

TAT NEWS E-BULLETIN



Newsletter of the Travellers Advice Team at Community Law Partnership

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Travellers Advice Team national telephone helpline for Gypsies and Travellers
0121 685 8677 Monday - Friday 9am - 5pm
No operator service. Get straight through to an expert.

DEFINING TRAVELLERS OUT OF EXISTENCE

The long awaited and dreaded changes to *Planning policy for Traveller sites* (PPTS) were introduced by the Government on August Bank Holiday Monday and come into force immediately. Most controversially, for planning purposes, if a Gypsy or Traveller stops travelling permanently for education or health reasons or reasons of old age, they will no longer be within the definition of Gypsy and Traveller! Other changes will make it much more difficult for Gypsies and Travellers to obtain planning permission for sites.

We believe these changes discriminate against Romani Gypsies and Irish Travellers and may also breach the human rights of all Gypsies and Travellers for reasons we will elaborate on in our conclusion to this piece. **TAT are very interested in hearing from any Gypsies or Travellers or their supporters who may be affected by these proposals or who are worried about these proposals. Please phone us on our advice line, 0121 685 8677.**

What do the changes mean?

The version of PPTS issued and coming into force on August 31st replaces the previous version. It should be read in conjunction with the National Planning Policy Framework (NPPF). We will not discuss here parts of PPTS which have not been changed but simply concentrate on the major changes. Changes to the policy are indicated by bold type.

Though actually contained in a Glossary (on page 9) to PPTS, we will start with the devastating changes to the definition.

For the purposes of this planning policy “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, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.

For the purposes of this planning policy, “travelling showpeople” means: *Members of a group organised for the purposes of holding fairs, circuses or shows (whether or not travelling together as such). This includes such persons who on the grounds of their own or their family’s or dependants’ more localised pattern of trading, educational or health needs or old age have ceased to travel temporarily, but excludes Gypsies and Travellers as defined above.*

At the outset it should be pointed out that the Government often fail to use capital letters when describing Gypsies and Travellers presumably in an attempt to play down their ethnic status (and, thus, their protection under the Equality Act 2010). Gypsies, Travellers and Travelling Showpeople who have stopped travelling **permanently** (the all-important word that was in the previous policy) due to education or health reasons or old age will no longer be within the definitions.

In exceptional cases, where a local planning authority is burdened by a large-scale unauthorised site that has significantly increased their need, and their area is subject to strict and special planning constraints, then there is no assumption that the local planning authority is required to plan to meet their traveller site needs in full (para 12).

Firstly, large-scale developments are very uncommon. Secondly, such a development normally indicates a failure of provision by the local authority in question. So now the Government propose to reward that local authority!

*Inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development. **Subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances*** (para 16).

It is already difficult to obtain planning permission in the Green Belt for a site. This change will make it much more difficult and often impossible. Yet Gypsies and Travellers normally cannot afford to buy land within development boundaries and, in some areas, the only land that is realistically available is Green Belt land.

*Local planning authorities should **very strictly limit** new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan* (para 25).

Once again, this change will make it more difficult for Gypsies and Travellers to obtain planning permission for sites.

*If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. **The exception is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads)** (para 27).*

Once again it will become much more difficult for Gypsies and Travellers to obtain planning permission, especially in Green Belt areas (see above).

Conclusion

The Government claim that one of their aims in this new policy is: *to promote more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites* (para 4(e)).

However it is impossible to see how the changes will do otherwise than have the opposite effect on site provision! See the points we make above. Additionally a lot of Gypsies and Travellers on local authority sites have stopped travelling permanently. The change to the definition will make it more rather than less difficult for local authorities to provide sites.

In their press release on August 31st accompanying the new policy (see <https://www.gov.uk/government/news/new-rules-will-offer-stronger-protection-against-unauthorised-occupation>) , the Department for Communities and Local Government (DCLG) state:

Between 2000 and 2009 there was a four-fold increase in the numbers of caravans on unauthorised sites – creating tensions between travellers and the settled populations.

These are, of course, out of date figures that are being quoted. If one takes the English Traveller Caravan Count over the last three years the numbers of unauthorised encampments and unauthorised developments are as follows:

January 2013	1455
July 2013	2057
January 2014	1354
July 2014	1985
January 2015	1283

So one sees that, in reality, the figures have been going down (taking account of the fact that the July figures are always higher than the January figures)!

Due to increased emphasis on enforcement against unauthorised encampments (also emphasised at the end of the press release), many Gypsies and Travellers will decide (understandably) that it is impossible to continue travelling so they will seek permission for a site. Yet in order to stand some chance of getting that permission they cannot stop travelling! A classic vicious circle!

DCLG place great emphasis on securing massive housing development: <https://www.gov.uk/government/news/quarter-of-a-million-homes-granted-planning-permission>

However the new PPTS effectively discourages new Gypsy/Traveller site development or places very significant hurdles in the way of such development.

If Gypsies and Travellers retire or if their health means they can no longer travel, they will stop being Gypsies and Travellers according to the new definition!

TAT believes that these changes may amount to discrimination under the Equality Act 2010 since, of course, Romani Gypsies and Irish Travellers are recognised as ethnic groups under the Act.

We also believe that these changes, in terms of all Gypsies and Travellers including New Travellers, may amount to a breach of Article 8 of the European Convention (the right to respect for private and family life and home).

This piece has been put together in haste. No doubt there are other important points to be made. We look forward to taking part in the ensuing debate. We think that legal challenges must be brought forward.

If you have any queries, please do not hesitate to contact us on our advice line, 0121 685 8677.

LOCAL CONNECTION AND TRAVELLERS

Connors v Forest of Dean DC, Bristol County Court, Recorder Blunt QC

Ms Connors is an Irish Traveller with 5 children, 2 of whom are disabled owing to a lung condition and hearing impairments. She had travelled all her life except for a short period in which she lived in a house. In June 2014 she had to leave a Traveller site in Stroud and relocated to the Forest of Dean District Council ('FoD') area. She moved her caravan onto a former Traveller site and commenced occupation. Her sister, who helped her with managing the children, lived just 5 minutes away. FoD commenced possession proceedings and Ms Connors made a homeless application. In August 2014, FoD decided that Ms Connors was owed a full re-housing duty but that she did not have a local connection with the FoD area because she was not normally resident or employed or had any enduring family relationships with others in the area, and also that there were no special circumstances to take into account. Accordingly, her local connection was with Stroud DC and they sought to refer her

back there. That decision was upheld in a homeless review in December 2014. An appeal was subsequently issued.

The appeal raised seven grounds of appeal including that FoD had erred in law in failing to take account of or have any regard to Ms Connors' protected characteristic, namely being a member of an ethnic group of Irish Travellers capable of being discriminated against on the grounds of her membership of that group. In particular, that FoD had failed to properly consider: (a) how long a Traveller's relatives should be required to be normally resident in an area before establishing a connection by family association, as by the very nature of their way of life residence for five years is much less likely to be established than if they were not a Traveller; and (b) in failing to have regard to the same matters when deciding to exercise its discretion to refer and, in doing so, failing to comply with its public sector equality duty under s149 Equality Act 2010. It was submitted that the travelling way of life means by its very nature that Irish Travellers are less likely to remain in particular areas for long periods, and that this should be taken into account in considering whether an Irish Traveller is normally resident in that area or has a local connection by reason of family associations. Irish Travellers might well have areas to which they resort much more often than others, and the likelihood that due to their way of life they may stay in one area for shorter periods should be taken into account in deciding whether they have a local connection. This is underlined by s149 Equality Act 2010, which requires, in relation to every decision taken by a public authority, proper consideration of their protected characteristic and whether it should be taken into account in the decision making process. The respondent council only considered this question in relation to what accommodation could be provided and this was plainly inadequate.

The appeal was allowed on 6 of the 7 grounds, including the Equality Act ground. Recorder Blunt QC found that, while the FoD had been mindful of the fact that Ms Connors is an Irish Traveller with protected characteristics:-

they only took account of those characteristics when referring to attempts to find an alternative traveller's pitch, as well as in relation to the suitability of conventional housing. However, it is plain that no account was taken of them in relation to the question of whether or not the Appellant has a local connection with the Respondents' district by reason of the length of her residence or her sister's residence there: this is because the Review Panel effectively treated any periods of residence short of those set out in the guidelines... as being irrelevant. The Review Panel ...were obliged to take account of the Appellant's and her sister's 'protected characteristic'. Again, therefore, I consider this ground of appeal to be made out.

Ms Connors was represented by barrister James Stark of Garden Court North Chambers and solicitor Craig Keenan at CLP.

A copy of the judgment will be available on the CLP website shortly.

OTHER CASES

Reports on the following planning cases will soon be available on our website (for more details of our website, see below):

Wenman v SSCLG

St Edmundsbury BC v Oakley

Reilly v SSCLG

The following important high court judgment about exceptional funding will also soon be available on the website:

IS v The Director of Legal Aid Casework and the Lord Chancellor

The regular Gypsy and Traveller Law updaters articles by Marc Willers QC, Dr Angus Murdoch and Chis Johnson of TAT will be published in October and November Legal Action magazine. They also hope to produce a separate article for LAG concerning the new PPTS.

WIDE INJUNCTIONS

There has been more publicity recently about these types of injunctions. See: http://www.nuneatonandbedworth.gov.uk/news/article/637/keeping_you_up_to_date_with_the_travellers

TAT believes that such injunctions are very challengeable. Where are Gypsies and Travellers meant to go if they are banned from all land in an area especially where local authorities have caused the problem by failing to ensure sufficient site provision? If you are affected by such an injunction or want to discuss this matter with us, please phone us on our advice line.

HIGH COURT PLANNING APPEALS

After a threat of judicial review by TAT over one particular case, the Legal Aid Agency has finally confirmed that planning appeals under Town and Country Planning Act 1990 sections 288 and 289 are in scope for legal aid provided there is a threat of 'loss of home' (which there will be if the Gypsy or Traveller concerned is living on the land).

Travellers Times Law Blogs

Marc Willers QC of Garden Court Chambers, Dr Simon Ruston and Chris Johnson of TAT provide regular law blogs for Travellers Times website. Here is a recent blog:- <http://travellerstimes.org.uk/Blog--Comment/Light-at-the-end-of-the-tunnel.aspx>

The Travellers Advice Team

The members of TAT are Chris Johnson, Parminder Sanghera and Sharon Baxter. The TAT Administrator is Emma Westwood.

CLP Website

On our website you can find:

- News items about Gypsy and Traveller issues:

<http://www.communitylawpartnership.co.uk/noticeboard/news>

- Updates on campaigns and consultations:

<http://www.communitylawpartnership.co.uk/noticeboard/campaigns-and-consultations>

- Recent Gypsy and Traveller legal cases:

<http://www.communitylawpartnership.co.uk/noticeboard/gypsy-and-traveller-cases>

- Judgments and reports on our leading cases:

<http://www.communitylawpartnership.co.uk/our-leading-cases>

- Links to Gypsy and Traveller groups:

<http://www.communitylawpartnership.co.uk/links/travellers>

- And , of course, previous TAT News E Bulletins:

<http://www.communitylawpartnership.co.uk/links/tat-news>

- Plus lots of information about the Housing and Public Law Teams who, amongst other things, represent Gypsies and Travellers in housing and homeless Gypsies and Travellers who are seeking housing in the Midlands and surrounding areas. For full details of the Housing Team see:

<http://www.communitylawpartnership.co.uk/our-services/housing-law>

and the Public Law Team see:

<http://www.communitylawpartnership.co.uk/our-services/public-law>

Until Next Time

We hope you find our E-Bulletin useful. All and any comments very welcome.

Don't forget our national self-funded advice line for Gypsies and Travellers:
0121 685 8677
Monday to Friday 9am to 5pm

Keep up the good fight! Best wishes to all our readers. Kushti bok!

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**TRAVELLERS ADVICE TEAM
NATIONAL TELEPHONE HELPLINE FOR GYPSIES AND TRAVELLERS**



Tel:- 0121 685 8677
Monday to Friday 9.00 am to 5.00 pm

The Travellers' Advice Team (TAT) at Community Law Partnership (CLP) provide advice and representation to Gypsies and Travellers throughout England and Wales in the following areas:-

- **Evictions from unauthorised encampments;**
- **Evictions from rented sites (local authority, housing association and private);**
- **Serious disrepair on rented sites;**
- **High Court Planning Appeals;**
- **Planning Injunctions;**
- **Stop Notices and direct action;**
- **Homelessness (including for those in houses who need a pitch);**
- **Allocation of pitches on local authority sites and increases in pitch fees;**
- **Cases for boat dwellers especially concerning the Continuous Cruising Guidance.**

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