

PROPOSAL TO REORGANISE COTTINGLEY SPRINGS TO REDUCE PITCH SIZE

The License

Travellers on the Council's authorised site, Cottingley Springs currently have a Licence Agreement. The Agreement provides that the Council may end the agreement by giving four weeks' written notice to the occupier.

Connors v UK

On 31 January 2000, the Council served a Notice to Quit on Margaret Connors and James and Esther Connors.

In law, on expiry of that Notice the Licence Agreements were terminated and Mr and Mrs Connors and Margaret Connors had no right to remain on Cottingley Springs. In accordance with the law as it stood at that time, Leeds City Council commenced proceedings to evict Mr and Mrs Connors and Margaret Connors and her husband. A Possession Order was duly granted and the family evicted from Cottingley Springs.

The Connors family took their claim to the European Court of Human Rights. The European Court of Human Rights upheld the claim indicating that their Article 8 rights had been violated by the United Kingdom Government. The Court indicated that there was a positive obligation on the United Kingdom to facilitate the gypsy way of life, that eviction was a serious interference with the Connors' Article 8 rights and required particularly weighty reasons of public interest by way of justification.

It should be emphasised that Leeds City Council was acting in accordance with the law as it was at that time. The Judgment was against the United Kingdom Government.

The European Court of Human Rights expressed its concern that the Connors family had been unable to challenge the factual accuracy of the allegations made against them through the Courts. They had sought to bring a Judicial Review claim which had failed. The European Court of Human Rights indicated that Judicial Review was an insufficient remedy to provide protection of an occupier's Article 8 rights.

Changes to the law as a result of Connors v UK

The case highlighted the difference in security afforded to a Council tenant with a secure tenancy of a council house as compared with a traveller occupying an authorised Local Authority site pursuant to a licence. In the case of Connors, the UK Government had been unable to justify the difference in treatment.

The Housing Act 2004 Section 11 amended the Caravan Sites Act 1968 Section 4 to give the Court the power to suspend an Order for Possession in respect of gypsy and travellers occupying an official site for up to 12 months (potentially for consecutive periods).

The Government has been considering further amendments to the law following the decision in Connors.

The Coalition Government has indicated an intention to increase security on authorised sites. Section 318 of the Housing and Regeneration Act 2008 will if and when it comes into

force amend the Mobile Homes Act 1983 to provide travellers on authorised sites with security comparable to Council tenants occupying Council houses.

There has been consultation on the proposed changes. One of the proposals is that there be provision for resiting a caravan in order for extensive refurbishments to be carried out. This would be broadly comparable to the rights when completing refurbishments on a Council house on the provision of alternative accommodation. It is likely that there will be a right to return to the original pitch. It is anticipated that there would be a requirement for full consultation with the occupants of the site.

A Local Authority can seek possession of a Council house let under a secure tenancy under Ground 10 where it seeks to complete extensive works or demolition. Suitable alternative accommodation must be provided.

There is no provision for applying for possession of a Council house on the basis it is under occupied except in limited circumstances on succession to the Tenancy Agreement, following death of a tenant.

Government Guidance

The Government provided draft guidance on managing travellers' sites dated May 2007. That Guidance provided that eviction should be a last resort. It indicated that the Government was committed to improving security for gypsy and travellers on authorised sites. The Guidance indicated that in the meantime in order to comply with the Connors judgment, it was recommended that Local Authorities avoid asserting their right to summary possession.

The Government encouraged Local Authorities to provide additional protection to licensees by, for example, redrafting their Licence Agreement and internal appeal procedures. The Guidance suggested that Local Authorities broadly followed procedures and safeguards provided to other social housing tenants when tackling a breach of tenancy

The Guidance recommends consulting with residents in relation to changes in terms of licenses and proposed repairs and improvements to the site, any matter which significantly affects every day life on the site.

Government Guidance is not binding but Local Authorities should have a good reason for not complying with Government Guidance, failing which they may be susceptible to a claim for judicial review.

It is to be noted that the Government Guidance on the design of sites for gypsies and travellers provides extensive guidance on the size of plots and facilities to be provided. The size and facilities provided on Cottingley Springs does not appear to be inconsistent with that Guidance save that Site A does not provide any green space.

The Local Authority would be required to taken into account the views expressed through any consultation in making a decision.

Race Relations Act 1976

The Race Relations Act 1976 makes it unlawful to discriminate on racial grounds in the exercise of public functions, including housing functions. The proposal is to reduce the size of the travellers' pitches on Cottingley Springs. I am not aware that we have ever considered taking similar steps in relation to a Council tenant. Indeed there is no legal right to a possession in those circumstances. There would need to be careful consideration of the Local Authorities duties when making any such decision.

Potential claims

The decision could be subject to judicial review on the basis that the Local Authority has failed to take account of relevant considerations or taken into account irrelevant considerations or that it is a decision no reasonable Local Authority would reach.

I anticipate that the occupants of Cottingley Springs would not agree to surrender their licenses. We would therefore need to terminate the agreements and obtain a court order.

An Application for Possession would be susceptible to an Article 8 Defence (Manchester v Pinnock). The Court would be invited to consider whether the decision to evict the travellers from their homes was a proportionate means of achieving a legitimate aim.

The claim could be defended raising a public law defence.

The court could be requested to suspend any order for possession, potentially for consecutive periods.

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