

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Cabinet
AUTHOR/S: Strategic Officers Group on Traveller Issues

8 September 2005

ANALYSIS OF LAND SWAP CONCEPT

Purpose

1. To describe the concept of land swap as a means of addressing unauthorised occupation of land and to discuss whether it is a feasible option to include in our developing strategy on Traveller issues.

Effect on Corporate Objectives

2.	Quality, Accessible Services	Traveller issues have implications for all four objectives. The Council's commitment to firm, fair and consistent planning enforcement is central to maintaining Quality Village Life and treating all sections of the community equitably. This is reflected in the Council's Policy on Traveller issues, agreed in July 2004. The Performance Plan highlights the challenge of unauthorised plots and future site provision as a major issue facing the Council.
	Village Life	
	Sustainability	
	Partnership	

Background

3. In 1994 the duty that had existed on Councils since 1968 to provide sites for Travellers was repealed and replaced with circular 1/94. This circular asked Councils to identify land suitable for site development. Many Councils ignored this but South Cambridgeshire District Council (SCDC) did identify land for Travellers at Chesterton Fen in its Local Plan.

4. The revision to circular 1/94 is expected imminently, but the draft recognised:

"The current under provision of accommodation is testament to the fact that planning policies, such as circular 1/94, are not producing sufficient number of sites" (pg 47:103).

The need to "Make site provision easier for elected members to support.....the most obvious way to do this is to re-introduce a statutory duty on local authorities to provide or enable the provision of Gypsy and Traveller sites" (pg 60:124).

It is therefore likely that the new guidance will impose some form of statutory expectation on local authorities to provide more sites for Travellers. We have anticipated this and are about to start the process of identifying further land for Travellers within the new LDF, based on the results of the Travellers Needs survey.

5. Nationally over the past few years many Travellers have been buying land, developing it and then applying for retrospective planning permission. The sites have often been in inappropriate locations, with few local facilities, and caused tension within the settled communities. This has resulted in legal actions between local authorities and Travellers, some resulting in costly evictions. SCDC is currently

involved in many enforcement proceedings with Travellers, which are lengthy, costly, take up considerable officer time and at present offer no solution to the overall problem of site provision.

6. This has led some campaigners, including the Cottenham Residents Association, to suggest "land swap" as a solution to unauthorised development.

Considerations

7. The land swap proposal involves the exchange of land owned and occupied by Travellers, which is considered to be in an inappropriate location and where permission has not been granted, for land which is considered more suitable for this form of site development.
8. In the case of SCDC, this would involve the Council:
 - a. identifying a suitable piece of land (which we could consider advertising for) and which subject to a planning application, permission would be granted for use as a Travellers site
 - b. either purchasing the land possibly using a compulsory purchase order (CPO) to then negotiate swapping with the Travellers unauthorised land, or;
 - c. purchasing their unauthorised land (possibly again by CPO) and inviting them to make an offer on the alternative land with planning permission, using the funds from our sale and possibly more, from a lender.
9. The Gypsy and Traveller Law Reform Coalition suggest:

"If councils were able to persuade Traveller families to exchange land on contested sites where planning applications had failed or were likely to, for another piece of land that did not disadvantage a family in terms of hazards and access to services and it was land they were happy to move onto, then a mutually beneficial solution could be found."
10. In October 2004 land swap was discussed in the debate on the Housing Bill and Lord Bassam explained:

"There are problems here because of the differential in costs. However we are of the opinion that it is up to local authorities to decide how to proceed, and if there is to be good co-operation, it is up to the local authorities to sort that out for themselves. We do not need legislation to do that; in fact I would suggest that this is an area in which voluntary agreements and arrangements are best developed."
11. SCDC officers have contacted other local authorities such as Tewkesbury and Taunton Deane who, we were led to believe, had carried out land swaps. However our investigations have found that these authorities have not conducted such a scheme and are not planning to in the near future. To our knowledge no local authority has carried out a land swap which follows the guidance suggested by the Gypsy and Traveller Law Reform Coalition.
12. Members may recall an officer from Chelmsford Borough Council discussing, at the member's workshop on 18 March, that they were carrying out a land swap of sorts. The circumstances were different but the land was compulsorily purchased and will be used to home Travellers who are occupying unauthorised land elsewhere in the district. The specific details of this exchange can be reviewed further if it is a concept

Members feel might work in South Cambs.

Issues

13. How would further unauthorised occupation of the vacated land be prevented?

Land swap would not necessarily result in effective enforcement. Having moved a family off an unlawful site to a new one provided under land swap, a new family could move on to the old unlawful site. If the Council had ownership it could evict the family as trespassers rather than under planning law. However, the Pryce case in the House of Lords currently puts some significant obstacles in the way of evictions. It is likely that those obstacles will be ameliorated in future.

14. How could the issue of the price differential between the new site (with planning permission) and the vacated site (without planning permission) be dealt with?

There will be a significant price differential between a site without planning permission and one which has or would be granted permission. The Council may be able to acquire land compulsorily to make a planning application for lawful settlement. Valuation advice would be needed on the price to be paid and whether it would reflect the proposed use. There are questions of compulsory purchase and valuation law. One would assume though that the land once purchased would have to be sold at full value.

The suggestion is that price differentials could be bridged through a loan or by families offering some form of environmental service to the wider community, possibly using forestry, landscaping or construction skills. Whether or not a loan is a good idea would depend partly on the credit worthiness of the borrower. One could foresee practical difficulties if the borrowers got into arrears. There might be similar issues in taking environmental services in exchange for interest and capital repayments. There is also a question of whether "service to the wider community" would be a payment to the Council. This would require further officer resources.

15. Who would own/manage the vacated site?

The Council would become the owners of the plots, which are highly contested. Land ownership carries with it responsibilities to manage the land. One might however want to consider land swapping in conjunction with a strategy for ownership by the Council of all of the unlawfully occupied land at Cottenham. There are practical questions there as to the boundaries of the unlawfully occupied land. In a sense it can be extended by any family occupying further land at will. Valuation advice already received by the Council will be relevant.

16. Who would pay for restoration of the vacated site to its previous condition and for development of the new site?

These costs would need to be negotiated as part of the land swap proposal. However one must assume the Council would pay to revert the old site back to its previous condition and the Travellers would pay to develop the new site as they wished, within their legal rights.

17. Could this be seen as an encouragement to set up unlawful sites in the hope of getting a land swap deal with the local authority?

The land swap system does risk being construed as an invitation to set up unlawful

sites. As the Gypsy and Traveller Law Reform Coalition paper suggests however, it might be possible to address that by excluding Councils, which have satisfactorily addressed Traveller accommodation needs in their area. For example if a needs survey states there is under provision of 50 pitches in a particular area and the authority meets that need, they would not need to provide any more sites to new Travellers entering into their district. SCDC will be able to consider this in the autumn when it received the results of its Travellers needs survey.

18. Would the proposal simply move the problem from one location to another?

The Travellers would be moved to another location and this has the potential to cause issues with the settled population in that area. However in our experience Travellers on authorised plots do manage their sites well, keep them tidy and contribute to the local community. This is evident at authorised sites in Rampton, Chesterton Fen and Willingham.

19. How would the views of the settled communities near to the new site be taken in to account?

There would have to be considerable consultation with the Parish Council and local community at the land identification stage. There would need to be give and take on all sides and negotiations may take many months. The Council would make the final decision but if faced with substantial opposition it may not seem sensible to continue negotiations.

20. How does the proposal differ from a policy of enforcement and provision of new authorised sites?

Under the new LDF process the Council will be identifying suitable land for Travellers sites. The Travellers, a housing association or private individual would purchase these new sites although the Council could assist in negotiations. SCDC would not have to purchase any land nor manage any land but the issue of empty unauthorised land would still remain. Other Travellers could potentially move onto the land left by Travellers who have purchased authorised land. The Council would have to develop as part of its ongoing strategy a way of managing this potential issue.

Financial Implications

21. As identified in the legal advice there would be a range of differing cost implications if the Council were to proceed with land swap. The Council may have to:
- a. purchase land
 - b. compulsorily purchase the unauthorised land (further unauthorised occupation could then be dealt with through trespass laws, although there have been legal issues mentioned on this)
 - c. employ legal advice to develop contracts and set up loans
 - d. take legal action against trespassers on the newly acquired (unauthorised) land owned by the Council
22. Financial costs of land swap proposals also need to be weighed up against the cost of taking alternative courses of action such as applying for injunctions through the courts. Within the current financial “capping” climate careful consideration would be needed before committing to any future expenditure

Legal and Equality Implications

23. The Commission for Racial Equality states “Gypsies and Irish Travellers are recognised ethnic groups for the purposes of the Race Relations Act (1976), identified as having a shared culture, language and beliefs”.
24. The emerging guidance from the ODPM to replace circular 1/94 may well place legal responsibilities on local authorities to provide suitable accommodation for Travellers in their locality. This is an issue we will need to follow closely and respond to when published. The Traveller Needs survey will also provide information on this issue.
25. There are also legal implications identified in the issues section (points 13-20) above, for example; the lawful eviction of trespassers, compulsory purchase and valuation law. These areas would need further investigation if the Council wished to proceed with a land swap.

Staffing Implications

26. There would be significant resources and staffing implications if the Council were to follow up on any of the issues outlined in points 13-20. There would be legal advice and documentation; officer investigation of land; negotiation with land owners, Travellers, Parish Councils and local communities; and reports to members in order to gain permission to proceed with negotiations. At any stage in the process the discussions could be halted by disagreement from any number of parties involved.

Risk Management Implications

27. Traveller Issues are highlighted as one of the key corporate risks facing the organisation (currently rated ‘very high likelihood’ / ‘critical impact’) on the Council’s Risk Register.
28. If the Council wished to enter into a land swap, a full risk assessment would need to be carried out exploring all the issues identified.

Consultations

29. Mills and Reeve have commented on the legality of the proposal and provided answers to some of the questions in points 13-20 above. If the Council wanted to proceed with land swap they recommend further investigation of the legal issues.
30. Management Team considered and agreed this report at its meeting on 23 August.

Conclusions/Summary

31. What are the advantages?
 - a. Travellers would be living on authorised pitches
 - b. a solution would be reached through cooperation and therefore more likely to be long lasting
 - c. the authority would be proactively managing its unauthorised developments
 - d. community relations could be strengthened through negotiations over site location

32. What are the disadvantages?

- a. the Council does not own any land which it could consider to use for land swap
- b. land would have to be purchased (possibly through CPO)
- c. significant staffing would be involved to manage the land swap process and continue to manage unauthorised land into the future
- d. a solution would need to be identified to protect the old site from new unauthorised encampments
- e. potential encouragement for Travellers to occupy sites without planning permission in the hope of a land swap
- f. there could be a public perception that this proposal would reward those who choose to develop land without planning permission
- g. the proposal is as yet untried

Recommendations

33. Based on the information presented in this report, it is recommended that land swap be ruled out as an option for the Council to consider within its strategy at this time. Once the LDF has identified potential land for Travellers, and the needs survey has identified the number of sites we may need to provide, this idea could be reconsidered as an option in our strategy to reduce unauthorised development.

Background Papers: the following background papers were used in the preparation of this report:

- Office of the Deputy Prime Ministers (ODPMs) "planning for Gypsy and Traveller sites" consultation paper November 2004
- Land Swap discussion paper - Gypsy and Traveller Law Reform Coalition

Contact Officer: Strategic Officer Group on Traveller Issues
e-mail: traveller.project@scambs.gov.uk
Telephone: (01954) 713297