



Gypsies and Travellers: camp sites and trespass

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Section Science and Environment Section

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- This note describes some law relating to Gypsies (Roma) and Travellers. It mainly covers issues relating to camp sites and trespass, including the *Anti-Social Behaviour Act 2003*. The issues arising when Travellers buy land and undertake unauthorised development upon it are covered in another note – [Gypsies and Travellers: unauthorised development](#).
 - *The Criminal Justice and Public Order Act 1994* introduced strict provisions to allow local authorities or the police to move on trespassers. Many councils have been reluctant to use the 1994 Act provisions, partly because Government guidance required full attention to be paid to the welfare needs of all the trespassers. It is probably not compliant with the European Convention on Human Rights to evict trespassers who have nowhere to go.
 - The Labour Government pressured councils to make adequate provision for Gypsies, partly through the *Housing Act 2004* and partly through Regional Spatial Strategies and Local Development Frameworks.
 - A letter to councils from Secretary of State Eric Pickles of 27 May 2010 states that “decisions on housing supply (including the provision of travellers sites) will rest with Local Planning Authorities without the framework of regional numbers and plans.”
 - The May 2010 spending cuts for the Homes and Communities Agency have ended the Gypsy and Traveller Programme grants for new sites, thus saving £30m in 2010/11.
 - On 29 August 2010 DCLG announced stronger tenancy rights on authorised sites; new incentives to build authorised sites; the abolition of Whitehall guidance; stronger powers to tackle unauthorised development. On 13 April 2011 the Government published a consultation on a new circular relating to planning for Gypsy sites.
 - In January 2012, the Government announced funding for camp sites. However, research suggests that the demand is not being met.

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1 Introduction

There are many aspects of the Travelling Community about which Parliament might be concerned, including problems that Travellers face in gaining access to education and social services. Unfortunately, most concern derives from illegal camping. Clearly that does not do justice to the Travelling Community. However, it does reflect serious problems in particular areas.

2 The present legal position

The Criminal Justice and Public Order Act 1994

- Removed local authorities' obligation to provide caravan sites
- Allowed Gypsies to be moved on, even when sites were not available
- Gave local authorities and the police the power (by way of a direction from a local authority) to remove trespassers
- Created an offence for (a) failure to comply with such a direction or (b) re-entry after removal
- Introduced a new offence of aggravated trespass for intimidation or obstruction

However, local authorities and police have often been reluctant to use these powers:

- Eviction requires many police and can result in violence, especially if whole families resist;
- Government guidance required the welfare position of all the trespassers to be considered, presenting problems when there is a shifting population;

- Eviction might infringe the European Convention on Human Rights

The European Convention on Human Rights

Article 8

1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Under the *Human Rights Act 1998* the European Convention can be used in British courts. Eviction of people with nowhere else to go infringes the Convention unless great care is taken over those who are evicted.

Some have argued that the powers could have been used more often than they were, notably Edward Garnier in an adjournment debate, stressing problems of nuisance and criminal behaviour.¹ On the other hand, many Gypsies were moved around. In May 2004 John Battle described how a group of caravans had been moved 50 times since January, with obvious difficulties for those needing medical care or education.²

3 Labour Government policy

On 1 March 2004, the Labour Government issued Guidance on Managing Unauthorised Camping.³ The policy aimed to compel local planning authorities to set aside enough land for Gypsy sites, via targets in regional plans. That would complement the legal obligation described below.

The Housing Act 2004 s.225 requires that every local housing authority must, when undertaking a review of housing needs in their district under section 8 of the *Housing Act 1985* (c. 68), carry out an assessment of the accommodation needs of Gypsies and Travellers residing in or resorting to their district. They must take this strategy into account when exercising their functions. This fits in with the Labour Government's *Planning Policy Statement 3; Housing*, which requires authorities to pay particular regard to (amongst other things)

- The diverse range of requirements across the area, including the need to accommodate Gypsies and Travellers.⁴

In other words, planning authorities have to take into account the needs of Gypsies and Travellers when preparing plans. [Planning Circular 01/06: Planning for Gypsy and Traveller Caravan Sites](#) explained how the planning system would ensure adequate site provision.

¹ HC Deb 16 July 1997 cc367-373

² HC Deb 19 May 2004 cc1070-1

³ <http://www.communities.gov.uk/publications/housing/guidancemanaging>

⁴ DCLG, *Planning Policy Statement 3: Housing*, 2006

4 Government policy since May 2010

Following revocation of Regional Spatial Strategies on 6 July 2010, DCLG issued guidance for planning authorities, including the following passage:

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 [Development Plan Documents]. 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.⁵

Although the revocation was later overturned by judicial review, the guidance shows Government policy.

On 29 August 2010, DCLG made the following announcement:

Travellers who play by the rules will get the same rights as other mobile home residents and could benefit from more authorised sites under plans announced today by Communities and Local Government Secretary Eric Pickles. At the same time, top-down Whitehall planning rules on travellers which Ministers believe has undermined community cohesion and harmed the countryside will be scrapped.

Stronger tenancy rights on authorised council sites

Travellers on official local authority sites will benefit from changes to legislation that will give them the same rights and responsibilities as residents on other mobile home sites. Travellers who abide by the terms of their pitch agreement will have greater protection against eviction, and have the same rights and responsibilities as other social tenants.

New incentives to build authorised sites

The Government has announced that councils will be given incentives through the New Homes Bonus scheme to deliver new housing. Ministers are announcing today that this will include authorised traveller sites. This means that councils will get financial benefits for building authorised sites where they are needed. This will ensure that all types of authorised residential developments are treated equally.

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.

⁵ DCLG, [Guidance for Local Planning Authorities following the revocation of Regional Strategies](#), 6 July 2010

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.

Stronger powers for councils to tackle unauthorised development

The Government is concerned about the growing number of unauthorised developments and encampments and the problems they cause within communities. Mr Pickles is looking at ways to strengthen the powers available to councils to more effectively tackle unauthorised development. This will include action against speculative, unscrupulous private developers.

Secretary of State for Communities and Local Government, Eric Pickles, said:

"Unauthorised developments have created tensions between travellers and the settled population. We want to redress the balance and put fairness back into communities. Like the rest of the population, the majority of travellers are law-abiding citizens and they should have the same chance of having a safe place to live and bring up their children. These changes will put travellers who play by the rules on an equal footing. But at the same time, we will not sit back and allow people to bypass the planning rules that everyone else has to abide by. That's why we will strengthen the powers that councils have to enforce against breaches of planning rules and tackle the abuse of the planning system."

Notes to editors

1. The Government is announcing its intention to commence Section 318 of the Housing and Regeneration Act 2008, designed to extend tenancy rights for travellers in authorised local authority traveller sites.
2. The details of New Homes Bonus scheme will be set out in a public consultation later in the year.
3. The Government intends to revoke Planning Circular 01/06 and Circular 04/07, subject to necessary impact assessments, to be replaced with a light-touch guidance outlining councils' statutory obligations.
www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100726/text/100726w0002.htm#10072632000565 (external link).
4. Further announcements will be made in due course on plans to increase planning enforcement powers; measures will be included in the Localism Bill this autumn.⁶

There was a further announcement on 11 October 2010 about improved tenancy rights for travellers on authorised council sites - [Andrew Stunell: Rights for travellers who play by the rules and protection for councils](#).

On 13 April 2011, the Government published a consultation on replacing the Circular – [Planning for Traveller Sites: Consultation](#).

The Government intends to replace all planning guidance with a new National Planning Policy Framework (NPPF) in April 2012. DCLG published the [draft National Planning Policy Framework](#) on 25 July 2011. Planning applications have to be determined in accordance with the development plan “unless material considerations indicate otherwise”.⁷ Courts have

⁶ DCLG, *Eric Pickles: Time for a fair deal for the travelling and settled community*, 29 August 2010

⁷ *Planning and Compulsory Purchase Act 2004* s.38(6)

decided that Government guidance, even in draft, can be a material consideration. Thus the July 2011 draft is important already.

The draft NPPF retains the idea of providing housing to satisfy the needs of different groups in the community but omits the explicit reference to Gypsies and Travellers (paragraph 111).

5 Gypsy Council Comment

In evidence to the DCLG Select Committee on the abolition of Regional Spatial Strategies, the Gypsy Council expressed great concern:

- Gypsies and Travellers are an extremely disadvantaged ethnic minority across a wide range of measures.
- The critical shortage of adequate, culturally appropriate residential accommodation is at the heart of many of the other disadvantages from which Travellers suffer.
- We are the victims of very high levels of prejudice and overt and institutional racism. Of particular importance for this inquiry is the institutional racism we suffer in the way the planning system works against us to refuse and restrict planning permissions for residential provision.
- We are not just facing the abolition of RSS, but of Circular 1/06, Planning for Gypsy and Traveller Caravan Sites, and of Gypsy and Traveller grant for new and additional pitches via the Homes and Communities Agency.
- The system put in place through ODPM Circular 1/06 with regional and district targets for additional pitches defined through RSS had not delivered significant additional pitches, **but it was beginning to work**. With time and support from Ministers and planning inspectors Circular 1/06 had the potential to substantially address the crisis in residential provision for Travellers.
- We have deep concerns about some aspects of localism, which carries the risk of pandering to lowest common denominator anti Gypsy racism. We are also deeply concerned at anti Traveller messages coming out of Communities and Local Government Ministers, particularly the Secretary of State, through informal, political channels which threaten an intensified open season on Gypsies and Travellers with policy based around enforcement, criminalisation and demonisation.
- Finally, we put forward principles for how a post RSS system can be made to work to provide adequate residential provision and begin to treat Gypsies and Travellers as equal and culturally distinct members of the Big Society. We particularly recommend that our communities are given a central role in planning for and providing for our own needs.

The Inequalities Experienced by the Gypsy and Traveller Community

For our people oppression and prejudice by the non Gypsy majority are so familiar and so much a part of every day life as to be not worth commenting on. A comprehensive summary of the disadvantage suffered by Gypsies and Travellers is provided in Inequalities experienced by Gypsy and Traveller Communities, Cemlyn, Greenfields, Burnett, Matthews and Whitwell for the Equality and Human Rights Commission, 2009. The following examples are taken from that report. They paint a picture of multi dimensional disadvantage and confirm the Commission's conclusion that Gypsies and Travellers are the most disadvantaged ethnic group in Britain:

- Life expectancy is shorter, infant mortality is particularly high – 3 times higher in one survey, maternal mortality much higher, yet access to health care, particularly primary health care, is much worse;
- Travellers are hugely disadvantaged in education. Only 75% of children are regularly in education, the worst of any ethnic group. In 2007 only 16% of Irish Traveller children and 14% of Gypsy children got 5 GCSE A-Cs compared with 59% nationally.⁸

6 The provision of camp sites, 2012

6.1 Government announces funding for camp sites, January 2012

On January 2012 DCLG announced funding for camp sites, but also brought into force provisions in the Localism Act to facilitate enforcement actions against unauthorised development. The replacement Circular on Planning for camp sites has not been published:

Communities Minister Andrew Stunell today (7 January 2012) announced the successful bids for £60 million of funding that will provide hundreds of new authorised pitches as well as better facilities for travellers on official sites.

The Homes and Communities Agency have completed their assessment of bids and have recommended offers from successful councils and other organisations that will deliver over 750 new and improved pitches at a cost of £47m.

New bids for the remaining £13 million of the £60 million budget will continue to be considered and the Agency will help those who had their bids rejected to improve and resubmit their offers so that further pitches can be delivered over the next three years.

This new support for official traveller pitches goes hand in hand with action against unauthorised traveller sites. Through the Localism Act, the Government is introducing stronger powers for councils to tackle the abuse of retrospective planning permission. These strengthened powers are helping councils tackle any form of unauthorised development.

The new authorised travellers' sites will provide help to reduce the number of unauthorised sites, which create tensions between travellers and the settled community.

Ministers believe the previous system was ineffective because traveller site funding was allocated but often remained unspent. They also argue that by imposing top-down targets for traveller sites, local councils were compelled to encroach onto the Green Belt, leading to an increase in the number of unauthorised sites and seriously harming community relations. (...)

Notes to Editors

1. A total of 33 providers, of which 18 are local authorities and 15 housing associations, will receive allocations 617 new and 167 improved pitches at a total cost of £47m. For more information, a CSV file of the successful bids is available at:

www.homesandcommunities.co.uk/sites/default/files/our-work/tpf_allocations_january2012.csv (CSV, 5.5 kb).

⁸ [Written Evidence by the Gypsy Council to the DCLG Select Committee on abolition of Regional Spatial Strategies](#)

2. The programme delivers 10 pitches in London (one per cent of the total) for £700,000. The proportion going to London has been agreed by the GLA.

3. The Government, as part of their broader package of reforms to the planning system and desire to see everyone treated equally and even-handedly in respect of it, went out to consultation on a draft, short and light-touch, new policy on 'planning for traveller sites' last year. Responses to the consultation are currently being considered and the new policy will be published as soon as possible. The Secretary of State's original announcement can be seen at: www.communities.gov.uk/news/newsroom/1886974.

4. The overarching objective of the new travellers policy is to ensure fair and equal treatment for travellers in a way that facilitates their traditional and nomadic way of life while respecting the interests of the settled community. The new policy puts planning for traveller sites back in the hands of local planning authorities, aligns planning policy for traveller sites more closely with that of policy on planning housing and provides greater protection to Green Belt.⁹

6.2 Research states not enough camp sites being provided

On 20 March 2012, the Independent reported on forthcoming research:

The Government is underestimating the demand for new Gypsy and Traveller sites, exacerbating the already dire shortage and making "a future Dale Farm inevitable", according to research to be published this week.

In January, the Homes and Communities Agency (HCA) announced grants of £47m for 170 improved and 620 new pitches in a number of schemes across the country.

But according to information gathered from local planning departments and housing associations, fewer than 300 new pitches are likely to be built before 2015, when it is feared the funding will be withdrawn.

Eric Pickles, the Communities and Local Government Secretary, has claimed that the HCA funding will reduce the number of unauthorised Traveller sites, which he says create tensions between Travellers and the settled community. But Michael Hargreaves, a planning expert and author of the research, said Mr Pickles was "either misinformed about the funding scheme, or is being disingenuous".

He added: "The mass eviction at Dale Farm in Essex was a direct result of the dire shortage of authorised pitches and created incredible tensions between the Traveller and settled communities. Yet the HCA funding programme, as it stands, can only make a future Dale Farm inevitable."

The research, due to be presented on Thursday at a conference attended by ministers from the Department for Communities and Local Government (DCLG), shows more than 80 per cent of local authorities that have received funding for proposed schemes do not have planning permission, which can often be difficult to push through in the face of local opposition.

The take-up of funding has been patchy. The report found that Essex, Kent, Cambridgeshire, Surrey and Hertfordshire had the most Gypsies and Travellers, but had been awarded only 4 per cent of the funding between them.

"There is a striking mismatch between need and where the money has gone," said Mr Hargreaves. "The Midlands, South-west, Yorkshire and the North-east have done

⁹ DCLG Press Release, *Stunell: New site funding offers fairer deal for travellers and the settled community*, 7 January 2012

reasonably well, but there have been few applications from London, the East and South-east, and much of the North-west."¹⁰

¹⁰ "Lack of Gypsy sites makes a future Dale Farm 'inevitable'", *Independent*, 20 March 2012