

GYPSY ROMA TRAVELLER INTEGRATION STRATEGY (GRTIS) FOR ENGLAND

ACCOMMODATION ISSUES

Discussion paper by the Travellers Advice Team (TAT), part of the Community Law Partnership (CLP)

TAT advises and represents Gypsies and Travellers throughout England and Wales and has taken some of the leading cases in this area of the law. We take cases involving 'accommodation issues', e.g. planning matters, evictions, homelessness, issues on rented sites etc. It is universally accepted that if the 'accommodation problems' (in terms of permanent and transit site provision) were resolved, then immense benefits would flow from that in terms of education, health, job prospects etc

We do not represent Roma since they are not nomadic and TAT deal with Gypsies and Travellers living in caravans. Therefore, this paper just addresses the situation for Gypsies and Travellers. The European Union definition of 'Roma' encompasses both Romani Gypsies and Irish Travellers. TAT also, of course, represents New Travellers and we would simply point out that most, if not all, of the issues discussed below are also of vital importance to New Travellers.

The European Union adopted a policy of asking for GRTISs to be produced by all member states in June 2011. The Westminster Government have produced a strategy document but, with regard to the commitments for England, most if not all Gypsy and Traveller support groups believe it is inadequate.

The English GRTIS effectively relies on the commitments contained in the Department for Communities and Local Government (DCLG) *Progress report by the ministerial working group on tackling inequalities experienced by Gypsies and Travellers* (the 3 pages relating to accommodation issues, pp 17-19, are appended to this paper for ease of reference). It is noted that there is no longer a specific Gypsy and Traveller Unit within DCLG (whereas there was a Unit in the Office of the Deputy Prime Minister) and there was no real inclusion of Gypsy and Traveller groups within the work of the ministerial working group.

Localism or Nimbyism

Alongside the revocation of Regional Strategies, the Government have introduced a new planning policy for Gypsies and Travellers, *Planning policy*

for traveller sites (PPFTS). By March 2013 all local authorities were meant to have produced a 5 year deliverable supply of sites. The initial evidence is that very, very few have managed to do this (see recent reports on London and the South East from the Traveller Law Reform Project).

The emphasis of PPFTS is on local authorities having sole responsibility for site provision. As with the period between the bringing into force of Department of Environment (DoE) Circular 01/1994 and the ODPM Circular 01/2006, there is a disconnection between central and local government with central government unwilling to ensure that local authorities actually deliver in terms of site provision.

This lack of central enforcement is a central problem when one comes to the issue of site provision.

Whereas previously national and local Gypsy and Traveller groups had to deal with 9 Regional Strategies now, in England, they have to try and cope with some 350 Local Plans, at a time when funding for groups is under the most severe pressure. Furthermore, due to the lack of regional scrutiny there is evidence to suggest that LPAs are not producing the robust evidence bases required of them by PPFTS. In one example in the East Midlands, the GTAA update was produced with no consultation with the Gypsy and Traveller communities and their representative groups. This is in direct conflict with the policy in PPFTS.

However there has been a big increase in the grant of temporary permissions since the introduction of Circular 01/2006 and that is likely to greatly increase following the replacement of that circular by PPFTS and the failure of the vast majority of local authorities to come up with a 5 year deliverable supply.

Cart before horse

The emphasis from DCLG, since the Coalition Government came to power, has been on enforcement rather than on site provision (see their recent document issued on this very subject). This is a classic case of the cart being put before the horse, as has been pointed out time and again by G&T groups. To date we have had restrictions on retrospective planning applications, shortening of judicial review time limit to 6 weeks from 3 months in planning cases, restriction on oral permission hearings in judicial review cases and a strengthening of temporary stop notice powers. On 1st July 2013 Brandon Lewis made a statement indicating that the Secretary of State was not happy with decisions from local authorities and Planning Inspectors on Green Belt (GB) Gypsy/Traveller planning cases, would now consider 'calling in' all such cases

and would be amending the guidance on recovered cases. This follows on from a continuing situation where there are inordinate delays in planning appeal decisions on Gypsy/Traveller cases being delivered.

There is anecdotal evidence that Gypsies and Travellers have been forced into housing against their will due to the difficulties faced on unauthorised encampments and developments.

The emphasis needs to be reversed – site provision is the solution.

The local picture

At the local level many local authorities (released from any real pressure from central government on G & T issues - though not on other issues!) seem incapable of finding temporary tolerated sites and incapable of locating land that might be suitable for permanent sites.

Unauthorised encampments

Many local authorities take a zero toleration approach to unauthorised encampments. There has been some attempt to use injunction actions to ban Gypsies and Travellers from large swathes of land. However in Leeds, the City Council have introduced a 'negotiated stopping' policy which is proving very successful and has saved the council a great deal of money on evictions and clear up costs.

The Government should be providing guidance to local authorities on negotiated stopping and temporary tolerated sites.

Mobile Homes Act 1983

Obviously the introduction of the Mobile Homes Act (MHA) 1983 on English local authority sites in April 2011 was very welcome (albeit that the previous Labour Government had done most of the donkey work on this but had moved so incredibly slowly that they missed out on getting the credit for it). It should be remembered that this occurred because of the European Court of Human Rights judgment in 2005 in *Connors v UK*.

Some local authorities have been introducing new written statements (as required by the MHA 1983) which include amended express terms which have not been agreed with the residents. This is unlawful.

The Government should make it clear to local authorities that express terms in agreements cannot be changed without agreement.

See also below for the situation with MHA 1983 disputes and legal aid.

Homelessness

Most if not all G & T groups would say that, if a homeless Gypsy or Traveller (in terms of Housing Act 1996 s175(2)(b)) requires a pitch, then they should be provided with a pitch. A homeless non-Traveller would not be provided with a pitch but with bricks and mortar.

Unfortunately the courts have placed emphasis on the concept of ‘cultural aversion to conventional housing’ and, even in that context, have provided (as it stands at present) a very restrictive interpretation of the duties local authorities have (see *Sheridan v Basildon BC*, Court of Appeal).

The Government should provide guidance to local authorities to make it clear that homeless Gypsies and Travellers who require pitches should not be provided with bricks and mortar accommodation in purported satisfaction of the homelessness duties.

Legal Aid under attack

The Legal Aid, Sentencing and Punishment of Offenders Act (LASPOA) 2012 removed large areas from the scope of legal aid. For example (and most ironically), after all the long and hard work involved in persuading the Government to introduce the MHA 1983 on English local authority sites, LASPOA 2012 has removed legal aid for all MHA 1983 disputes except for possession action and for serious disrepair matters (and the latter would have to go to a Residential Property Tribunal if the dispute could not be resolved – and there is no legal aid to go to such a tribunal!). So many rights for Gypsies and Travellers have been introduced – but they may not be able to enforce them because they cannot get any advice and assistance to do so!

In the meantime even more bureaucracy has been introduced into the legal aid process (e.g. clients must now produce bank accounts or post office accounts).

The latest Ministry of Justice consultation, *Judicial review: proposals for further reform*, includes proposals that may mean that it is impossible for Gypsies and Travellers to get legal aid for a judicial review challenge (especially relevant to those on unauthorised encampments) and may remove

legal aid from challenges under Town and Country Planning Act 1990 sections 288 & 289 (planning appeals to the high court).

As a minimum, the Government should recognise the disastrous results their proposals on legal aid for judicial review and for section 288 & 289 cases will have and should not implement these proposals.

Conclusion

The Government's current purported GRTIS contains effectively one recommendation on accommodation issues: some good publicity for successful private sites. Quite frankly there might as well not be a strategy at all if this is all it can deliver. We obviously welcome the continuation of the HCA Grant Scheme though note that this has been reduced. We wait to see whether the New Homes Bonus will have any real effect on site provision.

In Wales, the Welsh Government (who also have a grant scheme) are taking a much more positive approach on accommodation issues (see their GRTIS paper *Travelling to a Better Future*). Crucially they aim to re-introduce, in 2014, the **duty on local authorities to facilitate the provision of sites** (see the Housing (Wales) Bill). Additionally, the new Welsh Government *Guidance on Managing Unauthorised Camping* (2013) places important emphasis on 'tolerating' unauthorised encampments and on providing alternative locations. This approach may well lead to the resolution of the accommodation problems of Gypsies and Travellers in Wales. The current approach in England will not achieve that goal.

The Travellers Advice Team at Community Law Partnership

11th January 2014

Chapter 4

Providing appropriate accommodation

Introduction

- 4.1 Although Gypsies and Travellers are often seen through the prism of high profile unauthorised sites, the vast majority of traveller caravans (80%) are on authorised sites that have planning permission²².
- 4.2 However, there are still around 3000 caravans on unauthorised sites, either on sites developed without planning permission, or on encampments on land not owned by travellers. Gypsies and Travellers living on unauthorised sites can face additional difficulties accessing health and education services and the precarious nature of their homes can further exacerbate inequalities and stifle life chances.
- 4.3 The new planning policy for traveller sites will return decisions on traveller site provision to local authorities who are best placed to know the needs of their communities. We will encourage local authorities to provide appropriate sites and it is important that local planning authorities continue to plan for the needs of all in their community, including Gypsies and Travellers.

Financial incentives

- 4.4 The Department for Communities and Local Government has put in place a package of financial incentives and other support to help local authorities and elected members make the case for the appropriate development of traveller sites in their area.
- 4.5 We secured £60m Traveller Pitch Funding to 2015 as part of the Homes and Communities Agency's Affordable Homes Programme. This investment will help local authorities and other registered providers with the cost of providing new sites. On 7 January 2012 we announced the allocation of £47m that will help provide over 750 new and improved pitches.²³
- 4.6 Instead of top-down targets, we are focusing on providing incentives for development so communities reap benefits and not just costs of development. The New Homes Bonus commenced in April 2011, and will match fund the

²² DCLG; *Traveller Caravan Count January 2011*

²³ DCLG; *Stunell: New site funding offers fairer deal for travellers and the settled community*; <http://www.communities.gov.uk/news/planningandbuilding/2061166>

additional council tax raised - using the national average in each band - for new homes and long term empty properties brought back into use, with a premium for affordable homes, for the following 6 years. The New Homes Bonus will operate in exactly the same way for traveller sites as it does for other forms of housing ensuring that policy on traveller sites is aligned with that for other forms of housing and that it is fair for traveller and settled communities. The Government's goal is to increase and underline the local benefits of development. Local authorities that take responsibility and encourage growth should be recognised proportionately.

- 4.7 The New Homes Bonus also means that for the first time we are providing financial incentives to local authorities for the development of all authorised traveller site accommodation. Private provision is a key element of traveller pitch supply; the largest proportion of caravans (and growing) are on private sites; they are usually built by the travellers themselves and many Gypsies and Travellers want to live on them.

Changing perceptions of sites

- 4.8 To help change the perception of traveller sites and address the concern that can develop around traveller site development proposals, we are working on gathering examples of well-kept small private family sites. Gypsy and Traveller representative groups have been invited to lead on this and the Department for Communities and Local Government has also been in contact with local authorities to identify the best sites in their area.

Commitment 12

The Department for Communities and Local Government will help Gypsy and Traveller representative groups showcase small private sites that are well presented and maintained.

Subject to site owners agreeing to have their homes included we will help produce a case study document which local authorities and councillors, potential site residents and the general public could use. It could also be adapted and used in connection with planning applications.

Support for elected councillors

- 4.9 Consultation with local communities about planning applications is a fundamental part of the planning process but councillors can sometimes find this difficult in the face of opposition towards traveller site proposals.
- 4.10 Local Government Group has been running a successful course delivered by councillors for councillors to support them with their leadership role around traveller site provision, including advice on dealing with the controversy that can sometimes accompany planning applications for traveller sites. Councillors

have reported that the training helped them to conduct better planning meetings leading to fair and more effective decision-making.

- 4.11 We are funding this training so it can continue to 2015. The new programme, which starting in autumn 2011, will help the transition to the new planning system. It will support councils or groups of councils to find locally acceptable approaches to increasing the number of planned-for pitches that gain consent in their area without going through the planning appeal process.

Encouraging healthy living conditions

- 4.12 In addition to the provision of accommodation from which health services can be accessed, we want traveller sites to be healthy places to live.
- 4.13 One of the Government's aims in respect of traveller sites is to enable provision of suitable accommodation, which supports healthy lifestyles, and from which travellers can access education, health, welfare and employment infrastructure. Local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally and should, therefore, ensure that their policies promote, in collaboration with commissioners of health services, access to appropriate health services.

Commitment 13

The Government will continue to promote improved health outcomes for travellers through the planning system.

- 4.14 In April 2011 we applied the Mobile Homes Act 1983 to traveller sites owned by local authorities. This means that residents of these sites now have greater protection against eviction and other rights and responsibilities that already apply to residents of other residential mobile home sites. It also means residents can challenge poor site management through the residential property tribunal if the site owner (the local authority) has not fulfilled obligations set out in the pitch agreement.
- 4.15 The terms implied by the Mobile Homes Act into pitch agreements oblige the local authority (where they are the site owner) to maintain the parts of the site they are responsible for in a clean and tidy condition and to repair the amenity blocks provided on the pitch. Likewise, the pitch agreement also obliges residents to maintain, in a clean and tidy condition, their pitch and the outside of their mobile home.
- 4.16 We will review the impact of the application of the Mobile Homes Act to local authority sites in two years' time. This review will look at the extent to which residents are aware of their new rights and responsibilities.