

Traveller Law Reform Project Email newsletter number 4 22 February 2008

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Housing and Regeneration Bill

The Housing and Regeneration Bill has completed its Commons Committee stage and will shortly be debated again in the House of Commons before going to the House of Lords. The Bill offers security of tenure for residents of local authority Gypsy and Traveller sites, which is to be welcomed – but there are some concerns about some aspects of the Bill. See pages 4 - 6 of this newsletter for a full commentary on how the Bill will affect Gypsies and Travellers.

Security of tenure petition

A petition calling for security of tenure, drafted before the Housing and Regeneration Bill was introduced, has now closed after obtaining 653 signatures on the 10 Downing Street website and a further 765 on paper. Traveller representatives plan to hand the petition in to the Prime Minister on Tuesday 11 March.

Regional Spatial Strategies

Steve Staines, planning policy researcher for TLRP member group Friends, Families and Travellers, has been conducting a study of Gypsy and Traveller Accommodation Assessments (GTAAAs) and Regional Spatial Strategies (RSS). These are being conducted under the Housing Act 2004 and ODPM Circular 01/2006 with the stated aim of making sure that sufficient Gypsy and Traveller sites are provided to meet the current shortfall, officially estimated to be between 4000 and 5000 pitches.

Steve reports:

Some regions have considered that a formal dedicated partial review of the Regional Spatial Strategy is necessary for Gypsy and Traveller sites, other regions are including this issue in reviews along with other areas of work, whilst some consider that a formal partial revision is cumbersome, time consuming and unnecessary. In the East Midlands, for example, the approach is being taken of the production of a draft strategy with interim figures which will be replaced as soon as possible by figures emerging from completed accommodation assessments. This approach does in my view have the drawback of there not being available a full examination of the

quality of the GTAAs, but it does mean that local authorities can move ahead with planning for provision on the basis of the interim figures.

Circular 01/2006 states that regional spatial strategies should identify the number of pitches required in the area of each local planning authority (but not their location) in the light of accommodation assessments and a strategic view of needs across the region.

East of England Regional Spatial Strategy

On 25 January, at a meeting in Norwich, the East of England Regional Assembly adopted a single issue revision to its Regional Spatial Strategy under which Gypsy and Traveller pitch allocations were to be spread across the whole region rather than restricted to districts in which need had manifested itself. Each district should provide at least 15 pitches. This means that districts which have made little or no provision for Gypsies and Travellers will now need to do so, while those with relatively many caravans on unauthorised encampments or developments will not have to provide as many new authorised pitches as they would otherwise have had to do. The GTAA for Basildon in Essex, for instance, showed the need for well over a hundred extra pitches. Under the plan adopted, it will only have to provide 81, with the remaining Travellers currently in unauthorised locations in Basildon needing to find accommodation in surrounding districts such as Southend, which currently has no authorised pitches and will be expected to provide 15.

Representatives from some local authorities argued that the whole process of undertaking GTAAs was so flawed that nothing should be done. Representatives of local authorities which had made the most provision and from those which had the greatest numbers of caravans in unauthorised places argued that they should not have to make any extra provision – other districts, counties and regions should have to make provision instead. Representatives of local authorities with no provision, which had successfully evicted Gypsies and Travellers who had entered their territory, argued that they should not have to make any provision either, as there were no Gypsies and Travellers in their districts. Nonetheless, the RSS revision was approved by a large majority.

Now several local authorities in the East of England, including Basildon, have announced that they will challenge the pitch allocations which they have been given by the revised RSS.

Dale Farm

Basildon District contains the Dale Farm Travellers' Site, the largest unauthorised site in Britain. Many of its residents have come to Dale Farm after multiple evictions from other unauthorised sites, with all the grief which this causes. The families on the site own the land but many pitches do not have planning permission for caravans. Basildon Council has been trying for years to evict all those residents whose pitches do not have planning permission. The Travellers have been resisting eviction by every available legal means, as they have nowhere else to go.

Government guidelines make it clear that local authorities should not evict Gypsies and Travellers from unauthorised sites unless provision has been made for them elsewhere in the district or there are compelling reasons to evict. Despite this, former Secretary of State for Communities and Local Government, Ruth Kelly, approved the District Council's hugely expensive (£1.9 million) eviction plan.

Residents took the Council to the High Court for a judicial review of the decision to evict without having undertaken the necessary Race Equality Impact Assessment. The hearing took place from 11 to 15 February. Mr Justice Collins, hearing the case, will probably give judgement after Easter. He criticised Basildon Council's refusal to provide the extra 81 pitches assigned under the RSS and noted that the Council will have to provide for those Travellers made homeless by the planned evictions. He also criticised the behaviour of Constant and Co bailiffs. He said: 'Regardless of the outcome, I will request a serious rethink to the manner in which evictions take place and if the use of this firm of bailiffs is appropriate.'

Restriction of appeal deadlines

As noted in the December TLRP newsletter, the Government is planning to reduce the time limit for planning appeals when the same development is also the subject of an enforcement notice: appeals would have to be submitted within 28 days instead of the current limit of six months. No parliamentary debate will be necessary on this issue, as the Government is able to introduce the changes by 'secondary legislation', in this case by a simple decision of the Secretary of State for Communities and Local Government. In January, TLRP sent the following response to the department for Communities and Local Government.

'The Traveller Law Reform Project is strongly opposed to the Government's proposal in this matter because of the difficulty that Gypsies and Travellers face in finding legal representation to assist them with the appeal process. There are very few lawyers in Britain who are able and willing to take on planning cases for Gypsies and Travellers. We believe that this fact, together with the grave shortage of legal residential sites, transit sites and temporary stopping places, should outweigh any perceived gains in the efficiency or fairness of the planning system that would result from the proposed change. We believe that it would only be appropriate to make the proposed change once the shortage of sites and the shortage of lawyers have both been satisfactorily addressed.'

Planning Bill

The Planning Bill (see December TLRP newsletter) has been amended during its Commons Committee stage and should proceed to the House of Lords within the next few weeks. TLRP hopes to provide a briefing to Peers on the issues of concern in the Bill.

Education and Skills Bill

The Education and Skills Bill, introduced into the Commons last year, is now being discussed in Committee. It proposes to make education or training compulsory to age 18, and could have a bad impact on Gypsy and Traveller families providing informal training in family trades. TLRP hopes to produce a briefing on the Bill and to encourage amendments when the Bill is discussed in the House of Lords, so that the needs of Gypsy and Traveller families and young people are taken into account.

SWAN DVDs

SWAN (South West Association of Nomads) working with Open Productions, Tony Coll Associates and South West Planning Aid, has helped produced two helpful DVDs.

One square mile is about the need for new Gypsy and Traveller sites across the country. It explains the Government's policies and guidelines on site provision and explains that if local authorities comply with their new obligations it will be to the benefit of settled people as well as Gypsies and Travellers.

A place for everyone explains the planning system and how to make sure that planning departments work with Gypsies and Travellers to ensure site provision. It contains practical advice on how to find suitable land and how to make a planning application.

Both DVDs are available for free download from the SWAN website <http://www.gypsytravellerhelp.org/> or they can be bought from SWAN for £7 each or £10 for both of them, including postage and packing. Contact SWAN on secretary@gypsytravellerhelp.org or place your order via TLRP.

Traveller Law Reform Project Commentary on how the Housing and Regeneration Bill 2008 will affect Gypsies and Travellers in England and Wales

The Homes and Communities Agency

The Traveller Law Reform Project (TLRP) welcomes the Government's commitment to increasing the supply of low-cost housing in England and Wales through the Housing and Regeneration Bill 2008. TLRP hopes that the proposed Homes and Communities Agency will use its powers, where necessary, to ensure that there is adequate provision of caravan sites for Gypsies and Travellers as well as 'bricks and mortar' housing for those who need it.

Site management and the Regulator of Social Housing

The Housing and Regeneration Bill 2008 establishes the post of Regulator of Social Housing to defend the interests of the tenants of Registered Providers of social housing by ensuring good management of their properties. It is unclear whether Gypsy and Traveller sites owned by Registered Providers will come under the Regulator's authority. At present, it is clear that local authority Gypsy and Traveller sites will not come under the Regulator's authority.

TLRP believes that local authority Gypsy and Traveller sites, as well as sites owned by a Registered Provider, should come within the remit of the Regulator. Many residents of such sites have long suffered under poor site management and maintenance and have not been protected by the kind of regulation that exists to protect those living in 'bricks and mortar' social housing. Site residents would greatly benefit from standards being monitored by a statutory regulatory body, which would address this inequality.

Clause 301 of the Housing and Regeneration Bill 2008 (as published on 1 February 2008 after amendment in Commons Public Bill Committee) brings local authority Gypsy and Traveller sites under the Mobile Homes Act 1983 (MHA 1983). Under that Act, site owners are obliged to:

- provide, on request, written particulars of the dimension and location of a pitch;
- provide, on request, documentary evidence in support of a new pitch fee;
- repair the pitch and ensure that the utility supplies are maintained;
- maintain in a clean and tidy condition the common parts of the site;
- consult with pitch occupiers and any qualifying residents' association.

The fact that the law obliges owners of private Mobile or Park Home Sites to do these things does not, unfortunately, mean that they always do so. Indeed, according to the All Party Parliamentary Group (APPG) on Park Home Sites, allegations are made that some site owners are grossly negligent and in some cases make threats against site residents who complain.

It is clear that good management standards on both local authority Gypsy and Traveller sites and private Park Home Sites need to be enforced. The APPG on Park Home Sites recommends that before granting a licence to a potential private Park Home Site owner, investigations should be made to ensure that he or she is a 'fit and proper person'. If local authorities are to continue to be allowed to contract out Gypsy and Traveller site management to third parties, an obligation to conduct such an investigation would be important.

In addition, the supervision of the Regulator of Social Housing may help protect site residents from the injustice caused by poor management. TLRP therefore urges the Secretary of State for Communities and Local Government to use the powers granted her under Section 73(2) of the Housing and Regeneration Bill 2008 to ensure that Gypsy and Traveller sites owned by local authorities as well as those owned by Registered Providers are included in the Regulator's remit, whether or not such sites fit the definition of 'social housing' established by the Bill.

If such sites are to be defined as 'social housing', the Regulator will need to ensure that local authorities do not use this definition either to force caravan-dwelling Gypsies and Travellers to

accept offers of bricks and mortar social housing as if it were equivalent to a pitch on a caravan site, or to allocate pitches on Gypsy and Traveller sites to local authority tenants who have neither the tradition of living in caravans nor the desire to do so.

Security of tenure

The MHA 1983 currently applies to all Mobile Home sites apart from local authority Gypsy and Traveller sites and small private Gypsy and Traveller sites where a family lives together on its own land and does not rent pitches out to others.

The Mobile Homes Act 1983 gives site residents security of tenure. This means that they can carry on living on their pitch for their whole life unless they break their tenancy agreement or fail to maintain their mobile home in a reasonable condition AND the site owner can prove that they have done this AND that a court accepts that they have done it and thinks that it is reasonable for them to be evicted. (If a site only has planning permission for a few years, the pitch agreement must state this fact and this means that the security of tenure only lasts as long as the site's planning permission lasts.)

At the moment, residents on local authority Gypsy and Traveller sites can be evicted from their pitch with only 28 days notice and the site owner does not have to prove that they broke any rules in order to get a court order to evict them. So the form of tenure offered by the MHA 1983 would give greater security to local authority site residents than they have at present, and this is to be welcomed.

Many residents on local authority Gypsy and Traveller sites are concerned that new, more restrictive terms and conditions may be introduced in new tenancy agreements, particularly with regard to the amount of time that tenants could spend away from their pitch travelling without breaking their tenancy agreement. It is important to remember that bad or overburdensome clauses are *already* a problem in many local authority licence agreements. It will be important for site residents to seek advice when negotiating new agreements and bear in mind that they may be able to rely on the Unfair Contract Terms in Consumer Contracts Regulations 1999.

TLRP recommends that before new tenancy agreements are introduced there should be full consultation between the department for Communities and Local Government and site residents nationally on the contents of such agreements and a model tenancy agreement should be produced. Meanwhile, security of tenure should be introduced as an addition to existing licence agreements.

Right of occupiers to assign pitch agreements

The MHA 1983 gives site residents the right to give or to sell their mobile home to anyone they like, and thus transfer their pitch agreement, as long as the site owner agrees. The site owner must not refuse permission without good reason. There are differences of opinion over whether this right to assign pitch agreements should apply on local authority Gypsy and Traveller sites.

Some take the view that residents of local authority Gypsy and Traveller sites should have equivalent rights to tenants of local authority houses and flats, who have much more restricted assignment rights than Mobile Home Site residents (involving only those close family members who would have the right to succeed to the tenancy in the event of the tenant's death). Usually, when tenants move, their house or flat is transferred to another tenant in accordance with the local authority's allocations policy. There is a concern that if site residents are able to assign their pitch agreement to a person of their choice, Gypsies and Travellers with no legal pitch anywhere and without family connections or friends on an existing local authority site may never get a pitch. Some believe that the right to transfer a pitch agreement by selling the caravan on that pitch would be especially destructive, as residents may be tempted to sell to the highest bidder, and people desperate to get off the roadside would bid against each other. For these reasons, it is argued that

clear and transparent written local authority allocations policies, based on need and length of time on a waiting list, should operate whenever a pitch is to be vacated.

Others take the view that tenants on local authority Gypsy and Traveller sites should have the same rights as others who live in mobile homes, including the right to assign their pitch through giving or selling their caravan to the person to whom they wish to assign the pitch agreement. They point out that the local authority, as site owner, would be able to refuse consent to the pitch allocation if they had a good reason. They suggest that concerns could best be addressed by the government issuing guidance to local authorities on matters that they should take into account when considering whether or not to give consent to a proposed assignment. Such guidance could explain the circumstances in which consent will be given.

Some who hold this view point out that it is already the case that many local authorities, upon a licensee vacating a pitch, allocate that pitch to another family member, either because that is allowed for in the licence agreement or in their allocations policy or because it amounts to a sensible exercise of their discretion. It is understandable that a Gypsy or Traveller leaving a pitch will be anxious to ensure that their son, daughter or other family member who has no lawful stopping place, obtains the pitch. Those who take this view believe that the power of the local authority to withhold consent where it is reasonable to do so provides assurance that the right of assignment or gift is not misused and does not lead to problems. They suggest that it would be seen as reasonable for a local authority to refuse consent to an assignment or gift to someone where the local authority has good evidence that this person has been guilty of anti-social behaviour on a site in the past. They suggest that it would also be seen as reasonable for the local authority to withhold consent where the person in question already has a pitch on another site.

Succession to a pitch

Under the Mobile Homes Act 1983, where a site resident dies at a time when he or she is occupying a pitch, his or her widow, widower or civil partner can inherit the pitch agreement if they were living there with the resident at the time of death. If there is no widow, widower or civil partner, any other family member who was living with the resident at the time of death can inherit the pitch agreement. TLRP welcomes this aspect of the Act.

The Mobile Homes Act 1983 also says that if nobody else was living with the resident at the time of death, the person entitled to inherit the mobile home under the deceased person's will or under the laws of intestacy can also inherit the pitch agreement.

There are similar differences of opinion about whether this element of the MHA 1983 should apply on local authority Gypsy and Traveller sites as the differences of opinion over the right to pitch assignment. Some believe that the MHA 1983 provisions are acceptable, and that the non-resident person who inherits the caravan should also be able to come and live on the site if there is no reasonable objection from the local authority that owns the site. Others believe that a non-resident inheritor of a caravan should have the right to come and tow the caravan away but not the right to inherit the pitch agreement and live on the site. The pitch should instead be allocated according to the local authority's allocations policy.

Jurisdiction

The Mobile Homes Act 1983 gives site owners the right to stop site residents going to the County Court in the event of a dispute between a resident and the owner. Site owners can do this by putting an item in the pitch agreement saying that in the event of a dispute, the dispute will go to arbitration by someone appointed by the site owner.

TLRP believes that this provision is unfair to site residents. There is no objection to the use of a truly independent arbitration service, perhaps one established by Government for the purpose, but it should not prevent a resident from taking a dispute to the County Court if arbitration does not resolve the dispute satisfactorily.