

Draft Policy HS 3 (Amended) -
'Travellers Accommodation' Public
Consultation
Planning Policy Division
Department of the Environment
Level 3 Millennium House
17-25 Great Victoria Street
Belfast
BT2 7BN



5 October 2011

Dear Sir / Madam,

Draft Policy HS 3 (Amended) - 'Travellers Accommodation' Public Consultation

The Equality Commission for Northern Ireland¹ (the 'Commission') welcomes the opportunity to comment on the proposed amendment to Policy HS3 as contained within Planning Policy Statement 12 (PPS12).

We set out our views regarding HS3 below. We also provide a brief summary regarding planning policy in general as Annex 2.

The Commission broadly welcomes amendments to planning policies which further promote equality of opportunity for Travellers when applying for permission to build Traveller-specific accommodation.

To this end, **we welcome the extension of Policy HS3 to include the consideration of serviced sites in the countryside.**

However, **we also have concerns that amendment to Policy HS3 of PPS12 may not adequately facilitate equality of opportunity in the approval and development of all types of applications for Traveller accommodation**, particularly those within the countryside.

¹ Further details regarding the Commission and its remit are included in Annex 1.

Views on Proposed Amendment to Policy HS3 (Traveller Accommodation) of PPS12 (Housing in Settlements)

Overview of Planning Policy Statement 12: Housing in Settlements

Planning Policy Statement 12 states that the guidance it contains applies to all residential development proposals within cities, towns, villages and small settlements in Northern Ireland. The policy document does not apply to dwellings in the countryside, aside from exceptional circumstances as outlined in Policy HS3 (Travellers accommodation).

The Commission welcomes the extension of Planning Policy (HS3) to include the consideration of serviced sites in the countryside. We would also however raise the following concerns:

Restriction of Site(s) to those already within Local Development Plans and/or within/adjacent to settlements

The introduction to the consultation draft sets out that where a plan is “under preparation” the local development plans “should identify a suitable site(s)”. In addition, the draft sets out that proposals will be assessed under HS3 only where “sites are not identified in development plans”. This would suggest that where site(s) have been identified within a local development plan, no others will be considered.

The Commission is concerned that applications for planning permission for (sole-use) serviced sites owned and developed by Travellers may in practice be restricted to those already identified within the local development plan and/or to suitable site(s) within or near a settlement. This would appear to represent differential treatment when compared to the approach taken to planning applications for people from the non-Traveller community and may thus not afford equality of opportunity. Further, the above could also serve to limit the Housing Executive’s ability to avail of other more suitable site(s) which might become available. **The Commission recommends** the removal of obstacles that might prevent the reasonable identification and use of suitable sites.

Requirement to demonstrate that housing needs “cannot be accommodated” within settlements.

HS3 further states that an acceptable site in the countryside can only be considered where a transit site or serviced site “cannot be accommodated within a settlement, a site adjoining, or in close proximity to a settlement”. The policy would thus appear to require applicants who are seeking approvals for sites for Traveller accommodation away from settlements as having to be able to prove that planning permission would not be granted (or that suitable sites do not exist), within or immediately adjacent to, a settlement.

This requirement to demonstrate exhaustively that needs “cannot be accommodated” is not only likely to be resource intensive but may further represent differential treatment if only applied to applications for Traveller accommodation and not to planning applications for the non-Traveller community.

The Commission recommends that the Department assures itself as to whether applications for planning permission for Traveller accommodation are subject to a sequential test that is substantially and materially different, and so potentially placing such applications at a disadvantage, relative to those for non-Traveller accommodation.

The Requirement for a Housing Needs Assessment for Individual Traveller Families

The Commission recognises the potential requirement for HNAs for the development of sites to be used by extended Traveller families, as these, along with other medium and larger housing development projects may have significant impact upon the local environment and as such be considered in the drafting of a local development plan.

The Commission is concerned however that the requirement for a HNA - if applied to individual Traveller families who wish to develop their own sole-use serviced site(s) - could potentially amount to differential treatment of individual Traveller families, when compared with individual applicants from the non-Traveller community who may not be subject to this requirement. In effect, the approach may fail to afford equality of opportunity across Traveller families (single sites) and Non-Traveller families (individual houses).

Planning Policy and the Positive Obligation of Article 8 of the ECHR.

Article 8 of the European Convention on Human Rights requires that some special consideration be given to Traveller needs and their different lifestyles both in the relevant regulatory framework and in reaching decisions in particular cases. The recent Judicial Review for Boswell² highlighted that Housing Needs Assessments may not take into account all matters of the positive obligation in Article 8.

The Commission recommends that the Department considers any relevant amendments or clarifications to planning policy in light of this judgement.

Additional Criteria for Traveller Planning Applications

HS3 notes that where a local Housing Needs Assessment (HNA) identifies a demonstrable need, planning permission will be granted for a suitable facility. HS3 however also notes that additional criteria must be met with regards to landscaping; compatibility with local environment; and provision of related amenities. It is possible that the use of additional criteria may not afford equality of opportunity across Travellers and those from the non-Traveller community

This situation is potentially exacerbated in the scenario where objections to planning applications are often made on the basis of the ethnicity of the proposed occupants, as recognised by the Department's final EQIA on planning reform³.

Yours sincerely,

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² Weatherup J. In The High Court of Justice in Northern Ireland. Queens Bench Division (Judicial Review) Boswell's Application [2009] NIQB 95. An Application For Judicial Review by John Boswell.

³ The Department noted *"It has also been found that the planning system can be used as an outlet for discriminatory behaviour against some racial groups, particularly Travellers, through objections to planning applications, not made on the basis of the land use characteristics of the proposed development, but the ethnicity of the proposed occupants."* Department of the Environment. Reform of the Northern Ireland Planning System: Final Equality Impact Assessment (EQIA) at a strategic level in response to Programme for Government proposals.

http://www.planningni.gov.uk/downloads/final_eqia_at_strategic_level-2.pdf

Annex 1: The Equality Commission for Northern Ireland

The Equality Commission for Northern Ireland is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment and treatment, sex discrimination and equal pay, race relations, age, sexual orientation and disability. The Commission's remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 (Section 75).

The Commission's general duties include:

- working towards the elimination of discrimination;
- promoting equality of opportunity and encouraging good practice;
- promoting positive / affirmative action;
- promoting good relations between people of different racial groups;
- overseeing the implementation and effectiveness of the statutory duty on relevant public authorities; and
- keeping the legislation under review.

The Commission, along with the Northern Ireland Human Rights Commission, has been designated under the United Nations Convention on the Rights of Persons with Disabilities (UN Disability Convention) as the independent mechanism tasked with promoting, protecting and monitoring implementation of the UN Disability Convention in Northern Ireland.

Annex 2: General Observations on Planning Policy

Legislative Framework and Related Duties on the Department

The Department has duties under the Race Relations (Northern Ireland) Order 1997 (as amended) where it is unlawful for acts of discrimination and harassment on the grounds of colour, race, nationality or ethnic or national origin. **The Commission recommends** that the Department assures itself that Policy HS3, and wider planning policy, meets the provisions within the Order.

Under Section 75 of the Northern Ireland Act 1998 (Section 75) designated public authorities, including the Department, local councils, the Northern Ireland Housing Executive (“Housing Executive”) and registered housing associations are under a duty, when carrying out their functions, to have due regard to the need to promote equality of opportunity between persons of different racial groups and to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group. **The Commission recommends** that the Department seek every opportunity, including within the development of planning policy, to further promote equality of opportunity and good relations for all racial groups, including Travellers, within planning processes – including, for example, incorporating equality and good relations into its review and amendment of Planning Policy Statement 1 (PPS1).

The Right of Traveller Families to meet their own needs

Generally, planning policy in Northern Ireland needs to recognise the legal right of individual Traveller families to live on serviced sites owned and developed by themselves, similar to the rights available to non-Travellers to own and develop their own houses on sites within the countryside.

The Commission recommends that the Department consider amendment to the planning framework to ensure that individual Traveller families seeking planning permission for accommodation in the countryside (in the form of a serviced site) are treated in the same

manner as individual non-Traveller families seeking planning permission for accommodation (in the form of bricks and mortar) in the countryside.

In particular, the Commission raises its concern in respect to the related Policy CTY 1 as contained within PPS 21⁴ which refers all applications for Traveller accommodation to Policy HS3 within PPS 12. **The Commission recommends** that applications for Traveller accommodation by individual Traveller families be treated in the same way as applications for non-Traveller accommodation, under similar circumstances.

⁴ PPS21 Sustainable Development in the Countryside. Department of the Environment. [PPS21 Sustainable Development in the Countryside | Planning NI](#)