

GYPSIES AND TRAVELLERS SITE
PROVISION WITHIN LEEDS

ADVICE

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ADVICE

1. I am asked to advise Leeds City Council about its obligation to consider equality issues when considering a review by the Scrutiny Working Board.
2. The background to that review was that concerns had arisen about the Council's performance of its general obligations towards travellers and about the escalating costs of possession proceedings against unauthorised encampments. The purpose of the review was to provide a report and recommendations to the Executive Board.
3. That report is now in draft. At present it contains 12 recommendations. They are as follows:

Recommendation 1

That the Executive Board consider providing negotiated stopping sites for gypsies and travellers in Leeds for very short term encampments and commission the Director of Environment and Neighbourhoods to undertake further work with a view to introducing a pilot scheme and reporting back to the Executive Board.

Recommendation 2

That the Executive Board consider the principle of providing an additional 25 permanent pitches for 25 caravans in the city to accommodate "Leeds families" of gypsies and travellers and request the Director of Environment and Neighbourhoods to undertake further work based on national guidance to identify costs, and sources of funding and to develop a criteria for consulting and identifying suitable sites during operation of the pilot in recommendation 1.

Recommendation 3

That subject to recommendations 1 and 2 the Director of Environment and Neighbourhoods seeks to develop this pilot in the context of a wider strategic approach through the City Region and other appropriate bodies.

Recommendation 4

That irrespective of recommendations 1 and 2 the Executive Board commission a review of the Cottingley Springs site to ascertain whether better use of the site could be made that would allow the

provision of additional pitches and identify how this could be funded by January 2012.

Recommendation 5

That the Director of Environment and Neighbourhoods with the Chief Officer Legal Licensing and Registration undertake a review of the current licence in use at Cottingley Springs site to update it and incorporate current legislative changes (including the provisions of the Mobile Homes Act 1983 in future tenancy agreements).

Recommendation 6

That the Director of Environment and Neighbourhoods Development and adopt a Good Neighbourhood Code which would operate alongside any licence or tenancy agreement which would require all gypsies and travellers using sites operated by the Council to sign up to before being allowed to use these facilities.

Recommendation 7

That the Director of Environment and Neighbourhoods continues to develop a strong residents group on the Cottingley Springs site that could be the catalyst to engage more with the local community and that this formal arrangement should be established by June 2011.

Recommendation 8

That in accordance with the Local Development Framework Policy the Acting Director of City Development continue to encourage and support development of private gypsy and traveller site provision in the city which are appropriate, in keeping with the area and meet the necessary planning requirements.

Recommendation 9

That the Scrutiny Board (Children's Services) be asked to undertake a specific investigation on the national and local position of gypsy and traveller girls school attendance and educational achievements at 11 years and above.

Recommendation 10

That the Primary Care Trust and Director of Children's Services be asked to submit a report to Scrutiny Board (Health) on the services that have been withdrawn from gypsies and travellers and the alternative arrangements that have been instigated to protect this vulnerable group.

Recommendation 11

That the Chief Constable, West Yorkshire Police be asked to ensure that the protocol between the Police and the Council is applied uniformly by Divisional Commanders across the city and that ward members are always informed of unauthorised encampments and when this power is to be used.

Recommendation 12

That the Director of Environment and Neighbourhoods be asked to review and expand the information pack for use by residents and Members where unauthorised encampments occur on private land.

4. As is apparent from those recommendations, the report strives to balance the interests of the travelling community with those of others. Paragraph 70 of the report acknowledges that Romany gypsies and Irish travellers both fall within an ethnic group and enjoy the protection of the Race Relations Act 1976 as amended.
5. My instructing solicitor is conscious that the provisions of that Act are in the process of being repealed and replaced by the Equality Act 2010, and she poses two questions for me. They are, firstly, what duty currently applies in respect of an equality assessment and, secondly, what must the Executive Board do to ensure that it has due regard to an equality assessment when considering the report and recommendations of the Scrutiny Working Board.

The duty

6. The relevant duty was imposed by Race Relations (Amendment) Act 2000, which amended 71 of the Race Relations Act 1976. Although the provision is due to be repealed and to be replaced by parts of the Equality Act 2010, that repeal has not yet taken effect. The relevant Orders dealing with consequential amendments and commencements are SI 2010/2279 and SI 2010/2317.
7. The duty in section 71 of the 1976 Act requires Leeds, when carrying out its functions, to have due regard to the need to eliminate unlawful discrimination and victimisation and to promote equality of opportunity and good relations between persons of different racial groups.
8. As Moses LJ said in Kaur v Ealing LBC [2008] EWHC 2062 the obligations imposed on authorities such as Leeds are “fed with

recognisable content” by the statutory Code of Practice (Code of Practice on the duty to promote Race Equality 2002 CRE).

9. The Code identified questions that a local authority should ask itself, and in particular “Could the policy or the way the function is carried out have an adverse impact on equality and opportunity to some racial groups; in other words, does it put some racial groups at a disadvantage?” (See paragraph 3.16). That is the genesis of the equality impact assessment.

What the Executive Board must do

10. The need to have “due regard” to the obligations set out in section 71 of the 1976 Act, in the light of the Code, involves a "conscious approach and state of mind", or "conscious directing of the mind to the obligations" on the part of the Executive Board: see R. (on the application of Harris) v Haringey LBC [2010] EWCA Civ 703 at paragraph 9. In short, the Board must be seen to be taking the equality impact assessment into account.
11. The process of taking the assessment into account should be recorded: see Stanley Burnton J at first instance in BAPIO [2007] EWHC 199, QB.
12. The Code identified four principles which should govern public authorities' efforts to meet their duty to promote race equality. The third is that *the weight to be given to race quality should be proportionate to its relevance*. In other words, greater consideration and resources should be given to those functions or policies which have the most effect on the public. (Kaur v Ealing LBC at paragraph 18)
13. "Due regard" need not require the promotion of equality of opportunity but it does require an analysis of the assessment with the specific statutory considerations in mind. It does not follow that considerations raised by section 71(1) will be decisive. The weight to be given to the requirements of the section is for the Board: see R. (on the application of Harris) v Haringey LBC at paragraph 40.

Conclusion

14. Paragraph 80 of the draft report notes that “As with all policy decisions the allocation of limited financial resources will need to be considered. The Executive Board will need to balance the demand for social/affordable housing and a growing waiting list against the needs of a small transient gypsy and traveller community.” I believe that this puts the issue perfectly. In considering how to conduct that balance the Executive Board will need to take into account an equality impact assessment which sets out the effect of its potential decisions on the gypsy and traveller community. It will need to demonstrate that it has done that, and that it has heeded Leeds’s obligations under section 71 of the 1976 Act, but in the end the balance between competing needs is one for it to strike.

ASHLEY UNDERWOOD

Landmark Chambers

20 January 2011