

Habitats Regulations Assessment
**of the Secretary of State's
Proposed Changes to the
Revision of the Regional Spatial
Strategy for the East of England
on Planning for Gypsies and
Travellers and Travelling
Showpeople**

March 2009

Government Office of the East of England

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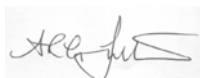
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This report has been produced as a separate but nonetheless integral part of the wider Sustainability Appraisal (incorporating the requirements of the Strategic Environmental Assessment (SEA) Directive) of the revision of the Regional Spatial Strategy (RSS) of the East of England addressing the provision of accommodation for Gypsies and Travellers. It provides an assessment under the provisions of the Habitats Directive and transposing Regulations of the Secretary of State's Proposed Changes stage of the review.

Schedule 1 of the Conservation (Natural Habitats &c.)(Amendment)(England and Wales) Regulations 2006 inserts a new Part IVA into the Conservation (Natural Habitats &c.) Regulations 1994 to transpose into law the requirement to apply the Habitats Regulations to land use plans – and hence to this RSS Revision.

This report reflects current draft guidance from the department for Communities and Local Government (CLG) on the application of the Habitats Regulations to RSS⁽¹⁾. It has also taken into account Natural England's draft guidance on Habitats Regulations Assessment of RSSs and Sub-Regional Strategies ⁽²⁾ .

In preparing this report the consultants have also reviewed and analysed the findings of the two previous Habitats Regulations Assessments (HRA) ⁽³⁾ ⁽⁴⁾ produced on the Secretary of State's Proposed Changes and Further Proposed Changes to the RSS for the East of England.

1.1

BACKGROUND TO THE RSS REVIEW

The Review aims to align the RSS with the requirements of Circular 01/2006, which the current East of England Plan RSS does not currently do. The Circular states that 'The RSS revision should identify the number of pitches required (but not their location) for each local planning authority in the light of local authority Gypsy and Travellers Accommodation Assessments (GTAAAs) and a strategic view of needs across the region (ODPM Circular 01/2006, paragraph 23). The Secretary of State's Proposed Changes also aim to ensure the RSS is consistent with the requirements of CLG Circular 04/2007 on Planning for Travelling Showpeople.

(1) Department for the Communities and Local Government, 2006, Planning for the Protection of European Sites: Appropriate Assessment under The Conservation (Natural Habitats and Conservation) (Amendment) (England and Wales) Regulations 2006. Guidance for Regional Spatial Strategies and Local Development Documents.

(2) Natural England, 2007, Draft Guidance: The Habitats Regulations Assessment of Regional Spatial Strategies and Sub-Regional Strategies.

(3) Government Office for the East of England, 2007. Draft Revision to Regional Spatial strategy for the East of England: Secretary of State's Proposed Changes. Habitats Regulations Assessment.

(4) Government Office for the East of England, 2007. Draft Revision to Regional Spatial Strategy for the East of England: Secretary of State's Proposed Changes and Further Proposed Changes. Report of the Habitats Directive Assessment (under the Habitats Regulations).

Once published, the revision will provide the regional policy framework within which Local Planning Authorities (LPA) will develop Local Development Frameworks (LDF). It will also influence other regional policy documents that may impact on the Gypsy and Traveller and Travelling Showpeople communities, such as the Regional Housing Strategy (RHS) and the Regional Economic Strategy (RES).

The draft policy, its SA and HRA have been subject to an Examination in Public (EiP)(October 2008). The independent Panel has published its report (December 2008). This report is an integral part of the process of finalising the policy. This assessment has helped to inform the Secretary of State's Proposed Changes to the emerging policy and will form an integral part of the public consultation of the Proposed Changes.

2 *THE GYPSY AND TRAVELLERS AND TRAVELLING SHOWPEOPLE REVIEW*

2.1 *INTRODUCTION*

This section of the Screening Report provides a brief introduction to the Secretary of State's Proposed Changes to the RSS review that is the subject of this assessment.

2.2 *THE PROCESS*

The East of England Plan - which together with relevant sections of the Milton Keynes South Midland Sub-Regional Strategy constitutes the RSS for the East of England - was published on 12th May 2008. The draft East of England Plan had been submitted by the RPB to the Secretary of State in December 2004 and underwent an Examination in Public from November 2005 until March 2006. The adequacy of provision for Gypsies and Travellers in the emerging RSS was the subject of some debate at the Examination in Public. In its evidence to the Examination in Public, EERA acknowledged that the submitted draft RSS was deficient regarding this matter and indicated that it intended to address this by bringing forward a single issue revision to the RSS rapidly following the Examination in Public.

At its meeting in February 2006 EERA's Regional Planning Panel decided to proceed with the single issue review relating to Gypsies and Travellers Caravan Sites. This early revision was required to:

- Address the pressing need for regional policy to assist local authorities in the East of England in identifying the appropriate number and location of Gypsy and Traveller Caravan Sites through their Local Development Documents;
- Conform with the policy framework on Gypsies and Travellers, in particular Government Circular 01/2006 Planning for Gypsy and Traveller Caravan Sites; and
- Reflect requirements in the Housing Act 2004 and the Planning and Compulsory Purchases Act 2004.

At the 27th April 2006 meeting RPP agreed to establish a Steering Group to assist with the revision. Membership was as follows:

- EERA;
- GO-East;
- EEDA;
- Section 4(4) Authority representatives (3);

- Local Planning Authority representatives (3) – Note local authority representation ensured that there was one representative from each of the six historic counties in the region;
- Gypsy and Traveller representatives (up to 2) – Note in Sept 2007 representation was increased to include up to 5 to allow participation of representatives of other Traveller communities (Irish Travellers, Travelling Showpeople, and New Travellers¹); and
- Regional Housing Delivery Group representative.

One of the steering group's first tasks involved preparing and publishing for consultation a project plan which outlined the objectives, timetable and approach to public participation for the review. This draft Project Plan was agreed for consultation by RPP at its meeting on 22nd June 2006 and was the subject of consultation which ran for 12 weeks, from 19th July 2006 to 11th October 2006. Following consideration of the consultation responses, amendments to the Project Plan were endorsed by RPP on 8th March 2007.

The purpose of the revision was to bring the RSS for the East of England into line with Government policy regarding the provision of Gypsy and Traveller Caravan Sites. The RSS is currently out of line insofar as Government Circular 01/06 (ODPM) (in paragraph 23) states that "The RSS revision should identify the number of pitches required (but not their location) for each local planning authority in the light of local authority Gypsy and Travellers Accommodation Assessments (GTAAAs) and a strategic view of needs across the region".

For the purposes of Circular 01/06 (ODPM) "Gypsies and Travellers" means;

"Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such".

A research report called "Preparing Regional Spatial Strategy Reviews on Gypsies and Travellers by Regional Planning Bodies" was commissioned by the Department of Communities and Local Government, EERA and other partners in 2006 and prepared by the Centre for Urban and Regional Studies, University of Birmingham, Salford Housing and Urban Studies Unit, University of Salford, and the Centre for Regional Economic and Social Research, Sheffield Hallam University. The report was published in early 2007.

In the light of information available an Issues and Options Consultation Document was prepared and following consideration by Regional Planning Panel on 8th March 2007 was published for 12 weeks public consultation in May 2007. The document sought to set out information relevant to the review

¹ However, in practice, no New Traveller representation was identified

and posed 11 questions which sought to determine attitudes towards four issues.

These Issues were:

- The appropriate scale of pitch provision across the region;
- The distribution of provision;
- Delivery and Implementation Issues; and
- Travelling Showpeople.

The Consultation Document also contained two options for the spatial distribution of the assessed requirement for 1,220 pitches provision to promote debate. A total of 2027 responses were received to the consultation (excluding responses to the Ormiston work ⁽¹⁾). In view of the scale of response and complexity of the issue Regional Planning Panel considered the results of the consultation and other relevant information at two meetings (27th September and 12th December 2007).

At the meeting on 27th September 2007 the Regional Planning Panel agreed to:

- endorse the conclusion that no further formal public consultation was needed in advance of the submission of the draft revision to government;
- endorse a modified figure of 1,190 (rounded from an exact figure of 1,187) as a robust estimate of the total number of net additional gypsy and traveller residential pitches required in the East of England in the period 2006-2011; and
- request a draft revision to the Regional Spatial Strategy for the East of England be brought before the Regional Planning Panel meeting on 12th December 2007 for consideration.

At the meeting on 12th December 2007 the Regional Planning Panel considered:

- a) The consultation response on the issue of transit pitch provision and provision beyond 2011 and the implications of them for the revision;
- b) The consultation response on issues relating to the distribution of pitch provision and the implications of them for the revision;
- c) The consultation response on issues relating to delivery and implementation and the implications of them for the revision;
- d) The consultation response on issues relating to Travelling Showpeople and the implications of them for the revision;
- e) The response on any other issues raised in the consultation response and the implications of them for the revision;

(1) Consultation with Gypsy and Traveller Communities on policy options for the draft revision to the Regional Spatial Strategy for the East of England to address the provision of Gypsy and Traveller Caravan sites. Report prepared by Prepared by Ormiston Children and Families Trust, 2007

- f) The results of the targeted research with the Gypsy and Traveller community (the Ormiston Report);
- g) The results of further working with local authorities to improve the information base; and
- h) The Sustainability Appraisal of the Proposed Revision.

The report contained the text of a proposed formal revision to the East of England Plan.

In the light of the debate the Panel agreed to recommend that, at its meeting on 25th January, 2008 EERA endorse the content of the proposed revision to the RSS.

The revision was endorsed by the Assembly on 25th January 2008 and was formally submitted to the Secretary of State on 25th February 2008. The Town and Country Planning (Regional Planning) (England) Regulations 2004 allow for the Secretary of State to reduce the minimum period of consultation from 12 weeks to 6 weeks if a draft revision is considered to constitute a minor amendment. This issue was discussed with the Government Office for the East of England and EERA was advised that the revision would not be treated as a minor amendment. Therefore submission will trigger a 12 week period of formal public consultation during which time representations on the revision could be made to the Secretary of State.

The submission of the formal revision was accompanied by:

- A covering letter containing details of potential changes in national policies proposed by the Regional Assembly to support implementation of the policy [this letter will also incorporated a statement that the draft revision is available for inspection, particulars of the places and times at which it could be inspected and a list of relevant supporting technical documents];
- The Sustainability Appraisal Report (incorporating Strategic Environmental Assessment) and the Habitats Regulations Screening Assessment;
- A pre-submission consultation statement; and
- A statement regarding delivery and monitoring.

2.2.1 Examination in Public and Panel Report

There was an Examination in Public under an independent Panel between 20th and 24th October 2008, which tested the soundness of the Draft Review. The Panel's Report was submitted to the Secretary of State and published in December 2008. The Panel made 42 recommendations to the Secretary of State, including:

- Increasing the number of pitches to be provided by 2011 from 1,187 to 1,237 and treating them as minima (Panel Recommendations 4.20, 4.21);
- Including provision for transit sites: 160 pitches by 2011 (Recommendation 5.1);

- Including provision for Travelling Showpeople: 184 plots by 2011 (Recommendation 6.1);
- The Regional Assembly should carry out a further review of needs and the RSS policy in 2011 or soon afterwards, which should also address the needs of Gypsies and Travellers in bricks and mortar housing, New Travellers, and Travelling Showpeople (Recommendations 2.1, 6.2, 8.2);
- The Assembly should produce a Delivery Plan, including clarifying the delivery role of the Homes and Communities Agency (Recommendation 8.1);
- The Policy should stress the role of major development sites in enabling provision (Recommendations 7.7).

The Panel broadly supported the Assembly's approach to the geographic distribution of additional pitches. They recommended reductions in the pitch requirements for the mainly urban and Green Belt districts of Basildon, Epping Forest, St Albans, Stevenage and Watford and increases in a group of more geographically extensive and rural districts

3 HABITATS REGULATIONS ASSESSMENT OF THE SECRETARY OF STATE'S PROPOSED CHANGES

3.1 INTRODUCTION

This section of the report sets out the process that has been followed for the HRA of the Secretary of State's Proposed Changes to the RRS Review concerning Planning for Gypsies and Travellers and Travelling Showpeople. The process has been carried out in accordance with the current guidance from CLG, with reference to that provided in draft by Natural England and guided by the requirements of both the Habitats Directive and Regulations ⁽¹⁾.

As recommended by the CLG, the HRA has been integrated with the wider SA work on the Secretary of State's Proposed Changes.

The HRA process, as outlined by the draft CLG guidance, is comprised of four stages:

1. identifying likely significant effects;
2. undertaking an appropriate assessment and ascertaining the effect on site integrity;
3. identifying mitigation measures and alternative solutions; and
4. considering whether there are imperative reasons of overriding public interest and securing necessary compensatory measures.

The East of England Plan was subject to a screening conclusion (Stage 1) that they would have likely significant effects upon a range of European sites and were consequently subject to an appropriate assessment under the Habitats Regulations (Stage 2). This process resulted in a number of changes to the policies in the final East of England Plan sufficient to ensure that any potential adverse effects on any European sites were negated. This process allowed the Secretary of State to reach a conclusion of no adverse effect on the integrity of any international sites and approve the East of England Plan in compliance with the legal provisions of the Habitats Regulations.

This review must satisfy the same tests and be first screened for any likely significant effect on any European site. As described below, the Secretary of State's Proposed Changes in this RSS review are held to have no likely significant effect upon any European site.

3.2 HABITAT REGULATION ASSESSMENT OF THE PROPOSED CHANGES

This assessment of the Secretary of State's Proposed Changes to the RSS policy for Gypsies and Travellers, and which now includes Travelling Showpeople and provision for transit sites, must be read in conjunction with the Habitats

(1) The Habitats Regulations Assessment of Regional Spatial Strategies and Sub-regional Strategies. David Tyldesley and Associates for Natural England March 2007.

Regulations Screening Assessment produced by EERA in February 2008 concerning its original policy submission¹. This assessment sets out the baseline information on Natura 2000 sites concerned in this review and this is not repeated here.

3.2.1 *Effects of Proposed Changes on European Sites*

The Proposed Changes make a relatively small increase to the previously assessed number of pitches for Gypsy and Traveller Caravans to be provided in local authority Local Development Documents (LDDs). The figure for additional pitches required between 2006 – 2011 within the region rises in the Secretary of State's Proposed Changes from 1,187 to 1,237. The Proposed Changes also maintain the requirement for an annual 3% compound increase in pitch provision between 2011 and 2021 proposed in the original EERA submission. The Proposed Changes also require that Development Plan Documents provide for an additional 160 transit pitches for gypsies and travellers by 2011 distributed throughout the region. At a regional scale the effect of this further increase would not be discernible and is considered a sufficiently small increase in development provision not to alter the conclusion of no likely significant effect on any European sites.

The proposed changes introduce a new - Policy H4 - which provides for plots of land for Travelling Showpeople. It requires a regional provision of 184 plots by 2011 and an annual compound increase of 1.5% beyond that

Added to the increase in Gypsy and Traveller Caravan pitches, this provision for Travelling Showpeople, considered at a regional level, is considered to have no discernible impact such to alter the original conclusion of no significant effect on European sites.

The Panel has already reported in Paragraph 7.21 that it is unnecessary to include in the RSS Policy any caveat to the effect that lower tier plans must avoid adverse effects on the integrity of European sites as this would duplicate the law imposed on local authorities by the Habitats Regulations. The Panel has also noted that this sentiment is already covered by the overarching statement supporting Policy SS1 in the East of England Plan that all RSS policies seek to ensure that *"no development adversely affects the integrity of sites of European or international importance for wildlife"*.

When assessing the suitability of sites, local planning authorities' attention should be drawn to Paragraph 5.15 of Policy H3 and Paragraph 5.17 of Policy H4. These that state that Local Development Documents should identify the location and capacity of sites sufficient to deliver the requirements in Policy H3 and Policy H4 in locations likely to be attractive to the local Gypsy and Traveller/Travelling Showpeople communities while avoiding areas at risk of flooding and adverse effects on areas of wildlife and landscape importance.

¹ Regional Spatial Strategy Single Issue Review: Planning for Gypsy and Traveller Accommodation in the East of England – Habitats Regulations Screening Assessment February 2008

3.2.2 *Implications of Policy H3 and H4 for European Sites*

Policies H3 and H4 propose a quantum of development at a broad strategic (ie local authority) level. The detailed locations associated with the policy will be selected following the development and consideration of options in lower-tier plans. The level of development proposed is limited in terms of both numbers and the extent of development both in absolute and relative terms to the levels of other types of development proposed in the Proposed Changes.

From our review of the available data on European Sites in the region it is not possible to identify any clear links between the distribution proposed and likely impacts on European Sites.

As noted in Natural England's draft guidance 'providing for a particular quantum of development does not itself have any effect on a European Site and associated sensitive area. An effect could only occur if the RSS directed some or all of the development, directly and explicitly to areas with a European Site or associated sensitive areas that could be affected by the development'. This is not the case with the proposed policies. Neither does it appear at strategic level likely that the quantum of development proposed cannot be accommodated without potentially affecting a European Site.

3.3 *CONCLUSION ON LIKELY SIGNIFICANT EFFECT*

Based on the supporting text of Policies H3 and H4, on the requirement to apply the Habitats Regulations to the production of LDDs and on the amendments and policy provisions already built into the East of England Plan resulting from its own HRA under the Habitats Regulations, we assess that Policies H3 and H4 will have no likely significant effect, either alone or in combination with other plans or projects, upon any European site. Considered at a regional-level the quantum of additional development provided for will have no discernible effect on European Sites. The relatively small volume of development proposed and the lack of exact geographical locations are germane to this assessment.

In view of the relatively small increase of additional provision for Gypsies and Travellers and Travelling Showpeople introduced by the Secretary of State, the conclusion of no likely significant effect, made in respect of the draft policy submitted by EERA, is also valid for these Proposed Changes.

3.4 *POTENTIAL SIGNIFICANT EFFECTS AT LOCAL LEVEL*

As indicated above the detailed spatial distribution of pitches and therefore any potential effects will be carried out at local authority level. This means that should any further assessment of potential effects on European sites be required it must be carried out at LDF stage.

It is the conclusion of this screening exercise that, at regional level, there are no likely significant effects, either alone or in combination with other plans or projects, resulting from the Proposed Changes upon any European sites. This is due to the following considerations:

- The supporting text to the Policies H3 and H4 protects against adverse effects on areas of wildlife importance.
- The modest level of development anticipated.
- The modest amount of land taken up by pitches and plots means they are flexible to locate and thus should avoid any significant effects.
- Lack of site-specific requirements which means no discernible impacts arise at a regional level.
- The requirement for local authorities to make detailed, location-specific provision for Gypsy and Traveller/Travelling Showpeople accommodation in Local Development Documents which must comply with the Habitats Regulations.
- The fact that the wider policy framework in the East of England Plan has already complied with the Habitats Regulations and provides further safeguards to international sites

