



**Irish Traveller Movement in
Britain
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Submission to consultation on Minor Alteration (Policy 3.9) of Replacement London plan



Submission by the Irish Traveller Movement in Britain

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This submission is endorsed by:

- Race on the Agenda (ROTA)
- London Voluntary Service Council (LVSC)
- Federation of Irish Societies
- Irish Chaplaincy in Britain
- Southwark Travellers Action Group (STAG)
- Refugees in Effective and Active Partnership (REAP)
- Action for Advocacy
- Ashiana
- Camden LGBT Forum
- Disability Hackney
- Greater London Forum for Older People
- Kairos in Soho
- MiNet
- Praxis
- Women's Resource Centre

Irish Traveller Movement in Britain is funded by:



The Irish Traveller Movement in Britain (ITMB) welcomes the opportunity to participate in the consultation on the Minor Amendment to the Mayor's London Plan and Spatial Development Strategy for Greater London. ITMB is proud to work in partnership with the Gypsy, Roma and Traveller community in London, together with service providers and policy makers across London, to better promote social inclusion and community cohesion.

This submission rejects the proposed alteration of pitch allocation from 538 to 238 pitches based on:

- The various incorrect facts and assertions which the Mayor has given as justification for the proposed minor alteration document. These suggest that the proposed alteration does not meet the tests of soundness upon which the plan must ultimately comply with.
- By lowering the pitch figure to completely exclude the accommodation needs of Travellers currently living in conventional housing, the Mayor has dismissed without due consideration, the human rights of Gypsies and Travellers currently housed in bricks and mortar accommodation against their will.

Introduction

In the Minor Alteration document the reasons the Mayor has given for his proposed decision of a lower pitch target can be summarised below:

- The Mayor believes that there are strong polarised opinions between on “one hand government and Gypsy Travellers and on the other hand, Boroughs and residents¹ seeking a lower figure.” He suggests that the comments from the first consultation indicate that many Boroughs find the commitment of the new pitch targets problematic and because of their lack of commitment the higher figure given in the original plan is not necessarily sustainable. He has therefore

¹ Incidentally, are Gypsy and Traveller people not “residents”? This sort of statement enforces and affirms the exclusion suffered by the Gypsy and Traveller community in society as a whole. The Mayor might also like to recall that the Traveller community are a protected group under the Race Relations Act and as such, capitalised letters should be used in reference to the community. Throughout the minor alteration document Travellers are referred to without capital letters. While this is a minor point it denotes a lack of appreciation and respect for their protected ethnic minority status respect.

selected the lower figure as a compromise between the two supposedly opposing sides.

- In basing his decision on the lower figure of 238, the Mayor has decided to withdraw all allocations for pitches to those Travellers already living in bricks and mortar accommodation. The Mayor justifies this by stating that those Travellers in bricks and mortar **must** show a proven psychological aversion to living in conventional housing before it can be shown that they have a **need** to live on a site pitch. In relation to this, the Mayor questions the evidence identified in the needs assessment in which he believes that such a psychological harm cannot be decisively proven.

In rebutting these assertions made in the Minor amendment, taking each in turn, it can firstly be argued that no such strong opposition exists in the way that the Mayor has described it, thus as a result, there is no need for a supposed compromise between the two “sides” as the Mayor has indicated. Based on the facts, as a result of conducting an in depth statistical analysis of the responses to the first consultation which the mayor has based his opinion on, it is clear that the analysis in no way supports this.

- ✓ In total 402 comments were received, of which 341 (85%) were from individuals, 21 (5%) were from local authorities and 40 (10%) were from other agencies, bodies or forums.
- ✓ There was an overwhelming individual response supporting the mid-point or an increased figure (89%). Of the 341 individual comments, 304 (89%) supported the mid-point figure or an increased amount, 27 (8%) were opposed and 10 (3%) undecided. Interestingly, of the 27 individual comments opposing, 16 referred specifically to Havering.
- ✓ Of the 21 Local Authority comments, 5 (24%) supported the mid-point figure or an increased amount; 10 were opposed (48%) and 6 (28%) undecided. In total more than half the Local Authorities commenting were in favour of, or undecided about the mid-point figure.
- ✓ Of the 40 other agency comments 28 (70%) supported the mid-point figure or an increased amount; 6 (15%) were opposed and 6 (15%) undecided. Other agencies supporting the mid-point or an increased amount include Planning Aid for London, Just Space and IBA Planning. All **non**-Gypsy and Traveller organisations with a specialisation in the planning process.
- ✓ Among the individual comments, there was a resounding statement supporting the mid-point figure or an increased amount (89%). These responses were presented in either standard postcard or letter form. 188 (62%) of the 304 individual responses were presented in standard postcard format. 116 (38%) were presented in non-standard, letter form.

Put simply, 89% of all respondents agreed with the previous figure of 538 or higher. Further to this, of the very small number of individual respondents opposing the figure, the majority of those were from the Borough of Havering. Therefore, the issue is hardly as decisive as the Mayor has suggested since the number actually opposing the higher

figure was negligible in contrast to the resounding London wide support for it. Secondly, with regard to the Mayor's assertion that the Boroughs are vehemently opposed to the original figure, this assumption is simply untrue since over half of all Boroughs either support the previous figure or are undecided. Therefore, in relating the above information to the assertions of the Mayor, it is clear that the lower figure of 238 cannot be justified. In particular, since one of the key justifications for the lower figure is the suggestion that it is unsustainable as it is alleged that the Boroughs will not support the higher figure, this has been proven to be totally unfounded.

Since the key arguments the Mayor has posited for a reduction in pitch allocations have proven to be inaccurate, this means that the lower figure would not meet the tests of soundness which the London Plan will be specifically scrutinised against at the Public Examination. In particular, according to Planning Statement 12 (as explained in the guidance document "Examining development plan document: soundness guidance") it must be shown inter alia, that the contents of the plan are justified and effective and are also based on a credible evidence base. Following from the analysis we have carried out, it is highly unlikely that the justification for the Mayor's decision to lower the figure would meet those tests.

Further to this, the minor amendment has referred to the fact that the large majority of responses from the Gypsy and Traveller communities are "standardized." This may be viewed as a veiled attempt to undermine the quality of these responses as opposed to the "more specific expressions of concern" from Boroughs. This is a calculated tactic to undermine the responses from the Travelling community. It also shows a complete disregard and misunderstanding of the fact that the Gypsy and Traveller community experience high rates of illiteracy and writing skills. It took a mammoth unprecedented effort to get these 188 standardised responses (as compared with the very small 21 specific responses from Boroughs) and for the Mayor to completely disregard and undermine these is unacceptable and demonstrates a lack of understanding of their characteristics and associated economic and social disadvantages which they suffer in society.

In rebutting the second aspect of the Mayors justification for the lower figure, it is clear that the Mayor has insisted that the Travelling community living in conventional housing must prove that they have a psychological aversion to living in such accommodation before the Mayor will deem them to have a need. As indicated in the Minor Alteration, there is an allegation made by the Mayor regarding the existence of proof in relation to this concept, which is in stark contrast to the findings of the GTANA. Regardless of this, it is argued here that the proving of psychological aversion (and whether it goes beyond the realms of Government guidance as the Mayor suggests), is not the key issue. The issue of importance here is the fact that the Mayor has not considered properly the needs and rights of Travellers housed against their will in bricks and mortar accommodation. Traveller's rights have not been considered by the Mayor who has mandated the need to prove psychological harm without actually considering that these Travellers have rights guaranteed under the Human rights and Equality law which must be respected.

In particular, the concept of "cultural aversion" (as distinct from psychological aversion) requires public authorities to consider the rights of Travellers who oppose living in conventional housing. These rights are guaranteed by the European Convention on Human Rights and the Human Rights Act under Article 8 which requires respect for private and family life. The concept of cultural aversion first appeared in the planning case, *Clarke v Secretary of State for the Environment, Transport and the Regions*². In this Judgment before the High Court (subsequently upheld in the Court of Appeal) the Court overturned the decision of a planning inspector who had refused permission to a Romani Gypsy in circumstances where the inspector had taken into account a previous offer of conventional bricks and mortar accommodation from the local authority. However, Burton J concluded that if a cultural aversion to housing was established such an offer would be considered unsuitable "just as would be the offer of a rat infested barn" (Para 34 Judgment).

The concept was then applied in the homelessness case of *R (Price) v Carmarthenshire CC*³ which involved a family of Irish Travellers who were homeless since they were living on an unauthorised encampment on council owned land. In relation to the concept

² [2002] JPL 552.

³ [2003] EWHC 42 (admin)

of cultural aversion, Newman J referred to the recently decided case at the European Court of Human Rights of *Chapman v UK*⁴

“...in order to meet the requirements and accord respect, something more than “taking account” of an applicant’s gypsy culture is required. As the Court in *Chapman* stated, respect includes the positive obligation to act so as to facilitate the gypsy way of life” (*Para 19, Judgment*).

Following the Price Judgment, the Department for Communities and Local Government amended the homelessness code of guidance for local authorities (Sept 2006). The amended code states-

“Where a duty to secure accommodation arises, but an appropriate site is not immediately available, the housing authority may need to provide an alternative temporary solution until a suitable site of some other suitable option becomes available. Some Gypsies and Travellers may have a cultural aversion to the prospect of “bricks and mortar” accommodation. **In such cases, the authority should seek to provide an alternative solution” (Para 16.38)**

Thus it has been clearly established under law that the concept of cultural aversion does indeed exist, which is a direct result of Article 8 of the European Convention on Human Rights, as enacted by the Human Rights Act in the UK, which provides the duty to protect the right to respect for private and family life. This duty means it is necessary for public authorities to be aware of the concept of cultural aversion to bricks and mortar (as distinguished from the concept of Psychological aversion) and make provision for this in the cases of housing policy and planning law. Thus, the concept of cultural aversion imposes a duty on local authorities to consider Travellers rights and needs who “should seek to provide an alternative solution” which is a mandatory as opposed to a discretionary duty which can be distinguished from the concept of psychological aversion which the Mayor believes is a discretionary concept. Furthermore, it is important to point out that whilst the Courts in these recent decisions have not uniformly mandated the need to **guarantee** site places in these instances where cultural aversion

⁴ [2001] 33 EHRR 399 European Court of Human Rights

exists, nonetheless the guidance to date has placed public authorities under a duty to recognise and take on board this concept in decision making, something which the Mayor of London has not acknowledged in his decision. Further by not incorporating this in his decision making it shows a complete disregard for the human rights of the Travelling community under equality law.

Thus the concept of cultural aversion in simple terms is a basic right recognised under human rights as distinct from the concept of psychological aversion which requires proof of psychological harm. In other words, psychological harm requires a higher standard of proof i.e. proving of actual harm from living in bricks and mortar. Whereas the concept of cultural aversion is something which in essence, requires the authorities to recognise the distinctive way of life of the Travelling community without the Travelling community having to demonstrate any further proof of this - in other words the burden of proof shifts to the authorities. So whilst the Minor Amendment states that “the concept of psychological aversion does not provide a sufficiently robust justification for specific planning intervention, this can be contrasted with the concept of cultural aversion which necessitates intervention. Furthermore, the fact that the Mayor refers to the psychological issue as reinforcing social exclusion (Para 5 minor amendment) proves that he does not understand the reality that living on sites does not necessitate social exclusion.

Linked to the issue of human rights, the Mayor states in the Minor Amendment that the site pitches must be “politically acceptable” (Para 4). We would like to remind the Mayor that the human rights of Travellers as guaranteed under the Human Rights Act and European Convention on Human Rights will take precedence should there be any potential questions of political acceptability.

Specifically linked to this, there is a duty to conduct an Equality impact assessment Under the Race Relations Act 2000 under which the Mayor’s Office is obliged to perform an impact assessment on all relevant policies and functions to ensure that it doesn’t discriminate and promotes equality of opportunity when changes to the previous plans are proposed which must be adhered to and action taken to rectify situations where there have been negative effects. In relation to this, the equality assessment has

not been considered properly as the Minor Amendment states that an equality assessment has been carried out (with no detail whatsoever of this) and the minor amendment indicates that the impact on equality was positive. This is OBVIOUSLY not the case when it is so clearly not positive in light of the concept of cultural aversion being totally ignored. Therefore as mentioned in relation to the first rebuttal it is clear that this change to the previous figure of 538 would most likely not comply with the tests of soundness and would not be considered credible or justified in light of this.

Conclusion

We believe that the proposed minor alteration figure of 238 should be rejected due to the reasons outlined above, relating to the inaccuracies in the Minor alteration which bring into question the justification for the lower proposed figure, combined with the failure to consider the human rights of housed Travellers.