

## THE HISTORY OF LOCAL AUTHORITY GYPSY/TRAVELLER SITES WITH REGARD TO THE QUESTION OF SECURITY TENURE

Domestic attempts to challenge the lack of security of tenure on local authority sites and relying on the Human Rights Act 1998 were unsuccessful – see Somerset County Council – v – Isaacs and Security State for Transport, Local Government and Regions [2002] EWHC 1014 Admin, and R (Smith) – v – Barking and Dagenham LBC Secretary of State for the Office of the Deputy Prime Minister [2002] EWHC 2400 Admin. Petitions to the House of Lords were refused leave in those cases.

In May 2004 Mr Connors application to the European Court of Human Rights (Connors – v – UK [2005] 40 EHHR 9) was successful and the ECtHR indicated that the eviction of Mr Connors without him being able to put his case in Court was a breach of Article 8.

In a memorandum to the Committee of Ministers the Government indicated that they would need to change the law and that the change of the law in the Housing Act 2004 by allowing (under Caravan Sites Act 1968 Section 4) Judges to suspend Possession Orders against residents of local authority sites was not sufficient. Thus is stated: -

*“The UK government accepts that [the power to suspend] does not fully resolve all the issues raised by the case...Ministers have accepted during the passage of the Housing Act 2004 that tenure on local authority Gypsy and Traveller sites is out of line with tenure in bricks and mortar social housing, and that public sites have strong similarities to social housing in terms of client profile, landlord profile and management needs...Ministers have indicated that the most suitable way to take any proposals forward would be as part of future legislation on tenure reform relation to bricks and mortar housing.”*

In early 2005 Chris Johnson (C.J.) suggested to the then Head of Gypsy and Traveller Unit within the Office of the Deputy Prime Minister that the “Connors problem” could be resolved by amending Section 5 of the Mobile Homes Act (MHA) 1983. She did not think it was a suitable suggestion.

On the 4<sup>th</sup> of July 2006 Julie Morgan MP moved a Ten Minute Rule Bill (The Caravan Sites Security of Tenure (and Related Clauses) Bill 2006). That was the first and last appearance of that matter before the House of Commons and that Bill was largely produced to indicate security of tenure could be introduced without great difficulty. (Bill drafted by Chris Johnson)

On 15<sup>th</sup> November 2007 the Housing and Regeneration Bill was published and this included a clause (which eventually became Section 318 of the Housing and the Regeneration Act 2008) which would duly amend Section 5 of the MHA 1983 (!)

In the case of *Doherty – v – Birmingham City Council* [2008] UK HL57, the house of lords indicated that they would have granted a declaration of incompatibility with regard to MHA 1983 Section 5 but for the fact that the Government were now in the process of amending the legislation, For example, Lord Hope stated at paragraph 51:

[It is worth noting that in July 2005 Oxfordshire County Council introduced a clause into their new licence of agreements for their six Gypsy/Traveller sites that incorporated security of tenure (along the lines of the security of tenure enjoyed by Council tenants of houses and flats), such clause lasting until such time as the Government introduced security of tenure on all sites.]

*On reflection I agreed that it would be appropriate to make such a declaration in this case Indeed I have considered that the decision of the Strasbourg Court in Connors left the House with no*

*alternative but to do this...In the events that have happened, however, the making of a declaration has become unnecessary. Sections...of the Housing and Regeneration Act 2008 leave the choice of the commencement date for the relevant provisions to the secretary of state but there is no longer any need for the 1983 Act to be amended under the power of section 10 (2) HRA gives to the Minister*

In the meantime the Government had entered into a consultation process dealing with how all of the provisions of the MHA 1983 would apply (or otherwise) on local authority sites. It should be noted that it has always been accepted that the security of tenure provisions (as contained in MHA 1983 Schedule 1 Part 1 paragraphs 4 to 6) would remain the same. Thus the consultation dealt with all other aspects of the MHA 1983 such as assignment succession, right to repair, right to move the mobile home, written statements etc. On this point, add that in early 2008 C.J. had made the point to CLG that they could just proceed with bringing into force the security of tenure provisions and then take their time with regard to the other provisions, but was informed that the matter could not be dealt with "piecemeal".

There have been four consultation papers all from Communities and Local Government during this process namely:-

- 1. A new approach for resolving disputes and proceedings relating to Park Homes under the Mobile Homes Act 1983 (as amended): a consultation paper; (May 2008);*
- 2. Implementing the Mobile Homes Act 1983 on local authority Gypsy and Traveller sites: Consultation (September 2008);*
- 3. Dispute resolution under the Mobile Homes Act 1983 (as amended): Summary of responses and further consultation; (May 2009);*
- 4. Further consultation on termination provisions in the Mobile Homes Act 1983 (as amended): Government response; (December 2009);*

The latest paper (not strictly a consultation paper) reported back on jurisdiction with regard to possession actions and concluded that actions brought under paragraph 4 or 5 should still be brought in the County Court but that actions brought under paragraph 6 [detrimental to the amenity of the site] would need to be commenced in the Residential Property Tribunal and that no application for termination of an agreement could be made to the County Court until that tribunal had concluded that the house was detrimental and was satisfied either that it should not make a repairs order or was satisfied that, having made an order, the repairs ordered had not been carried out.

CLG indicated that the necessary changes to the MHA 1983 would be brought through parliament and that the MHA 1983 would be brought into force on local authority sites by or on 6<sup>th</sup> April 2010.

In an email from an officer of CLG on 10<sup>th</sup> February 2010 to various Gypsy and Traveller organisations-

*Unfortunately, due to pressure on parliamentary time leading up to the General Election, slots cannot be found to debate Statutory Instruments that would: -*

- Bring into force section 318 of the Housing and Regeneration Act (bringing LA sites into the Mobile Homes Act) and make consequential amendments to the Mobile Homes Act and*
- Make amendments to Schedule 1 (the implied terms) the Mobile Homes Act*

*[Therefore these Statutory Instruments will not be laid in parliament before the General Election]*

*The Whips advised that time could not be found for all the proposed secondary legislation from across all Government departments and ministers were asked to make a decision on Government priority...*

*We have to been given a publication date for the summary of responses for the consultation and doubt we will publish this before the election. The work that has been done will put aside pending decisions by ministers following the election...*

Notes taken-courtesy- Chris Johnson CLP

SEE: Briefing paper.//Note on Actions//Housing and Regeneration A2008S. 318//A.O.R.

Notes

SEE: CLG Gypsy and Traveller Site Management; Good Practice Guide (July 2009)

SEE: Oral question in the House of Lords – Baroness Whitaker – 17<sup>th</sup> March 2010-05-09 SEE: Attendance note of Chris Johnson (CLP) on some issues surrounding the Security of Tenure Issue

#### Memorandum to Committee of Ministers regarding Connors v. United Kingdom judgement.

The United Kingdom accepts that certain general measures are necessary in order to give effect to the judgement of the Court in case of Connors v. United Kingdom. In this context, the Government draws attention to the following changes in domestic law:

The housing Act 2004 allows judges to suspend eviction orders against residents of local authority sites. This brings the situation for residents of local authority sites in line with those on private Gypsy and Travellers sites and those with secure tenancies in bricks and mortar housing in this respect. It gives discretion to a court, which is able to suspend the eviction for periods of up to 12 months at a time on terms. This provision will come into force on 18 January 2005. So, in cases on anti-social behaviour an eviction order could be suspended on condition that there is no further anti-social behaviour.

The nature of judicial review has also changed after the Human Rights Act came into force (Mr Connors' case predates the Act). In *R (Wilkinson) v Broadmoor Hospital* RMO [2002] 1 WLR 419, in application for judicial review of decisions on essentially factual questions, the Court of Appeal held that there should be cross-examination of witness in order to determine those matters and that, on that basis, the judicial review procedure would be compatible with Article 6.

The UK government accepts that the above does not fully resolve all the issues raised by the case. ODPM is currently carrying out a comprehensive Review of Gypsy Traveller accommodation policy which, among other things, is considering further the issue of security of tenure and how to give the effect to the judgement of the Court in Connors v. United Kingdom.

Ministers have accepted during the passage of the Housing Act 2004 that tenure on local authority

Gypsy and Traveller sites is out of line with tenure in bricks and mortar social housing, and that public sites have strong similarities to social housing in terms of client profile, landlord profile and management needs.

To make reforms to the security of tenure of gypsies on local authority sites requires a great deal of further work. This work could not be carried out in the timescales of the Housing Act 2004, which was already well advanced when the Connors judgement was given. The policy review is considering what is the best way forward and whether that would be to align the position of Gypsies and Travellers on local authority sites with those in mainstream social housing.

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Ministers have indicated that the most suitable way to take any proposals forward be as part of future legislation on tenure reform relating to bricks and mortar housing. The Law Commission are preparing a draft Bill which will be delivered to the Department early in 2005. The Law Commission's original consultation did not address security of tenure issues for Memorandum to Committee of Ministers regarding Connors v United Kingdom judgement.

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#### Annexe to the memorandum

Other changes are currently underway or have been put in place which will improve the overall position of Gypsies and Travellers in terms of their accommodation and social inclusion:

Steps are being taken to mainstream Gypsy and Traveller provision within the housing and planning systems, to ensure that their needs are properly considered alongside the needs of other groups/

Under new measures in the Housing Act 2004, local authorities will be required to review the accommodation needs of 'gypsies and travellers' residing in, or resorting to, their district when carrying out reviews of housing needs under section 8 of the Housing Act 1985.

Under section 87 of the Local Government Act 2003, the Secretary of State (in respect of England) or the National Assembly for Wales (in respect of Wales) may require a local housing authority to prepare and supply them with a strategy in respect of housing matters. It is anticipated that the Secretary of State and the National Assembly for Wales will require local housing authorities to prepare and supply a strategy under the section in respect of the meeting of the accommodating needs of Gypsies and Travellers in their district. The new measures in the Housing Act 2004 require local authorities to take any such strategy into account when exercising their other function. This can include functions relating to planning, education, social care etc as well as housing.

The new planning system will ensure a systematic and comprehensive approach is taken to the assessment of housing needs and site provision and that sites are included in local development plan documents.

The permissible purposes of the Housing Corporation will be extended to allow Registered Social Landlords (private sector providers of publicly funded social housing) to provide as well as manage Gypsy and Traveller sites, and receive public subsidy to do so.

We are also revising Planning Circular 1/94, which deals with Gypsy and Traveller sites, to overcome some of the obstacles to site provision.

The Gypsy Sites Refurbishment Grant (GSRG) continues to support the improvement and expansion of the local authority network of sites. GSRG will be providing £8m funding for this purpose in 2005/06. The scope of the grant has also been widened for 2005/06 to cover the provision of new residential sites.

The Social Exclusion Unit based within ODPM has embarked on a study into 'Better Service Delivery for Disadvantaged People who Move Frequently' which will include an examination of the particular issues faced by Gypsies and Travellers.

The ODPM Policy Review is also considering further what actions can be taken to improve the availability of sites and overcome the barriers to provision.