

All Party Parliamentary Group Meeting

Accommodation For Gypsies and Travellers: Ringing the changes!

This paper addresses the impact that the decision by the Secretary of State for Communities and Local Government to revoke Regional Strategies and his intention to withdraw Circular 1/06 will have upon the provision of accommodation for Gypsies and Travellers

The provision of accommodation for Gypsies and Travellers

1. No one can seriously deny that there is a severe shortage of accommodation for Gypsies and Travellers in England.

2. In order to understand how the shortage has arisen it is necessary to analyse the effect of legislation and policy on the provision of accommodation for Gypsies and Travellers.
 - In 1960 the ***Caravan Sites and Control of Development Act (CSCDA) 1960*** was passed. 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. However, the local authorities failed to make use of the collateral power to provide caravan sites to compensate for the closure of the commons (provided by ***Section 24 of the CSCDA 1960***) 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 at p71:
'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 the **Criminal Justice and Public Order Act** was enacted. 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, central funding for the provision of such sites was withdrawn and with little incentive to use that power the number of local authority sites has fallen. At the same time the **1994 Act** 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**.
- Before **CJPOA 1994** was enacted the Government indicated that it was keen to shift the burden of site provision away from public provision and to encourage private site provision and it issued advice to local planning authorities on the provision of sites for Gypsies and Travellers in DOE Circular 1/94. Whilst one of the main intentions of Circular 1/94 was to provide that the planning system recognised the need for accommodation consistent with the nomadic lifestyle of Gypsies and Travellers, in reality the Circular restricted the chances for the provision of such accommodation by

withdrawing previous guidance which had suggested that it might be necessary to accept the establishment of Gypsy sites in protected areas, including Green Belts. As Lord Irvine (then Shadow Lord Chancellor) said in the House of Lords during debate on the **CJPOA 1994**:

'There is humbug at the heart of the Government's policy. The humbug is not simply that what they are suggesting is unrealistic as a solution to the problem of unauthorised sites; it is also that at the same time as they suggest that private site provision is the solution on which we should rely, they are making such provision more difficult by altering national planning policies. The real effect of the legislation, which they dare not openly avow, is to make those who have no lawful place to reside in their vehicles disappear through the imposition of criminal sanctions.'

- Circular 1/1994 did make it clear that local planning authorities should carry out a quantitative assessment of the need for Gypsy sites in their areas and that they should identify locations where such sites could be created wherever it was possible to do so. However, few if any, local planning authorities complied with that advice and the widespread failure to do so only compounded the difficulties faced by Gypsies and Travellers.
- Indeed, the effect of the repeal of the **1968 Act**, coupled with the negative changes to planning guidance in 1994, the failure by local planning authorities to comply with the positive aspects of that guidance and to assess the needs of Gypsies and Travellers and then address those needs by identifying locations on which they might be accommodated and the enforcement powers given to local authorities and the Police by the **1994 Act**, rendered it virtually impossible for those Gypsies and Travellers without an authorised site to continue living their traditional way of life *within* the law and led to a significant increase in the shortfall of lawful accommodation to meet their needs.

3. Having recognised that Circular 1/94 had failed to provide adequate sites for Gypsies and Travellers in many areas of England over the previous 12 years the last Labour government withdrew it and issued fresh planning advice on 2nd February 2006 in the form of ODPM Circular 01/06 '*Planning for Gypsy and Traveller Caravan Sites*'.

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

5. 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;*
 - *help avoid Gypsies and Travellers becoming homeless through eviction from unauthorised sites without an alternative to move to.*

6. Circular 1/06 explained how the new planning system will work in the context of the provision of Gypsy sites. It made it clear that local planning authorities should begin the process by assessing the accommodation needs of Gypsies and Travellers and produce Gypsy and Traveller Accommodation Assessments (GTAAs).
7. The information from GTAAs was then to be fed to the Regional Planning Bodies (RPBs) who would then be responsible for preparing Regional Spatial Strategies (RSSs, though now known as Regional Strategies) which would identify the number of pitches required (but not their location) for each local planning authority and a strategic view of needs across the region.
8. It would then be for individual local planning authorities 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. Local planning authorities 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 would also need to explain how the land required will be made available for a Gypsy site and the timescales for such provision.
9. It was anticipated that it would take some time for local planning authorities to complete GTAAs, for RPBs to produce RSSs which accurately identify the number of pitches that individual local planning authorities should be required to provide, and for local planning authorities to then adopt site specific DPDs. Paragraph 43 of Circular 1/06 states that where there is a clear and unmet need for additional site provision then local planning authorities should bring forward DPDs containing site allocations in advance of the regional consideration of pitch numbers and completion of their GTAAs.

10. Paragraph 45 of Circular 1/06: refers to the advice in Circular 11/95 that a temporary permission may be justified where it is expected that the planning circumstances will change in a particular way at the end of the period of temporary permission; and indicates that where there is unmet need but no available alternative Gypsy and Traveller site provision in an area but there is a reasonable expectation that new sites are likely to become available at the end of that period in the area which will meet that need, local planning authorities should give consideration to granting temporary planning permission.

11. Paragraph 46 states that in such circumstances local planning authorities (and by implication Planning Inspectors on appeal):

*'are expected to give **substantial weight** to the unmet need in considering whether a temporary planning permission is justified'* [Emphasis added].

Slow but steady progress

12. Studies show that since Circular 1/06 was published there has been a considerable increase in the number of successful planning applications made by Gypsies and Travellers and that their chances of successfully appealing against the refusal of planning permission at first instance have also improved. In addition, although progress in the production of DPDs has been slower than one would hope, there were encouraging signs that the shortfall in site provision would be addressed in many, if not all, local authority areas within a reasonable period of time.

13. It is also clear that the regional authorities have played an important role in the progress that has been made since Circular 1/06 was issued by carrying out the important role of the benchmarking GTAA's and by setting the pitch targets for local authorities to meet.

14. Whilst Gypsy and Traveller organisations and those that have fought tirelessly for the provision of sufficient and suitable accommodation to meet their needs ever since the 1960s (such as Lord Eric Avebury) understandably wish that site provision would gather speed, there is general agreement amongst them all that:

- the energy and valuable work generated by Circular 1/06 is not dissipated; and
- it is vital that both central and regional government continue to play a key role in any plan-led process designed to address the needs of Gypsies and Travellers in the future.

The decision to revoke Regional Strategies

15. Given the progress made, the clear consensus amongst those with most knowledge on the subject and the history of local government failing to meet the accommodation needs of Gypsies and Travellers in the past, it is of considerable concern that the Secretary of State for Communities and Local Government revoked the Regional Strategies for all the regions on 6th July 2010 – particularly when he did so without consulting upon the impact that his decision would have upon Gypsies and Travellers and without putting in place some other form of regional or central government framework capable of supervising and ensuring the provision of accommodation for them by local authorities.

16. That said, one cannot criticise the Secretary of State for not having given advanced warning of his intentions:

- the Conservative party document entitled *Open Source Planning* (published before the General Election on 22nd February 2010) said that a Conservative government would

'abolish the entire bureaucratic and undemocratic tier of regional planning, including Regional Spatial Strategies ...'

and raised the possibility that an incoming Conservative Secretary of State would consider using executive powers to revoke RSSs, prior to the introduction of primary legislation;

- the Coalition government's *'Coalition Agreement'* said that:
'We will rapidly abolish Regional Spatial Strategies and return decision-making powers on housing and planning to local councils ...'

the SoS reiterated his commitment to *'rapidly abolish Regional Strategies'* in a letter dated 27th May 2010 sent to Chief Planning Officers of local authorities.

Future policy and provision

17. It seems that the Coalition government is not satisfied with revoking Regional Strategies and that it is determined to reform the whole process for the provision of sites for Gypsies and Travellers established by its predecessor.

18. In *'Guidance for Local Planning Authorities following the revocation of Regional Strategies'* that the Secretary of State sent to the Chief Planning Officers on 6th July 2010 it was stated that:

'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 (GTAAAs) 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.'

19. On 26th July 2010 the Coalition government's Parliamentary Under-Secretary of State answered a written question in respect of the status of Circular 1/06 in the following terms:

*'Since regional strategies have been revoked, the level of pitch provision should now be determined locally. We intend to replace this circular with new **light-touch** guidance as part of a broader package of reforms to ensure fair play in the planning system'* [Emphasis added].

20. Then on 29th August 2010 the Secretary of State announced that there were to be the following changes in respect of the policy relating to Gypsy and Traveller sites:

'Abolition of Whitehall guidance

The Government has already freed councils from the top-down Regional Strategies and the associated building targets: this now allows councils to decide for themselves how many traveller pitches are necessary in their area according to local need and historic demand.

Following through on this policy, Ministers are today announcing their intention to revoke what they regard as flawed Whitehall Planning Circulars on travellers. The planning rules have been criticised by many local councils, some of whom have said this has compelled them to build on the countryside and compulsorily purchase land. Such rules have, Ministers believe, undermined community cohesion by creating a perception amongst many people of 'different' planning rules for the travelling community and for the settled community. Planning rules should be the same for all.'

21. I pause to comment at this stage on the premise advanced by the Secretary of State for withdrawing Circular 1/06. With respect, it is completely misconceived. The reality is that since 1994 few if any local authorities made any planned provision for accommodation for Gypsies and Travellers - whereas they have all done so for the settled community. That's where the difference in treatment lies and Circular 1/06 was designed to ensure that the accommodation needs of Gypsies and Travellers were no longer ignored by recalcitrant local authorities.

22. Whilst the fact that the Coalition government did not consult before revoking Regional Strategies is surprising, the lack of any consultation in respect of the Secretary of State's intention to revoke Circular 1/06 and replace it with new 'light touch' guidance is quite remarkable.

The vulnerable position of Gypsies and Travellers in our society

23. Gypsies and Travellers continue to face high levels of discrimination in the United Kingdom. The following extracts from 'Gypsies and Travellers: Britain's Forgotten Minority' by Sarah Spencer, Commissioner, Commission for Racial Equality [2005] 33 EHHR 18 are relevant:

'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 (pp.335-6).

The majority of the 15,000 caravans that are homes to Gypsy and Traveller families in England are on sites provided by local authorities, or which are privately owned with planning permission for this use. But the location and 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 (p.337).

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 (p.337).

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 (pp.338-9).'

24. Indeed, it was the high level of discrimination experienced by Gypsies and Travellers that led the European Court of Human Rights in the case of *Chapman v UK* (2001) to hold that:

'The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases ... To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way life ...' [see paragraph 96 of the judgment.]

25. Given the State's positive obligation to facilitate the Gypsy way of life and its duty to promote equality of opportunity one wonders how the withdrawal of Circular 1/06 can be justified and whether the decision to do so has been properly thought through.

26. Not only does the retention of Circular 1/06 make good sense from the point of view of addressing the needs of Gypsies and Travellers but it also makes good economic sense: most of the new sites that have already been developed under Circular 1/06 have been paid for by Gypsies and Travellers themselves at nil cost to the taxpayer; whilst the provision of sufficient sites is bound to reduce the costs associated with enforcement which currently run into many millions of pounds.

Conclusion

27. Whilst the Coalition government may have sound reasons for its policy of 'localism', the history of site provision shows that local authorities cannot be trusted to meet the needs of Gypsies and Travellers on their own, without close supervision by regional and/or central government. The sad fact is that 'nimbyism' remains rife and seems particularly prevalent when the development of Gypsy sites is proposed. In that context, localism and the use of 'light touch' guidance is doomed to failure and the Coalition government should be urged to rethink its policy on the planned provision of Gypsy sites so as to ensure that: the valuable work done by regional bodies and the important progress made under Circular 1/06 is not wasted. We have not yet achieved the main aims of the Circular and this is not the right time for the Coalition government to be *'ringing the changes'*.

Marc Willers ©

Garden Court Chambers

10th October 2010