (NPPF 158 and the PPTS). The public interest does not, therefore, allow for the exclusion of travellers' housing needs in a Local Plan's overall assessment of housing needs as has been done here.
47. Secondly, the housing land supply for the settled community would, in any event, still increase. As I have noted previously, the Council is working proactively with the developers and landowners of most of the proposed housing allocation sites in the Plan and it has produced draft Masterplans for the two Garden Suburbs. Some planning applications have already been granted permission and more are soon to come forward for consideration. Thus, the Council is already implementing the Plan's allocations for market and affordable homes and so any delay in meeting the housing needs of the settled community would be minimal.
48. And, lastly, it would not be in the public interest to set a precedent for the exclusion of traveller housing need evidence and provision in a Local Plan which deals with overall housing needs. It could encourage other LPAs to avoid producing or submitting robust evidence on the assessment of travellers' housing needs and/or to avoid making difficult decisions on the allocation of any required traveller sites or pitches.
49. Evidence submitted during the Examination by local people highlighted that that, despite pressure to do otherwise, the Council has repeatedly not addressed traveller site allocations in a responsible manner; that it has ignored national planning policies on travellers' accommodation for many years; and that traveller provision in the District has primarily been by planning appeal. The July 2014 Exploratory Meeting and subsequent suspension was caused partly by my serious concerns about policy H6, to which the Council responded by submitting the 2014 GTAA. The Council now criticises its submitted 2014 GTAA as being inadequate. And the Council's future Traveller LP was only included in its LDS after I raised the point at the hearing session.
50. It does appear, therefore, that there are well founded reservations about the Council's track record in producing evidence of need for, and then delivering, traveller sites. Given this, I am not convinced that the Council will actually deliver an additional Traveller LP on time or possibly even at all. That history of past poor performance on this issue adds weight to my finding that there is not a clear justification for an additional Local Plan on this subject.
51. I am aware that my colleagues in some other examinations have taken a different course of action and have agreed to a later additional Traveller LP.

But in the cases that I am aware of my colleagues have had adequate evidence of traveller housing needs which enabled them to make recommendations which could set clear targets and pitch numbers required over the plan period to guide the additional Local Plan. That is not the case here as there is no objective assessment of need or development requirements for housing travellers. Moreover, I have reservations that the Council is fully committed to the production of an additional Local Plan for travellers' needs, and I consider it more likely than not that travellers' housing needs would remain unfulfilled.

52. I consider, therefore, that the reasons put forward by the Council are not a clear justification as required by the NPPF (153) and the PPG for travellers' provision to be undertaken in a later additional Local Plan.

### *Conclusions*

53. I consequently conclude that the Plan is not sound because policy H6:

- is not **positively prepared** in that it does not meet objectively assessed needs or development requirements for housing for travellers;
- is not **justified** by proportionate evidence as what evidence there is either is out-of-date or cannot be relied upon; and
- is not **consistent with national policy** because it does not deliver sustainable development in accordance with the NPPF or with the PPTS.

54. I also conclude that there is no clear justification as required by paragraph 153 of the NPPF for the Plan's proposal to set out traveller provision in an additional Local Plan at a later date. This is an additional reason for me to conclude that the Plan and policy H6 is not sound.

## **Potential Main Modifications and other remedies**

### *Main Modifications*

55. I have considered whether I could recommend main modifications to rectify the unsoundness. The lack of adequate evidence means that I would have to recommend a main modification to delete the pitch requirement numbers (70 pitches by 2027) in the submitted policy because that is based on out-of-date and unreliable evidence of need. I cannot modify policy H6 to set revised pitch number requirements to meet traveller housing need over the plan period because there is no robust or adequate evidence of that need.
56. I cannot modify the policy to allocate sites for travellers for two reasons. Firstly, because I do not have any dependable figures which quantify the housing need over the plan period. And, secondly, because I have no knowledge of, or evidence of, any possible sites or pitches which could be allocated. In short, without a reliable, up-to-date and robust evidence base I have no justification or basis for recommending any main modifications which might set out pitch number requirements or site allocations.

57. The Inspectorate's '*Procedural Practice*'<sup>2</sup> for Local Plan examinations notes that there will be some plans which are "*incapable of being made sound through main modifications*" (paragraph 11). Paragraph 4.27 similarly says "*there could be circumstances where the Plan is so flawed that it is in effect irreparable.*" I consider that to be the case for this Plan due to the serious soundness failings in its policy H6.
58. I conclude that it is not possible for me to recommend any main modifications which would remedy the identified unsoundness, except for those suggested by the Council which would make the selection criteria fair and to delete the present pitch requirements, although this would not address the other unsoundness issues I have identified.

### *Suspension of the Examination*

59. Another option would be to suspend the Examination, either in whole or in part (for policy H6) to allow the Council time to either allocate sufficient traveller allocations in this Plan to 'tide over' provision until the new Traveller LP is produced, or to set out the required pitch numbers over the plan period.
60. Allocating sites would require a very long suspension of the Plan (either in whole or in part just on this policy) in order to provide the evidence of need, to find and assess potential sites, to carry out further sustainability appraisal work, and to consult upon those sites selected. Both the Inspectorate's and my own experience is that that this would take at least one and a half years (which matches the Council's own LDS estimate), but it could take longer.
61. The Inspectorate's '*Procedural Practice*' advises (paragraphs 8.11, 8.12 and 8.16) that any delay beyond six months usually indicates that the Plan should be withdrawn and re-submitted, and that it is generally inappropriate to try to rectify a seriously flawed document through suspension. I consider that advice to be directly applicable here, whilst appreciating that in other circumstances Inspectors have permitted longer suspensions.
62. A partial suspension just on policy H6 would not comply with Government advice in the NPPF and the PPTS that housing in a Local Plan should be dealt with as a whole so that the LPA has a clear understanding of overall needs, and so it can meet and address those needs comprehensively. As I have said, the Council is in the process of proactively granting planning permissions on its strategic housing allocations, and thus the opportunity of finding traveller sites within those areas will be lost if the traveller evidence and allocations are not progressed. The key point is that the allocation of traveller sites needs to be considered at the same time as the other settled community housing allocations, not one after the other, so that both are co-ordinated and so necessary infrastructure can be provided.
63. During such a long suspension the evidence base for all the other policies in the Plan (e.g. for market and affordable housing, employment and retail needs) would age and potentially become out-of-date, and thus it is possible that these would need to be updated and the relevant policies modified. The Examination has already been provided with a large number of updates to

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<sup>2</sup> A public document available on the Planning Portal at:  
<http://www.planningportal.gov.uk/planning/planningsystem/localplans>

evidence, such as that on the 2012-based household projections for England 2012-2037 published in February 2015, and the SHMA is currently on its third edition. It is already difficult for participants to understand the new evidence, updates to existing evidence, and consequential suggested modifications since the Plan was submitted in April 2014. Any more would be very confusing.

64. Paragraph 8.16 of the Inspectorate's '*Procedural Practice*' says that a delay to commission new evidence suggests that the evidential base for the Plan is not sound and that it risks, as I believe is likely to occur here, major changes to the submitted Plan. Making what might be significant modifications to change the Plan could be unfair to those who engaged on the basis of the Plan as submitted and who might be denied the opportunity to affect the Plan's strategic direction, and thus its consequent detail, at its early formative stage.
65. This Examination has already been suspended once in July 2014 to enable the Council to try to resolve traveller evidence and allocations, and it has failed to do so. I have seen nothing to convince me that another suspension would produce the required action by the Council to comply with clear Government policies on meeting housing need and travellers' accommodation.
66. A variation would be to suspend the Examination (in whole or in part) to enable the Council to set out only the required pitch numbers to meet traveller housing needs over the plan period. This would not take as long, but it would still take an appreciable length of time, probably in the region of one year or more allowing for further sustainability appraisal work and public consultation. However, my objections expressed in the paragraphs above would apply to this suspension option as well. And, crucially, this option would do nothing to allocate travellers' sites and pitches.
67. I conclude that suspending the Examination, either in whole or in part, for lengthy periods of time whilst the Council attempted to resolve the soundness failures in policy H6 would be contrary to Government planning policies on housing need in the NPPF and the PPTS, and to the Inspectorate's '*Procedural Practice*' for examinations. It would not be fair to travellers in current and future housing need as their need for sites or pitches would not be properly planned in a co-ordinated, comprehensive fashion.

## **Equality Act 2010**

68. Policy H6 relates to the provision of sites or pitches for Travellers, some of whom will be Romany Gypsies or Irish Travellers, each of which is a distinct racial group, and who form a racial group for the purposes of Section 9 of the Equality Act 2010. These groups are ethnic minorities that experience poor social outcomes and discrimination, and they are severely disadvantaged when compared to the general population in terms of accommodation, health, life expectancy, infant mortality and education. Research has shown that the lack of authorised traveller sites perpetuates many of these problems. Equality duties under the Equality Act are an integral and important part of the mechanisms for securing the fulfilment of the aims of anti-discrimination legislation.<sup>3</sup>

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<sup>3</sup> All from *Moore & Anor v Secretary of State for Communities and Local Government & Ors* [2015] EWHC 44 (Admin) (21 January 2015).

69. Policy H6 will particularly affect this racial group because it does not propose to allocate any pitches or sites and because it introduces criteria for assessing the merits of proposals and allocations for pitches and sites.

### **The Public Sector Equality Duty (the PSED)**

70. In exercising my function as the person appointed by the Secretary of State to carry out this independent examination of the Plan, I have given particular attention to ensuring that I comply with the Equality Act, particularly section 149 on the PSED.
71. The PSED under section 149 requires me to pay due regard to the need to eliminate unlawful discrimination, harassment and victimisation (and other prohibited conduct); to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and to foster good relations between people who share a protected characteristic and people who do not share it.
72. In considering the PSED I have directed myself to the wording of the Equality Act and the tests set by the Courts. The Council submitted a Legal Opinion on the application of the Equality Act with particular reference to the Moore court case<sup>4</sup> and other representors also submitted their views, all of which I have taken into account.
73. There are two possible decisions to consider under the PSED. The first is the impact of the housing policies in the Plan if it were to be adopted. In this decision policy H6 would include the two main modifications that I have previously discussed, both of which were suggested by the Council – one to remove the pitch number requirements because of the lack of evidential justification, and one to make the site selection criteria fair. Because there is no adequate evidence of housing need for travellers the policy could not set an overall specific requirement over the plan period for sites or pitches, and nor could it allocate sites or pitches to meet travellers' housing needs. These tasks would be carried out in the later Traveller LP.
74. The policy's effect would be a serious disadvantage to travellers because there would be no assessment of their housing need and no provision of sites or pitches to meet that housing need. Thus there would be no certainty that sufficient sites for travellers' housing needs could be found in the District in suitable locations. Paragraph 25 of the PPTS says that where an up-to-date 5-year supply of deliverable gypsy and traveller sites cannot be demonstrated then that is a significant material consideration when considering applications for the grant of a temporary permission. But that temporary provision is not intended to be a substitute for permanent traveller allocations in a Local Plan, and nor is there any guarantee that its application would fully mitigate the lack of allocated sites or pitches.
75. Dealing, at least in the short term, with travellers' housing needs through individual planning applications would mean, at best, uncertainty and delay in the provision of homes and, at worst, that some travellers would be unable to find the home they need in the District until a new Traveller LP is produced and sites are allocated. The latter scenario is highly likely from past

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<sup>4</sup> As for footnote 3 above.

experience of traveller provision in Maldon.

76. By contrast, market and affordable housing for the settled community would have specifically allocated sites in the other policies in the Plan in accordance with an objective assessment of their housing needs and so these people, unlike travellers, would be able to relatively easily find the homes they need over the plan period. Thus the adoption of the Plan's housing policies would disadvantage travellers as compared to the settled community. This difference between the settled community and travellers in the provision of their homes in the District is directly contrary to Government planning policies, the overarching aim of which are to ensure fair and equal treatment for travellers in the provision of sites (PPTS paragraph 3).
77. The overall result of the adoption of the Plan's housing policies would not advance equality of opportunity for a home between travellers and the settled community. The Plan would not remove or minimise the disadvantages that travellers face in finding suitable sites or pitches for a home, and nor would it take the proper steps necessary to meet their housing needs. It would add to, and not eliminate, discrimination against travellers. It would not foster good relations between travellers and the settled community because of the likelihood of increased planning disputes following the submission of planning applications or enforcement against unauthorised pitches.
78. The later Traveller LP is primarily necessary because the Council has not prepared an adequate, robust and reliable evidence base of travellers' housing needs and allocations for this Plan in accordance with national planning policies. This failure therefore cannot be used as a justification for, or a mitigation of, the adverse impact of the policy on equality considerations. In other words, the fact that a later Traveller LP will be produced is not a mitigating factor because its purpose is to carry out the missing work that should have been done in this Plan.
79. For the reasons I set out earlier in my soundness assessment, I do not consider that modifications or suspension of the Local Plan would result in any beneficial impact to the protected group in terms of eliminating discrimination, advancing equality of opportunity or the fostering of good relations.
80. Because the lack of authorised traveller sites and pitches perpetuates the poor social outcomes and discrimination experienced by Romany Gypsies and Irish Travellers I regard this as being a serious adverse outcome of the policy so far as equality impacts are concerned.
81. The second decision is my conclusion that policy H6 is not sound and that I cannot rectify it by recommending main modifications or by other means, such as by suspending the examination.
82. I have concluded that there is no clear justification for an additional Traveller LP as required by Government policy. I am also not convinced that the Council has a strong commitment to the production of a separate Traveller LP for the reasons I have previously explained. There is a reasonable probability that either it would not be produced within the timescale set out in the LDS, or that it would not be produced at all.
83. Moreover, the Government intended that travellers' accommodation needs

should be considered within the context of the general consideration of overall housing needs within the District. This is so the Council has a clear understanding of those needs and so they can be addressed comprehensively and together. For instance, policy H6 expresses a preference for traveller sites to be located within strategic growth areas and this can most easily be done within a Local Plan which deals with all the housing needs for the District.

84. The decision would achieve the proper consideration of travellers' accommodation needs in the District in accordance with the Government's planning policies in a comprehensive manner by considering all housing need, addressing it, and meeting it. It is the most appropriate means available to achieve that aim, and it is fair when balanced against the disadvantage to travellers that would be suffered if the Plan's housing policies were to be adopted as the Council has proposed with its suggested modifications.
85. This decision would equally affect both travellers and the settled community in that neither group would have allocated sites to meet their housing needs. It would be a positive decision because it would ultimately eliminate discrimination and advance equality of opportunity under section 149. In the longer term the proper and fair provision of travellers' sites and pitches would lead to better relations with the settled community.
86. If the Plan's housing policies were to be adopted then the equality impact would be very serious as it would adversely affect the possibility of Romany Gypsies and Irish Travellers accommodation needs being met in the District. I consider that my decision to find the Plan's policy for travellers' accommodation unsound is the best way of now resolving that serious equality impact, and that is sufficient to outweigh any short term unfavourable equality impact that might consequently arise from my decision.

### **Indirect discrimination under Section 19**

87. Indirect discrimination under Section 19 of the Equality Act is when a person 'A' discriminates against another person 'B' if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic (which is 'race' in this case) of person B. In layman's terms, indirect discrimination is when there is a practice, policy or rule which applies to everyone in the same way, but which has a worse effect on some protected people than on others.
88. The Plan would apply to everyone in the District but, as I have said, the housing accommodation needs of travellers would not be addressed, unlike those of the settled community. It is not for me to decide whether the Plan as submitted with the modifications proposed by the Council would indirectly discriminate – that is a matter for the Courts. But I am concerned that there is a real risk that that might be the end result if the Plan's housing policies were to be adopted. I do not come to any conclusion or finding on this point, but it is a matter to which the Council should give the most serious consideration.

## **Overall Findings and Future Options**

89. Policy H6, and thus the Plan, has a number of serious deficiencies in relation to soundness for the reasons set out above which mean that I would have to

recommend non-adoption of it in any future report that I submitted under Section 20(5) of the 2004 Act. Because I do not have a reliable, up-to-date and robust evidence base I have no justification or basis for recommending any main modifications which might set out pitch number requirements or site allocations. Suspending the Examination, either in whole or in part, for long periods of time whilst the Council attempted to resolve the soundness failures in policy H6 would be contrary to Government planning policies on housing need in the NPPF and the PPTS, and to the Inspectorate's '*Procedural Practice*' for examinations. It would not be fair to travellers in current and future housing need as their need for sites or pitches would not be properly planned in a co-ordinated, comprehensive fashion.

90. I have paid due regard to the PSED under the Equality Act 2010. If the Plan's housing policies were to be adopted (with modifications) then there would be a serious adverse outcome in equality terms for the protected Romany Gypsies and Irish Travellers racial groups. That further reinforces my conclusion that policy H6 and the Plan's housing policies are not sound.
91. There are two options for the conclusion of this Examination. Firstly, the Council may choose to receive my report on the Plan, which will not deal with any other planning issues, and which, in accordance with s20 (7A) of the 2004 Act, would recommend non-adoption of the Plan.
92. Secondly, and alternatively, the Council may choose to withdraw the Plan under s22(1) of the 2004 Act and so return to the preparation stage (s33A(3)(a) of the 2004 Act). It would then be able to rectify the soundness deficiencies in any new Local Plan, taking account of concerns raised in the preparation of this Plan and in the light of any new information and evidence on the future development needs of the District.
93. I would be grateful if the Council would confirm as soon as possible (via my Programme Officer) its decision as to whether it wishes me to issue a non-adoption report or whether it wishes to withdraw the Plan. In the meantime, it would obviously be inappropriate for me to continue with the further hearing sessions on the remaining policies in the Plan which I had tentatively scheduled in my letter of 9 February 2015 (IED15) for the end of June 2015. These will not now go ahead.
94. The Council's Examination website should be updated to reflect the situation. A copy of these Interim Findings should be placed on the website and made available on request.

*David Vickery*

Inspector