



Originator:	Ian Spafford
Tel:	2474409

Report of the Chief Officer Legal Licensing & Registration

Scrutiny Board (Environment and Neighbourhoods (working Group)

<p><u>Not for publication: The Appendix to this report is Exempt/Confidential under Access to Information Procedure Rules 10.4 (5)</u></p>

Subject: Inquiry into Gypsy and Travellers Site Provision within Leeds – Legal Position

Date: 20th October 2010

<p>Electoral Wards Affected: All</p>

<p>Specific Implications For:</p>
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Equality and Diversity	<input checked="" type="checkbox"/>
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Community Cohesion	<input type="checkbox"/>
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Narrowing the Gap	<input type="checkbox"/>
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Executive Summary

This report sets out the legal background to the continuing problems and the Council's legal obligations and powers

This report updates matters and reviews the Council's legal position by reference to Counsel's advice and judges' remarks in relation to applications for possession orders in the context of the consideration in the past by the Council of its policies with regard to alternative sites and the speed with which those policies are implemented.

The report points out the possible potential legal difficulties and reinforces the position whereby the provision of such sites may not be a means of fully resolving all the relevant problems and issues.

1 Purpose of the report

- 1.1 This report sets out the Council's legal position in relation to the accommodation needs of the travelling community, the impact of unauthorised encampments, the Council's legal position.

2 Background Information

Council's duties

- 2.1 Since the repeal of the Caravan Sites Act 1968 there is no duty on local authorities to provide an authorised site for gypsies and travellers.
- 2.2 The Housing Act 2004 places a duty on local authorities to carry out an assessment of the accommodation needs of gypsies, travellers, travelling show people and new age travellers and to make reasonable provision for these groups through the planning process. This duty is commensurate with the obligation placed on local authorities to consider and make reasonable provision of housing for the settled population.
- 2.3 As a result an accommodation needs assessment has been carried for the five West Yorkshire authorities (GTAA). This assessment identified a need for additional provision across the West Yorkshire sub-region (Leeds, Kirklees and Calderdale) for an addition 67 pitches and 48 in Leeds. The assessment concluded that these should be made available between 2008 and 2015.
- 2.4 The Housing Act 2004 also requires local housing authorities to take a strategic approach towards the needs of gypsies and travellers, including how the accommodation needs of these communities will be met, as part of their wider housing strategies.

Planning

- 2.5 There have been recent changes to the law. Planning for gypsy and traveller caravans sites (ODPM Circular 1/06) provided Guidance to local authorities requiring that the number of pitches set out in the Regional Spatial Strategy (RSS) must be translated into specific site allocations in one of the local authority's Development Plan Documents (DPD) which form part of the Local Development Framework (LDF). The Guidance provided that where there was an urgent need to make provision, local planning authorities should consider preparing site allocation DPDs in parallel with or in advance of the core strategy.
- 2.6 The RSS was abolished in July 2010. (CALA Homes are seeking to judicially review the decision to revoke the RSS because of the method used to abolish it and the lack of transitional arrangements). The Secretary of State for Communities and Local Government has announced that Circular 1/06 is to be abolished.
- 2.7 The Secretary of State for Communities and Local Government wrote to Chief Planning Officers on 6 July 2010 providing the following Guidance on abolishing the RSS :-

“14. How do we determine the level of provision for travellers’ sites?”

Local councils are best placed to assess the needs of travellers. The abolition of Regional Strategies means that local authorities will be responsible for determining the right level of site provision, reflecting local need and historic demand, and for bringing forward land in DPDs. They should continue to do this in line with current policy. *Gypsy and Traveller Accommodation Assessments* (GTAAs) have been undertaken by all local authorities and if local authorities decide to review the levels of provision these assessments will form a good starting point. However, local authorities are not bound by them. We will review relevant regulations and guidance on this matter in due course. “

- 2.8 The Secretary of State indicates that the Circular will be replaced with Guidance “with a new lighter touch” Local authorities will be encouraged to an appropriate number of travellers sites in consultation with local communities, reflecting the local and historic demand exploring the incentives for site provision and innovative ways of funding and maintaining sites.
- 2.9 No further information regarding the Government’s intentions on this issue is available at this time.
- 2.10 The Core Strategy Preferred Approach which has been approved by the Development Plan Panel includes reference to the accommodation needs of the travelling community. Following consultation on the Preferred Approach, the Core Strategy will be published and submitted to the Secretary of State in 2011 and subject to public examination in 2011. It will then be modified in line with the Planning Inspector’s recommendations and adopted.

Homelessness

- 2.11 Where a Local Authority has reason to believe that an applicant may be homeless or threatened with homeless it is under a duty to make enquiries to establish whether he is eligible for assistance and what if any duty is owed.
- 2.12 The Housing Act 1996 places an obligation on local housing authorities to ensure that suitable accommodation is available for a person who is:
- Homeless;
 - Eligible for assistance;
 - In priority need of accommodation;
 - And who did not become homeless intentionally.
- 2.13 Section 175(2)(b) of the Housing Act 1996 (as amended) provides that a person is homeless if he has accommodation which is a moveable structure, vehicle or vessel designed or adapted for human habitation, and there is nowhere that he is entitled or permitted to place it and reside in it.
- 2.14 Local authorities may transfer the responsibility of ensuring that accommodation becomes available to another local authority based on local connection. A person has a local connection with the district of a local housing authority if he or she has a connection with it because:
- He or she is, or was, normally resident there of his or her own choice (Guidance for Local Authorities and referees states normal residence

should be residence during the previous 12 months or for not less than three years during the previous five year period);

- He or she is employed there;
- Of family associations; (Guidance for Local Authorities and referees states save in exceptional circumstances relatives includes parents, adult children, siblings resident in the area for at least 5 years) or
- Of special circumstances

2.14 In discharging its duty to secure suitable accommodation for Gypsies and Travellers who are statutory homeless, the local authority must give careful consideration to any cultural aversion and the degree of that cultural aversion to bricks and mortar accommodation. The local authority has a duty to facilitate the gypsy way of life. Where land is not available or can not readily be made available, it is open to a local authority to offer bricks and mortar accommodation¹. Any decision could be subject to challenge by way of judicial review on the basis that the decision to offer bricks and mortar is a decision no reasonable local authority would reach. This is a high hurdle but it may be more difficult to justify an offer of bricks in mortar in the long term, depending on the circumstances of the case.

2.15 The Homelessness Act 2002 imposes a duty on the Council to carry out a homelessness review and to formulate and publish a homeless strategy based on the results of that review.

Race Relations Act 1976 (as amended)

2.16

Romany gypsies and Irish Travellers both fall within an ethnic group and enjoy the protection of the Race Relations Act. The local authority is under a duty in carrying out its functions to have due regard to the duty to eliminate unlawful racial discrimination and promote equality of opportunity and good relations between persons of different racial groups.

Powers to regulate and curtail anti-social behaviour

2.17 The Council does, of course, have powers to regulate and curtail anti-social behaviour which have been considered but effectively are generally impractical on unauthorised sites because of the difficulty in identifying offenders and the difficulty in collating information given the constant moves and proving who has done what and indeed enforcing anti-social behaviour orders even if made.

2.18 Travellers living on an authorised site would be subject to the terms on any license

2.19 The Council has various powers which it employs to curtail illegal waste disposal, including;

¹ Court of Appeal in Codona v Mid-Bedfordshire District Council [2004] EWCA Civ 925).

- Section 33 of the Environmental Protection Act 1990 (EPA) gives the Council the power to prosecute perpetrators for the illegal disposal of controlled waste on land without the required permit. This is an indictable offence and can result in fines of up to £50,000
- Section 34 (1) EPA empowers the Council to investigate compliance with duty of care regarding waste on vehicles, not allowing that waste to escape and other legal requirements. This is an indictable offence and can result in an unlimited fine
- Section 47 EPA gives the Council powers in respect of business waste, Section 87 EPA in respect of littering.
- The Control of Pollution (Amendment) Act 1989 created offences of failing to be registered or provide proof of registration in relation to business waste. Section 6 enables the local authority to apply for a warrant to seize and dispose of vehicles used in illegal waste disposal where the Local Authority cannot identify the person in control of the vehicle when the illegal waste disposal took place. Failure to register can result in a fine of up to £5,000 or a fixed penalty of £300. Failure to provide proof of lawful waste transfer (lawful disposal of waste) pursuant to Section 34 (5) may result in a fine of up to £5,000 or £300 fixed penalty

Bye Laws for pleasure grounds, public walks and open spaces

2.20 There are bye laws in force which prohibit camping without consent on specified green areas in Leeds which would include parks and recreation grounds.

2.21 Perpetrators may be prosecuted for breach of bye laws by issuing a summons in the Magistrates Court. The Penalty would be a fine at a level set by the Magistrates.

Voting

2.22 A person with no fixed address may be registered at the address of, or which is nearest to, a place in the UK where they commonly spend a substantial part of their time (whether during the day or night). Section 7B (4) (b) The Representation of the People Act 1983.

Eviction from unauthorised encampments

2.23 The Council, and the Police, have legal powers to address the issue of unlawful encampments. These include:

Police Powers

- Section 61 of the Criminal Justice and Public Order Act 1994 (power of the Police to direct persons to leave land and remove vehicles in circumstances where there are more than 6 vehicles on land or persons are causing damage/disruption);
- Section 62(A) of the Criminal Justice and Public Order Act 1994 (power of the Police to direct persons to leave land where there is available accommodation for caravans on a relevant caravan site);

2.24 Although there is a protocol concerning the use of section 61 between the Council and West Yorkshire Police, this power can only be exercised by the Police in specific circumstances. Without alternative sites to direct travellers to, the Police are often reluctant to use their powers. Additionally the Police are mindful of the potential impact in terms of civil disturbance of moving by force a large encampment and will also need to consider the potential safeguarding issues arising from arresting parents who refuse to leave the site. It should be noted that it is only in Leeds that section 61 tends to be used by West Yorkshire Police. Force policy is to avoid the use of this power but in Leeds it has been seen as a relevant tactical tool in certain situations.

Local Authority Powers

- Section 77 of the Criminal Justice and Public Order Act 1994 (power of the local authority to give a direction when persons are residing on a highway or other relevant land);
- Highways Act 1980 (powers of the local authority and the Police to institute proceedings in relation to obstruction of the highway or to give notice of removal of anything deposited on the highway etc.)
- Injunction to restrain trespass. The Council does have powers to apply for an injunction under S222 of the Local Government Act 1972 but there are technical legal difficulties around proving intention to trespass, evidence of ownership etc not to mention again the lack of an alternative site which makes an injunction highly unlikely and indeed the decision to even apply for one might render the Council liable to judicial review.
- Possession Proceedings

2.25 In practice in relation to **Council owned land**, the Council generally uses its powers under the Civil Procedure Rules to apply to the County Court for an order for possession to enable it to evict travellers. The Council is required to serve the claim on the defendants together with any witness statements in the case of residential property not less than 5 days and in the case of other land, not less than 2 days before the hearing date. Proceedings are issued against named Defendants (where names are available) or persons unknown. The court papers are served on the Defendants by a process server visiting the site. There is provision for the Court to shorten these notice periods eg where there is an assault/threats to assault/other serious reasons why an earlier hearing is required. It is possible for defendants to raise a public law defence in the County Court challenging the Council's decision to seek possession (i.e. focusing on the decision making process together with other matters which may influence that decision making, such as the way the Council has approached toleration or indeed issues of rationality, reasonableness etc). The possession order once obtained is enforced by instructing bailiffs.

2.26 The Council is legally obliged when faced with a new unauthorised site, to consider whether to immediately evict, whether to 'tolerate' the encampment or part of it depending on the circumstances of each individual family and for how long or whether an alternative site can be identified; further the Council is also obliged to undertake welfare assessments of the travellers and their families on unauthorised encampments in order to properly and fully consider the options. The Council's obligations in this regard are often not fully understood by the public and the media

which, understandably, present a viewpoint that the Council should simply take what might be precipitate action without regard to its legal obligations.

2.27 Unlike privately owned land, the Council cannot simply eject travellers, their caravans and vehicles from Council owned land. As well as the considerations set out above which need to be taken into account in the decision making, government guidance “requires” that when local authorities seek to evict travellers they must do so by applying for a court order. Failure to comply with government guidance without a very good reason would render the Council liable to legal challenge by way of judicial review proceedings in the High Court.

3 Current Situation

3.1 Although unauthorised encampments can be experienced at any time of the year, (and indeed can vary from one or two caravans to several dozen caravans with associated vehicles etc), during the summer in particular, much time and resources are expended by Council officers in Environment and Neighbourhoods and Legal in addressing unauthorised encampments and taking steps which are legally necessary. As indicated, some unauthorised encampments are quite large making that action more complicated but most such unauthorised encampments are characterised by complaints to a lesser or greater degree from local residents (often supported by elected members and MPs) particularly when they might or do impact on local leisure activities eg at the playing fields at Spinkwell Lane, Morley and over the last couple of years at the Copperfields School site; Fearnville Leisure Centre which threatened the Gipton gala (and which easily could have caused significant public disorder difficulties if the gala had been disrupted); Ninelands, Garforth which threatened the Community Gala; Thorpe Road at Middleton etc. One issue is that sometimes parts of an unauthorised encampment move to other unauthorised sites.

3.2 In this context, also other elements which are relevant are the Council’s duties in respect of homelessness (as detailed above) in light of a cultural ‘aversion’ to living in a house; the Council’s obligations under race relations legislation in relation to the potential vulnerability of travellers as a group and endangerment of this cultural lifestyle including such issues as early mortality, lack of access to education, health etc. It follows that decision making is not straightforward in balancing all the considerations which the Council needs to take into account both in addressing unlawful encampments and generally.

3.3 In many cases the travellers move on within a short period of time with or without the Council having obtained a court order. Travellers usually move on as soon as a court order is obtained. However in a number of cases where possession proceedings have been instituted, they have sought to defend the claim as they are legally entitled to do so by citing public law defences.

3.4 It is entirely usual for travellers to pass through Leeds, with this increasing in conjunction with horse fairs etc. There are approximately three family groups which tend to remain in the Leeds area. Two of these local families who are currently travelling together are the families who have defended proceedings repeatedly. One of these families was part of the Spinkwell Lane encampment. They instruct the same local solicitors who have developed a specialism in travellers law.

3.5 A defended claim usually results in the Court adjourning the hearing for further evidence to be filed by the travellers and consequent further evidence by the Council

and so that sufficient court time can be allocated to a contested hearing. In that event inevitably there are delays sometimes of weeks, even months on occasion. In such circumstances, the complaints of local residents are exacerbated and the kind of public debate which resulted in the deputation to Council last year ensues.

4 Defence of Lack of Alternative Site

4.1 One continuing theme in the public debate and in relevant possession proceedings is the travellers' claim, supported by such organisations as GATE (Leeds Gypsies and Travellers Exchange) that if the Council provided an alternative site/sites then the travellers would have no need to occupy any other Council land unlawfully.

4.2 Although with the change of Government, the Regional Special Strategy has been abolished, the Gypsy and Travellers' Accommodation Assessment identified a need which is referred to in the Core Strategy to a certain extent and in the Council's Housing Strategy (and such elements regularly feature in the legal defence put forward by the travellers in contested possession proceedings). That assessed need remains, in the sense that it has not been reviewed since 2005 and is regarded as the Council's 'policy position' externally.

5 Legal Advice Regarding the Council's continuing approach to possession proceedings

5.1 There is attached at appendix 1 confidential legal advice

6 Recommendations

6.1 The Gypsy and Travellers Working Group is requested to note this report which is to be read in conjunction with the report of Director of Environment and Neighbourhoods.