

# **Gypsy & Traveller Law Reform Coalition - Submission on Temporary Stop Notices**

The following paper is a draft discussion paper to help the committee of the Gypsy and Traveller Law Reform Coalition reach a formal response to the Government consultation on new temporary stop notices.

## **General Observations**

1/ The temporary stop notice provisions in Part 4 of the Planning and Compulsory Purchase Act 2004 inserted sections 171E to 171H to the Town and Country Planning Act 1990. The Act gives local planning authorities a new discretionary enforcement power to be able to issue a temporary stop notice at the start of unauthorised development, before an enforcement notice is served, speeding up the process of enforcement.

2/ The Gypsy & Traveller Law Reform Coalition (G&TLRC) firmly believes that existing enforcement powers and stop notices are already extremely harsh and have led to the imposition of fines of up to twenty thousand pounds or even imprisonment for those who have infringed them. It should be remembered that members of the Gypsy and Traveller community have been compelled to resort to establishing homes through retrospective planning applications as the repeal of the duty on councils to provide sites in 1994 and replacement with the universally accepted ineffective circular 1/94 have created a shortage of sites. This leaves families with limited choices, either to live on the side of the road, give up their nomadic way of life and move into housing (assimilation) or develop a site through a retrospective planning application. It is therefore inhumane to pile up even more draconian punishments and restrictions on families who take the latter option.

3/ In the ODPM press release that accompanied the consultation process on the new temporary stop notices Keith Hill MP Minister of State declared

*"We must act to stop the scourge of unauthorised sites which can blight local communities.....Local councils have asked us to empower them to deal with this problem so that's exactly what we are doing. But this is a two way process. We want to see councils taking a more proactive approach to delivering authorised sites for Gypsies and Travellers".*

4/ We believe though that the Government has failed to introduce the measures needed to deliver authorised sites in the numbers needed. We welcome the fact that the Government has incorporated the Commission for Racial Equality (CRE) drafted amendments into the Housing Bill, which create a statutory duty on councils to assess Traveller accommodation need and incorporate that in strategy documents outlining means to deliver such provision. However, we feel that in some cases this will move no further than the development of a strategy document as opposed to actual sites on the ground. We along with the CRE, National Farmers' Union and Local Government Association still contend that a statutory duty is needed on councils to provide and facilitate sites.

We call upon the government to again consider the final amendment tabled by Lord Avebury to the Housing Bill, which proposed that the Secretary of State may, if at any time it appears to him to be necessary to do so, give directions to a local housing authority, requiring it to exercise its powers

under S 24 of the Caravan Sites and Control of Development Act 1960, to provide such sites for Gypsies, for the accommodation of such numbers of caravans, as may be specified in the directions. The Secretary of State would not give any directions under subsection (1) unless either

(a) there were Gypsy caravans on unauthorised sites in the area of the local authority at the previous January count, or

(b) Gypsy families had been evicted from unauthorised sites in the area of the local authority during the previous calendar year.

This would come into operation on the day two years after the day of passing of the Housing Act.

Finally, we wish to state that the eight million allocated for new 100 % grants for residential sites is woefully inadequate. A much greater funding commitment is required.

### **Some Specific Points on the New Temporary Stop Notices**

5/ We welcome the fact (see point 13 of the regulations) that temporary stop notices may not prohibit the continued stationing of a caravan on land where the caravan is the main place of residence. However, the regulations declare that the exception is in extreme cases where development is *"harmful to the local amenity"*. We believe that it would be useful if the regulations provided more clarification here so that the stop notices really are only invoked in extreme cases and thus ensure that planning authorities do not try and extend this definition to cover cases which fall outside of this criteria.

6/ We welcome the fact that (point 14 of the regulations) the local planning authority should ensure minimum standards of health, hygiene and public health are maintained before taking action such as "waste disposal". We presume this enables Travellers to install drainage and flushable lavatories.

7/ We note that the person affected by a temporary stop notice cannot appeal to the Secretary of State. We believe that the temporary stop notices should not be issued/upheld in relation to a breach of planning control by Gypsies or other Travellers unless the Secretary of State has certified that sufficient accommodation exists for Gypsies or other Travellers residing in or resorting to the region of which the local planning authority forms a part. Hence, stop notices should be conditional on councils meeting the targets set as a result of the Regional Spatial Strategies, this may act as a slight spur to increasing site provision.

8/ Local authorities representatives (point 32) may choose to discuss whether there is any alternative means to overcome objections. If an alternative can be found the regulations suggest an option is to consider granting planning permission. In order to promote such dialogue and compromise we believe that the Secretary of State should actively assess any such dialogue in deciding where to support an appeal against a temporary stop notice. The absence of any such dialogue should weigh against the Secretary of State upholding a temporary stop notice in the appeals process. Clearly therefore we believe that there should be an appeal process and that the Secretary of State should have a role within it.

9/ The GTLRC believes that existing enforcement powers are already extremely harsh and have led

to the imposition of large fines up to (£20,000) and even imprisonment. Given the focus of such measures against Gypsies/Travellers as opposed to their direction against the settled community they are probably discriminatory. We believe that the temporary stop notices are incompatible with article 8 and article 1 of the protocol (the right to peaceful enjoyment of one's property) but also article 6 because there is no right of appeal and judicial review is likely to prove an inadequate remedy when the temporary stop notice can be issued without notice and lasts only 28 days.

If the temporary stop notice is introduced it should only be used in extreme situations as para 13 of the draft circular suggests and not as para 33 of the partial regulatory impact assessment suggests - simply in order to protect land that is classed as valuable eg green belt.

## **The Debate on Enforcement Powers**

9/ Conservative front bencher Eric Pickles MP on the 5th of March 2004 tabled a private member's bill (Town and Country Planning Enforcement Notices and Stop Notices Bill) calling for more enforcement powers. It struck many that the Government's temporary stop notice proposals were drafted in response to this Bill as they were unveiled shortly before Eric Pickles gave his Bill a formal second reading. At the time Pickles welcomed the new proposals from the Government.

*" The reason why I am so pro-Government at present is their announcement of 25 February that they will table amendments to the Planning and Compulsory Purchase Bill currently in another place, allowing local authorities to issue a new kind of stop notice. That is very welcome and goes some way towards meeting the Demands in my Bill"*

10 - Since then though the Conservatives have placed an even stronger emphasis on enforcement and have now indicated dissatisfaction with the Government proposals. Michael Howard, Conservative Party leader recently announced that the Conservatives were undertaking a policy review on Traveller issues in which strong enforcement powers and amendments to the Human Rights' Act would play a central role.

11 - The Government has rejected criticism of the Human Rights Act. Speaking on behalf of the Government in an adjournment debate on the 16th of September 2004 Paul Clark MP stated

*" There is a perception that Gypsies, Travellers and other groups have special rights, that they have rights greater than people living in settled communities but that is not the case. As I said, human rights legislation exists to protect everyone's human rights. Of course, the interests of neighbours must rightly be taken into account, but the planning enforcement decision being considered is against Gypsies and Travellers, so a decision has to be taken that is proportionate in their judgment. So no such difference exists, but we recognise that the perception exists that a different balance is involved "*

12/ In Prime Minister's question time a number of Tories such as John Baron MP (15th September 2004) have challenged the Prime Minister on the new temporary stop notices and called for stronger measures. The Prime Minister has expressed sympathy but declared

*" As I think I said to the hon. Gentleman when we met in February, I am basically sympathetic to the points that he makes. As he knows, we are undertaking a policy review on the position of Gypsies and Travellers, which we will publish shortly. My understanding is that the 28-day delay allows the local authority to take prompt action. I know that he disagrees with that and thinks that we need additional legal powers. I am happy to look at the question again and discuss it with my right hon. Friend the Deputy Prime Minister, but we think that the powers are valid as I think my hon. Friend the Under-Secretary of State, Office of the Deputy Prime Minister, the hon. Member for Pontefract and Castleford (Yvette Cooper) said to the hon. Gentleman when we met. I entirely agree that it is a major issue in certain communities I know that from my own constituency and it is important that the powers are in place to deal with it effectively. I will go back and have a look at the issue again, but it is worth pointing out that we have strengthened the law and the advice we are receiving although I will check it carefully is that the law is sufficiently strong to enable us to deal with the problem. I understand that it is an issue in some areas and I will look into it carefully myself "*

However in response to a question from Simon Burns MP (West Chelmsford) (Con) on the 3<sup>rd</sup> of November 2004 The Prime Minister hinted that there was a possibility that stronger measures might be introduced.

*"I agree entirely with the hon. Gentleman, and I have held discussions with hon. Members about it. My understanding is that we are actually giving local authorities greater powers to ensure that they can take immediate action in the courts, rather than having a drawn-out process that often means that buildings or dwellings are erected by Travellers before there has been a chance to take action. However, we are looking at the matter again to ensure that the powers are sufficiently tough. I know from my own constituency that the issue can be serious and I think that the combination of measures that we are taking will make a genuine difference. But I am looking at the issue myself and, on that, too, perhaps I can get back to the hon. Gentleman".*

13 - We hope that the Prime Minister will not succumb to populist pressures and advocate more draconian steps. Lord Rooker, Minister of State in a special statement on temporary stop notices indicated that the Government felt there was no need to take any further steps.

*" I yesterday tabled an amendment to the Planning and Compulsory Purchase Bill that is currently being considered by the House of Lords as a result of the Review of the Planning Enforcement System in England. The responses to the review supported our belief that the existing system of planning enforcement is basically sound and does not need to be reinvented. That is not to say that there is no scope for improvements. We received a wide range of ideas and proposals on how to make planning enforcement more effective and better able to play its part in ensuring that people have confidence in the planning system as a whole. We will be publishing our full conclusions on the review later in the year".*

14/ Some Conservatives such as Peter Luff MP (adjournment debate 16th of September 2004) have called for infringement of the planning law to become a criminal offence. This was rejected by Paul Clark MP, speaking on behalf of the Government, he stated

*" The hon. Gentleman mentioned the idea of creating a criminal offence, which was in fact considered*

*by Parliament in debates that culminated in the Planning and Compensation Act 1991. The majority view then was that criminalisation would be too severe a punishment for breaches of planning control, given that some people might be genuinely unaware of the need to obtain planning permission for relatively minor developments. Of course, others have suggested that it should be criminalised only for the development of Gypsy sites, but Members will recognise that it is neither right nor legal to criminalise only one section of the community".*

15/ Sections of the media have launched an unprecedented attack on the Gypsy and Traveller community, headlines have labeled them 'scum', 'rural terrorists' and 'invaders'. Tensions in communities are reaching acute levels. Those clamoring for even stronger enforcement powers are pandering to this wave of prejudice. The recent statements by Michael Howard in this context are therefore highly irresponsible. The Conservatives are seeking to exploit this as an election issue for votes, given their major role in creating the present crisis by ending the duty on councils to provide sites, it is inexcusable that they make no mention of means to increase site provision. It should also not be forgotten that Michael Howard was the Home Secretary who helped pilot the Criminal Justice and Public Order Act through parliament which ended the duty on councils to provide sites. Following Michael Howard's statement on Travellers Keith Hill MP, Secretary of State, declared in an ODPM press release on the 17th of October, 2004

*" Michael Howard has a cheek to highlight the lack of suitable legal sites for gypsies. It was the Tories in 1994, when he was Home Secretary, who abolished the long-standing duty on local authorities to provide gypsy sites. And it was the previous Tory government which withdrew all funding to develop such sites.....Labour inherited a legacy of massive disinvestment in gypsy sites.....The Tories political opportunism is hindering rather than helping local authorities deal with these issues".*

**Further information on the temporary stop notices can be accessed at:**

[http://www.odpm.gov.uk/pns/displaypn.cgi?pn\\_id=20](http://www.odpm.gov.uk/pns/displaypn.cgi?pn_id=20)