Gypsy Roma Traveller History Month
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Introduction

Romani Gypsies have been resident in Great Britain since the 16th century. Irish Travellers have been resident in mainland Britain since at least the 19th century. Yet they remain two of the most disadvantaged racial groups in Britain.

The ethnic identity of Romani Gypsies and Irish Travellers

It is important to note that Romani Gypsies and Irish Travellers have been held to be 'ethnic' groups for the purpose of the Race Relations Act (RRA) 1976. In *CRE v Dutton*,[1] the Court of Appeal found that Romani Gypsies were a minority with a long, shared history, a common geographical origin and a cultural tradition of their own.

In *O'Leary v Allied Domecq*,[2] HHJ Goldstein reached a similar decision in respect of Irish Travellers. Although a county court judgment, it should be noted that, in Northern Ireland, Irish Travellers are explicitly protected from discrimination under Race Relations (Northern Ireland) Order 1997 article 5, and this makes it highly unlikely that their status as members of a separate ethnic group could be open to challenge again in the United Kingdom. As HHJ Goldstein said in *O'Leary*:

'… if indeed it be the case, as the defence argue, that Irish travellers do not bring themselves within the definition of an ethnic social group under the Act, then we have a very strange anomaly that Irish travellers are protected in Ireland but not protected in England as a result of legislation by a British government'.[3]

Romani Gypsies and Irish Travellers are protected from discrimination by the RRA 1976 whether or not they pursue a nomadic way of life. It is their separate group identities which makes them eligible for protection.

New Travellers and other occupational Travellers (other than those who can claim an ethnic heritage) do not come within the definition of a racial group.

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1 [1989] 2 WLR 17, CA.

2 *P O'Leary and others v Allied Domecq and others* (unreported) 29 August 2000 (Case No CL 950275–79), Central London County Court, Goldstein HHJ.

3 *P O'Leary and others v Allied Domecq and others* at p26 of the judgment.

In *O'Leary*,[4] HHJ Goldstein made it clear that the court's decision would not enable all Travellers to claim ethnic status, and that it should not be seen as *'opening the floodgates to endless applications from amorphous groups seeking to take advantage of this decision'*. Furthermore, it was made clear by Stocker LJ in *Dutton*[5] that a strong case would need to be made by others and that *'the fact alone that a group may comply with all or most of the relevant criteria does not establish that such a group is of ethnic origin'*.

That said New Travellers may be able to argue that a decision taken by a public body which discriminate against them on grounds associated with their lifestyle violates their rights protected by Article 14 of the European Convention on Human Rights (the ECHR).

Discrimination suffered by Gypsies and Travellers

Although race relations legislation has been in force in the United Kingdom since 1965 and has developed considerably to protect against increasingly subtle forms of discrimination, Gypsies and Travellers are still experiencing discrimination of the most overt kind: 'No blacks, no Irish, no dogs' signs[6] disappeared decades ago, but the 'No Travellers' signs, used intentionally to exclude Gypsies and Travellers, are still widespread, indicating that discrimination against these groups remains the last 'respectable' form of racism in the United Kingdom.[7] This is supported by the findings of a 2003 Mori poll conducted in England[8] in which 34 per cent of respondents admitted to being personally prejudiced against Gypsies and Travellers. In 2004, Trevor Phillips, the former Chair of the Commission for Racial Equality (CRE) and now the Chair of the Equality and Human Rights Commission (EHRC), compared the situation of Gypsies and Travellers living in Great Britain to that of black people living in the American Deep South in the 1950s and, in 2005, Sarah Spencer, one of the CRE's Commissioners, drew further attention to their plight in an article entitled '*Gypsies and Travellers: Britain's forgotten minority*':[9]

The European Convention on Human Rights … was a key pillar of Europe's response to the Nazi holocaust in which half a million Gypsies were among those who lost their lives. The Convention is now helping to protect the rights of this community in the United Kingdom …

The majority of the 15,000 caravans that are homes to Gypsy and Traveller families in England are on sites provides by local authorities, or which are privately owned with planning permission for this use. But the location and

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4 *P O'Leary and others v Allied Domecq and others* at p39 of the judgment.

5 [1989] 2 WLR 17 at 34.

6 See, for example, the discussion by McVeigh 'Nick, nack, paddywhack: anti-Irish racism and the racialisation of Irishness' in Lentin and McVeigh, eds, *Racism and anti-racism in Ireland*, Beyond the Pale, 2002, pp136–152.

7 See, for example, Hawes and Perez, *The Gypsy and the State: the ethnic cleansing of British society*, The Polity Press, 1996, pp148–155.

8 *Profiles of prejudice: the nature of prejudice in England*, Stonewall, 2003.

9 [2005] EHRLR 335.

condition of these sites would not be tolerated for any other section of society. 26 per cent are situated next to, or under, motorways, 13 per cent next to runways. 12 per cent are next to rubbish tips, and 4 per cent adjacent to sewage farms. Tucked away out of sight, far from shops and schools, they can frequently lack public transport to reach jobs and essential services. In 1997, 90 per cent of planning applications from Gypsies and Travellers were rejected, compared to a success rate of 80 per cent for all other applications … 18 per cent of Gypsies and Travellers were homeless in 2003 compared to 0.6 per cent of the population …
Lacking sites on which to live, some pitch on land belonging to others; or on their own land but lacking permission for caravan use. There follows a cycle of confrontation and eviction, reluctant travel to a new area, new encampment, confrontation and eviction. Children cannot settle in school. Employment and health care are disrupted. Overt discrimination remains a common experience … There is a constant struggle to secure the bare necessities, exacerbated by the inability of many adults to read and write, by the reluctance of local officials to visit sites, and by the isolation of these communities from the support of local residents … But we know that these are communities experiencing severe disadvantage. Infant mortality is twice the national average and life expectancy at least 10 years less than that of others in their generation.'

Shortage of suitable accommodation
A key contributor to the poor socio-economic condition of Gypsies and Travellers is the fact that thousands of families have no lawful residence: they are routinely refused planning permission and face constant eviction or other enforcement action, including criminal proceedings, when trying to pursue their traditional way of life, living in their caravans.

There is a significant shortfall in accommodation for Gypsies and Travellers throughout England and Wales and about 25% of those living in caravans are homeless.

In order to understand how the shortfall has arisen one must appreciate the effect of legislation and policy on the provision of accommodation for Gypsies and Travellers over the last 50 years:

- In 1960 Parliament passed the *Caravan Sites and Control of Development (CSCDA) 1960*. That *Act* was designed to regulate and control private caravan sites and provided that no occupier of land could use it as a caravan site without a site licence and that a site licence could not be obtained unless planning permission had been granted for the use of the land for such a purpose.
- *Section 23 of the CSCDA 1960* also gave local authorities the power to close common land to Gypsies and other Travellers. This power was used enthusiastically by local authorities. *Section 24 of the CSCDA 1960* also gave local authorities the power to provide caravan sites to

compensate for the closure of the commons. However, local authorities failed to make use of this collateral power and it became increasingly difficult for the Gypsy and Traveller population to carry on their nomadic way of life.

- In 1968, having recognised the problems caused by the *1960 Act*, Parliament passed the *Caravans Sites Act (CSA) 1968.* It came into effect on 1st April, 1970 and was designed to convert the *section 24 CSCDA 1960* power into a duty imposed on County Councils to provide caravan sites for Gypsies resorting to or residing in their area.
- Though sites were built as a result of the *CSA 1968* a number of authorities failed to comply with their duty and there remained a significant shortfall in authorised accommodation. As Sedley J noted in *R v Lincolnshire CC ex p Atkinson* (1997) JPL 65:

  'For the next quarter of a century there followed a history of non-compliance with the duties imposed by the Act of 1968, marked by a series of High Court decisions holding local authorities to be in breach of their statutory duty, to apparently little practical effect.'
- Then in 1994 Parliament passed the *Criminal Justice and Public Order Act.* The *CJPOA 1994* repealed much of the *CSA 1968*, including the duty imposed on County Councils to provide authorised sites. Though the *section 24 CSCDA 1960* power to provide sites has been retained it has not been utilised and as a consequence the number of local authority sites has fallen.
- At the same time the *CJPOA 1994* gave both the Police and local authorities additional powers to remove Gypsies and Travellers when they park their caravans on unauthorised encampments: see *sections 61 and 77 of the CJPOA 1994* respectively.[10]

[10] Failure to comply with a direction given by a Police officer is a criminal offence and can lead to an arrest without warrant, imprisonment on conviction and the seizure of vehicles: *Section 61(4) and section 62(1) of the CJPOA 1994* and *section 24 of the Police and Criminal Evidence Act 1984.* Failure to comply with a local authority's *section 77* removal direction is also a criminal offence and a person who remains on the land after the removal direction has expired risks having their goods (including their caravan and home) removed from the site and impounded.

It is clear that *Circular 1/94* failed to deliver sufficient sites for Gypsies living in England. Indeed, the effect of the repeal of the *CSA 1968*, coupled with the changes to planning guidance, the enforcement powers given to local authorities and the Police by the *CJPOA 1994*, and the existing remedies available to private landowners has been to render it virtually impossible for those Gypsies and Travellers without an authorised site to continue living their traditional way of life within the law.

Circular 1/06 – the new policy regime

On 2nd February 2006 the government issued *ODPM Circular 01/06 'Planning for Gypsy and Traveller Caravan Sites'.* The *Circular* replaced *Circular 1/94.* The government decided that it was necessary to issue new planning advice precisely because the evidence showed that *Circular 1/94* had failed to provide adequate sites for Gypsies and Travellers in many areas of England over the last 12 years.

In *paragraph 5 of Circular 1/06* the government referred to the poor health and low level of educational attainment amongst Gypsies and Travellers[11]. In the same paragraph the government expressed the view that the new *Circular* should enhance their health and education outcomes.

In *paragraph 12* the government indicated that it is intended that *Circular 1/06* will, inter alia:

- *create and support sustainable, respectful and inclusive communities where Gypsies and Travellers have fair access to suitable accommodation, education, health and welfare provision;*
- *reduce the number of unauthorised encampments and developments;*
- *increase significantly the number of Gypsy and Traveller sites in appropriate locations with planning permission in order to address under-provision over the next 3 – 5 years;*
- *recognise, protect and facilitate the traditional travelling way of life of gypsies and travellers, whilst respecting the interests of the settled community;*
- *underline the importance of assessing needs at regional and sub-regional level and for local authorities to develop strategies to ensure that needs are dealt with fairly and effectively;*
- *identify and make provision for the resultant land and accommodation requirements;*
- *promote more private Gypsy and Traveller site provision in appropriate locations through the planning system, while recognising that there will always be those who cannot provide their own sites;*

[11] See e.g. *Gypsies and Travellers: Britain's Forgotten Minority* [2005] EHRLR 335.

- *help avoid Gypsies and Travellers becoming homeless through eviction from unauthorised sites without an alternative to move to.*

The new planning system

Circular 1/06 explained how the new planning system will work in the context of the provision of Gypsy sites. It makes it clear that local planning authorities (LPAs) should begin the process by assessing the accommodation needs of Gypsies and Travellers and produce Gypsy and Traveller Accommodation Assessments (GTAAs).

The information from GTAAs was be fed to the Regional Planning Boards (RPBs) who would then be responsible for preparing Regional Spatial Strategies (RSSs) which would identify the number of pitches required (but not their location) for each LPA and a strategic view of needs across the region.

It would then for individual LPAs to produce their own Development Plan Documents (DPDs) which set out site specific allocations for the number of pitches that the RSSs have specified they need to accommodate within their areas.

LPAs would need to demonstrate that sites are suitable and that there is a realistic likelihood that specific sites allocated in DPDs will be made available for that purpose. DPDs will also need to explain how the land required will be made available for a Gypsy site and the timescales for such provision.

All DPDs are subject to independent examination by an Inspector and the conclusions reached by such an Inspector will be binding. Where a LPA fails to allocate sufficient sites for the needs of Gypsies and Travellers that have been identified then the Inspector could recommend that a DPD is altered to include additional sites. The Secretary of State also has default powers.

Transitional arrangements

The government recognised that it would take some time for LPAs to complete GTAAs, for RPBs to produce RSSs which accurately identify the number of pitches that individual LPAs should be required to provide, and for LPAs to then adopt site specific DPDs and as a consequence gave LPAs advice on steps that might need to be taken during the transitional period and the circumstances in which temporary planning permission might be granted.

Significantly, *paragraph 43 of Circular 1/06* states that where there is a clear and unmet need for additional site provision then LPAs should bring forward DPDs containing site allocations in advance of the regional

consideration of pitch numbers and completion of their GTAAs. Moreover, in *paragraph 63 of Circular 1/06* the government indicated that:

*'**Local planning authorities should also have regard to whether the absence of existing provision may prejudice enforcement action**, or give rise to grounds of appeal against refusal of an application for a new site'* [Emphasis added].

Coalition government policy changes

However, following the election of the coalition government, Eric Pickles MP, the new Secretary of State for Communities and Local Government, has announced that he intends to abolish regional bodies and their RSSs will no longer play a part in the process[12]. In short that means that local authorities will be required to identify sufficient sites to address the need that they have identified in the GTAAs and not the numbers of sites that the regional bodies have stipulated that they should identify. Those representing Gypsies and Travellers fear that this approach will not address the shortfall and that many local authorities will, true to historical form, bow to pressure for local people and nimbyism and do little or nothing to address the existing need and all the good work done up and down the country to reduce the shortage of sites will be wasted. Such a result would have a catastrophic effect on Gypsies and Travellers and their ability to access the healthcare and education that the rest of our society enjoys.

Gypsy status and the meaning of 'Gypsy' and 'Traveller' in planning

Notwithstanding the difficulties that Gypsies and Travellers are likely to experience in creating their own private sites, many attempt to do so by seeking planning permission.

In order to benefit from the positive government guidance on the provision of Gypsy and Traveller sites in *Circular 1/06*, it is not enough for an applicant to prove that he or she is an ethnic Gypsy or Traveller; an applicant must show that he or she is entitled to what has become known as 'Gypsy status'.

Gypsy status and pre-2006 case-law

When Parliament first legislated on the provision of caravan sites for Gypsies and Travellers it defined 'Gypsies' not on grounds of ethnicity but as meaning:

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12 In addition, it should be noted that the Coalition government has already cut the grants for the refurbishment of council run sites and that pre-election literature published by the Conservative Party suggested that it would create a new offence of 'intentional trespass' and prohibit retrospective planning applications if it won the election. Whether the Coalition government attempts to bring in such measures remains to be seen.

'… persons of nomadic habit of life, whatever their race or origin, but does not include members of an organised group of travelling showmen, or persons engaged in travelling circuses, travelling together as such'.[13]
The use of that definition generated a substantial amount of litigation.

In *Greenwich LBC v Powell*,[14] Lord Bridge of Harwich stated that a person could be a statutory Gypsy if he led a nomadic way of life only seasonally.

The case of *R v Shropshire CC ex p Bungay*,[15] concerned a Gypsy family that had not travelled for some 15 years in order to care for its elderly and infirm parents. An aggrieved local resident in the area of the family's recently approved Gypsy site sought judicial review of the local authority's decision to accept that the family had retained their Gypsy status even though it had not travelled for some considerable time. Dismissing the claim, the judge held that a person could remain a Gypsy even if he or she did not travel, provided that their nomadism was held in abeyance and not abandoned.

In the later case of *Hearne v National Assembly for Wales*,[16] a traditional Gypsy was held not to be a Gypsy for the purposes of planning law as he had stated that he intended to abandon his nomadic habit of life, lived in a permanent dwelling and was taking a course that led to permanent employment.

In *R v South Hams DC ex p Gibb*,[17] the Court of Appeal considered the statutory definition further and qualified it by holding that there should be some recognisable connection between the travelling of those claiming to be Gypsies and the means whereby they made or sought their livelihood:

'… the definition of 'Gypsies' … imports the requirement that there should be some recognisable connection between the wandering or travelling and the means whereby the persons concerned make or seek their livelihood. Persons, or individuals, who move from place to place merely as the fancy may take them and without any connection between the movement and their means of livelihood fall outside these statutory definitions …'[18]

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13 CSCDA 1960 s24(8). The same definition was formerly contained in CSA 1968 s16 and stems from the decision of the Divisional Court in *Mills v Cooper* [1967] 2 WLR 1343. For guidance in respect of Travelling Showpeople, see DoE Circular 22/91 (Welsh Office Circular 78/91).

14 [1989] 1 AC 995; [1989] 2 WLR 7 at 15.

15 [1991] 23 HLR 195.

16 22 October 1999, (QBENF 1999/0648/C); (1999) Times, 10 November.

17 [1995] QB 158; [1994] 4 All ER 1012, CA.

18 [1994] 4 All ER 1012 at 1021.

The latter part of the Court of Appeal's interpretation of the statutory definition of 'Gypsy' involves a consideration of whether the individual concerned travels to seek or make their livelihood and this point has been considered further in a number of cases. For example, in *Maidstone BC v Secretary of State for the Environment and Dunn*,[19] it was held that a Romani Gypsy who bred horses and travelled to horse fairs at Appleby, Stow-in-the-Wold and the New Forest, where he bought and sold horses, and who remained away from his permanent site for up to two months of the year, at least partly in connection with this traditional Gypsy activity, was entitled to be accorded Gypsy status. More recently, in *Basildon DC v First Secretary of State and Rachel Cooper*,[20] the Court of Appeal accepted that a Romani Gypsy woman was a statutory Gypsy in circumstances where she travelled to traditional Gypsy fairs during the summer months and sold craft items at those events.

In the past Local Planning Authorities often went to considerable lengths to try to 'prove' that the Gypsies or Travellers seeking planning permission were not entitled to Gypsy status.

The Welsh Assembly's Equality of Opportunity Committee[21] has recognised this tendency and has argued that the weaknesses in the planning system are indicated by the increasing consideration of the provisions of the Human Rights Act (HRA) 1998 in relation to legal action being taken by Gypsies and Travellers on planning issues. The Committee noted the:
'… apparent obsession with finding ways to prove that an individual is not a 'Gypsy' for the purposes of the planning system. This approach is extremely unhelpful … and there can be no doubt that actual mobility at any given time is a poor indicator as to whether someone should be considered a Gypsy or a Traveller'.[22]

In *Wrexham CBC v The National Assembly for Wales and Berry*,[23] the courts considered once more the question of whether an individual can lose her or his Gypsy status, particularly in relation to cases where old age and ill-health has led to Gypsies and Travellers not being able to travel. In *Berry*, a planning inspector had allowed a planning enforcement appeal for an ethnic Irish Traveller family in Wrexham, only to see the decision challenged in the High Court on the grounds that the elder breadwinner in the family, Mr Berry, was no longer a 'Gypsy' because he had become too ill to continue to travel for work. In his judgment, Sullivan J decided that he could not see anything in *R v South Hams DC ex p Gibb*[24] to suggest that, had

19 [1996] JPL 584.
20 [2004] EWCA Civ 473.
21 *Review of service provision for Gypsies and Travellers*, National Assembly for Wales, 2003.
22 *Review of Service Provision for Gypsies and Travellers* , p58.
23 [2002] EWHC 2414 Admin.
24 [1995] QB 158; [1994] 4 All ER 1012, CA.

the Court of Appeal been confronted with what might be described as a 'retired' Gypsy, it would have said that he had ceased to be a statutory Gypsy because he had become too ill and/or too old to travel in order to search for work. Indeed, Sullivan J stated that he believed:
'… such an approach would be contrary to common sense and common humanity … It would be inhuman pedantry to approach the policy guidance … upon that basis …'[25]

Wrexham CBC appealed against the decision of Sullivan J and the Court of Appeal allowed the appeal.[26] In doing so, Auld LJ stated that the following propositions of law should be applied:
'…

(2) Whether applicants for planning permission are of a 'nomadic way of life' as a matter of planning law and policy is a functional test to be applied to their normal way of life at the time of the determination. Are they at that time following such a habit of life in the sense of a pattern and/or a rhythm of full time or seasonal or other periodic travelling? The fact that they may have a permanent base from which they set out on, and to which they return from, their periodic travelling may not deprive them of nomadic status. And the fact that they are temporarily confined to their permanent base for personal reasons such as sickness and/or possibly the interests of their children, may not do so either, depending on the reasons and the length of time, past and projected, of the abeyance of their travelling life. But if they have retired permanently from travelling for whatever reason, ill health, age or simply because they no longer wish to follow that way of life, they no longer have a 'nomadic way of life'. That is not to say they cannot recover it later, if their circumstances and intention change … But that would arise if and when they made some future application for permission on the strength of that resumption of the status.

(3) Where, as here, a question is raised before a Planning Inspector as to whether applicants for planning permission are 'gypsies' for the purpose of planning law and policy, he should: (i) clearly direct himself to, and identify, the statutory and policy meaning of that word; and (ii) as a second and separate exercise, decide by reference to that meaning on the facts of the case whether the applicants fall within it …

(4) In making the second, factual, decision whether applicants for planning permission are gypsies, the first and most important question is whether they are – to use a neutral expression – actually living a travelling life, whether seasonal or periodic in some other way, at the time of the determination. If they are not, then it is a matter of fact and degree whether the current absence of travelling means that they have not acquired or no longer follow a nomadic habit of life.

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25 [2002] EWHC 2414 Admin at para 20. Note that the decision of Sullivan J was overturned by the Court of Appeal.

26 [2003] EWCA Civ 835.

(5) *On such an issue of fact and degree, the decision-maker may find any one or more of the following circumstances relevant and, if so, of varying weight: (i) the fact that the applicants do or do not come from a traditional gypsy background and/or have or have not followed a nomadic way of life in the past – the possible relevance in either case being that respectively they may be less or more likely to give it up for very long or to abandon it entirely; (ii) the fact that the applicants do or do not have an honest and realistically realisable intention of resuming travelling and, if they do, how soon and in what circumstances; (iii) the reason or reasons for the applicants not living a travelling way of life at the time of the determination and their likely duration'.*[27]

The decision in *Berry* left ethnic Gypsies and Travellers who had been forced to cease travelling on grounds of old age or ill-health in a particularly unfortunate position – in effect they were precluded from relying on the positive government guidance in Circular 1/94 on the provision of Gypsy and Traveller sites at the very time when they needed a settled base on which to station their caravans in which they had lived for all their lives.

The Court of Appeal's decision did not reflect the fact that the state owed a positive duty under article 8 of the ECHR to facilitate the Gypsy way of life[28] and Mr Berry took his case to the European Court of Human Rights (ECtHR). However, before the ECtHR could consider Mr Berry's case, his re-determined planning and enforcement appeals were allowed, meaning he was no longer a 'victim' for Convention purposes. As a consequence, the court found his case to be inadmissible.

Gypsy status and Circular 1/06

The question whether a person could retain their nomadic status, notwithstanding illness or old age, was dealt with head-on when the government published Circular 1/06 and, in doing so, changed the policy definition of the term 'Gypsies and Travellers'.

Paragraph 15 of Circular 1/06 states that:
'For the purposes of this Circular 'gypsies and travellers' means
Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or

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27 Gypsy and Traveller women who are single parents may be faced with LPA decisions that they are not statutory 'Gypsies' since they do not travel for an economic purpose. In such circumstances, they may be able to argue that their economic nomadism is in abeyance (see *R v Shropshire CC ex p Bungay* [1991] 23 HLR 195). Alternatively, they may be able to argue that such a conclusion amounts to indirect sex discrimination under the Sex Discrimination Act 1975, though there is currently no case-law on this matter.

28 *Chapman v UK* (2001) 33 EHRR 399; (2001) 10 BHRC 48; (2001) Times, 30 January, at para 73.

permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such.'

To a substantial extent this new guidance reverses the effect of the Court of Appeal's judgment in *Berry*; although clearly it does not follow that all Gypsies and Travellers who wish to seek planning permission for a caravan site will be able to rely upon the positive government guidance in Circular 1/06. For example, if an applicant has willingly given up travelling, for example, to take up employment, then he or she will not be able to do so – a situation which the courts may yet conclude amounts to a breach of article 8 of the Convention.

GTAAs and the definition of Gypsies and Travellers

The fact remains that disputes concerning 'Gypsy status' still arise in planning appeals and in the Courts. To add to the confusion on this topic, on 2 January 2007, the government issued the Housing (Assessment of Accommodation Needs) (Meaning of Gypsies and Travellers) (England) Regulations 2006,[29] which state that yet another definition of 'Gypsies and Travellers' is to be used by local authorities for the purposes of carrying out their Gypsy and Traveller accommodation assessments (GTAAs), in accordance with duties imposed by Housing Act 2004 s225. The Regulations state that:

'Gypsies and Travellers' means –

(a) persons with a cultural tradition of nomadism or of living in a caravan; and

(b) all other persons of a nomadic habit of life, whatever their race or origin, including –

(i) such persons who, on grounds only of their own or their family's or dependant's educational or health needs or old age, have ceased to travel temporarily or permanently; and

(ii) members of an organised group of travelling showpeople or circus people (whether or not travelling together as such).'[30]

It is clear is that the Regulations' definition embraces those Gypsies and Travellers who have resorted to conventional bricks and mortar accommodation due to the scarcity of lawful sites but whose culture, traditions and preference would be to live on a site in a caravan. Given the central role of GTAAs as the evidential basis for future site allocations through the RSS, this is a significant consideration.

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29 SI 2006 No 3190.

30 This definition thus includes Travelling Showpeople. Guidance with regard to planning applications by Travelling Showpeople is contained in DoE Circular 21/91 (Welsh Office Circular 78/91).

Some Gypsy and Traveller campaigners argue that the time has come for the government to accept (as they say it must do if it is to pay due regard to the right that Gypsies and Travellers have to respect for their traditional way of life) that all those with a cultural tradition of nomadism, or of living in a caravan, as well as all other persons of a nomadic habit of life, whatever their race or origin, should be entitled to Gypsy status for the purpose of seeking planning permission for a site. However, attempts to argue that the definition ought to be widened to cover all those with the Regulations definition have been rejected by the Courts[31] and the time may be ripe for the issue to be considered by the European Court of Human Rights.

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[31] See *R(McCann) v SSCLG and Basildon DC* [2009] EWHC 917 (Admin) and *Wingrove and Brown v SSCLG and Mendip DC* [2009] EWHC 1476 (Admin).