

KENT COUNTY COUNCIL

GYPSY AND TRAVELLER ADVISORY BOARD

AGENDA

Thursday, 26 November 2009, at 10.00 am
**in the Darent Room, Sessions House,
County Hall, Maidstone**

Ask for: **Geoff Mills/Andy Ballard**
Telephone: **(01622) 694297/694297**

UNRESTRICTED ITEMS

(During these items the meeting is likely to be open to the public)

1. Substitutes
2. Declarations of Interests by Members in items on the Agenda for this meeting.
3. Minutes of Meeting of 22 July 2009 (Pages 1 - 4)
4. New Gypsy And Traveller Site Projects (Pages 5 - 10)
5. Security Of Tenure (Pages 11 - 14)

Peter Sass
Head of Democratic Services and Local Leadership

Wednesday, 18 November 2009

Please note that any background documents referred to in the accompanying papers may be inspected by arrangement with the officer responsible for preparing the relevant report.

This page is intentionally left blank

KENT COUNTY COUNCIL

GYPSY AND TRAVELLER ADVISORY BOARD

MINUTES of a meeting of the Gypsy and Traveller Advisory Board held in the Darent Room, Sessions House, County Hall, Maidstone on Wednesday, 22 July 2009.

PRESENT: Mr J D Kirby (Chairman), Mrs A D Allen, Mr M J Angell, Mr R B Burgess, Mr A D Crowther, Mr D S Daley (Substitute for Mr S J G Koowaree) and Mrs J Whittle

ALSO PRESENT: Mr G Gibbens

IN ATTENDANCE: Mr W Forrester (Head of Gypsy & Traveller Unit), Mr R Feasey (Development Planning Manager), Ms J Robson (Head of Language & Traveller Achievement Service), Mrs Angela Slaven (Director, Youth Services And Kdaat) and Mr Geoff Mills, Democratic Services Manager (Executive)

UNRESTRICTED ITEMS

Statement by Mr Graham Gibbens

Mr Gibbens said that in his capacity as the Cabinet Member for Adult Social Services it was his view that the Board should discuss matters without him being present at its meetings. However, he said he would be delighted to attend any meeting for either its entirety or for a particular item if the Board would find that helpful.

1. Election of Vice Chairman

(Item. 3)

Mr J Kirby proposed and Mr M Angell seconded that Mrs A Allen be elected Vice Chairman of the Advisory Board.

Carried Unanimously

Statement by Mr Graham Gibbens

Mr Gibbens said that in his capacity as the Cabinet Member for Adult Social Services it was his view that the Board should discuss matters without him being present at its meetings. However, he said he would be delighted to attend any meeting for either its entirety or for a particular item if the Board would find that helpful.

2. Minutes of Meeting - 13 February 2009

(Item. 4)

RESOLVED that the Minutes of the meeting held on 13 February 2009 are correctly recorded and that they be signed by the Chairman.

3. Community Cohesion

(Item. 5 - Report by Amanda Honey, Managing Director, Communities, Oliver Mills, Managing Director, Kent Adult Social Services and Rosalind Turner, Manager, Children, Families & Education)

1) This report outlined the Community Cohesion Agenda and its implications for the County Council as a whole. It also highlighted current good practice and suggested future opportunities to collaborative work in this area. Jenny Robson highlighted in particular the core strands of work which are being undertaken at a strategic level in relation to the Community Cohesion Agenda and emphasised the importance to proactively bring this work into the mainstream of the Council's work.

2) Members of the Advisory Board said that they welcomed this report and the wide range of initiatives which were already being undertaken within the Council in order to make Community Cohesion a core part of its activities. It was also said that consideration should be given to a representative from the gypsy community attending future meetings of the Advisory Board. Mr Forrester said that officers had encouraged representatives of the Gypsy and Traveller Community to set up a Gypsy and Traveller Forum and consideration would be given to someone attending future meetings of the Advisory Board to contribute to its proceedings as appropriate.

3) The Board resolved to support the ongoing work on Community Cohesion as detailed in the report and supported the development of further initiatives and opportunities for promoting Community Cohesion. The Advisory Board also noted that there would be a further report updating it on progress in 12 months' time.

4. Update: Progress on Improvement Access & Achievement for Gypsy, Roma and Traveller Children & Young People

(Item. 6 - Report by Rosalind Turner, Managing Director for Children, Families & Education (Ms Joanna Wainwright, Director of Commissioning) (Specialist Services) was present for this item)

1) This report updated Members on progress to improve access to education and achievement for Gypsy, Roma and Traveller Children and Young People. The report included comprehensive data for the Pupil Level Annual School Census, attendance returns and monitoring of key stage outcomes. The report also gave some illustrative examples of strategies to promote access and achievement.

2) Following discussion the Advisory Board thanked officers for this report and noted the progress being made in addressing the concerns related to access and achievement of Gypsy, Roma and Traveller Children. The Advisory Board also noted that there would be a report on the Kent pilot of the National Strategies Gypsy, Roma and Traveller Achievement Programme at a future meeting.

5. South East Plan: Consultation on Gypsy, Traveller and Travelling Show People Pitch Allocations 2006-2016 - Oral Report

(Item. 7 - Report by Mr Mike Austerberry, Executive Director, Environment Highways and Waste and Mr Oliver Mills, Managing Director, Kent Adult Social Services)

(1) The Chairman declared consideration of this report to be urgent on the grounds that it contained information which needed to be considered by the Advisory Board prior to the County Council sending a formal response by 1 September 2009, on the proposals submitted by the Regional Planning Body to Government on providing Gypsy and Traveller plus Travelling Show People accommodation.

(2) The Advisory Board had before it a report which had been prepared for a meeting of the Joint Member Steering Group of Kent authorities which met on 13 July 2009. That meeting had explored the scope for a common approach for all Kent and Medway authorities in responding to the consultation on the proposals submitted by the Regional Planning body to Government on providing for Gypsy, Traveller and Travelling Show People accommodation needs 2006 – 2016. The consultation period had been extended until 1 September 2009 and was based on option D of the previous four options that had been the subject of public consultation in Autumn 2008. It was now for the County Council to consider option D but also any alternative approaches it wished to consider. Following consideration of the representations received, a Government appointed Panel of inspectors would be holding an Examination in Public from 2 to 5 February 2010 and on that basis it could be assumed that the Inspectors' report would be published in the Spring/Early Summer of 2010. Allowing for consultation on any proposed changes, it was thought unlikely that the publication of the overall pitch numbers and the district by district distribution of pitches would be before late 2010.

(3) During the course of discussion, several Members expressed concern that they had not received this report in time to read and consider its contents and come to a considered view as to what recommendations the Advisory Board should make to the Cabinet Member for him to take into account when considering the views to put forward on behalf of the County Council. Mr Angell expressed the view that he would prefer to see the number of pitches to be dealt with through the Local Development Framework as he believed that would offer a simpler approach. Mr Feasey said that this was a 2 stage process and turning distribution numbers into detail would be something that would be done through the LDF but at a later stage. Mrs Whittle said that she understood the concerns which had been expressed by Members in relation to the time they had had in which to consider the report, but that nonetheless she believed that the right approach was to adopt Option C as she believed that to be the fairest and most equitable. It was also said that some district and borough councils had yet to consider their response and it was important for the County Council to be aware of all the views which had been expressed by district and borough partners.

(4) Taking these views into account and in noting that Mrs Whittle had expressed strong support for Option C, the Advisory Board decided that it was not in a position to comment on the report at this time. It was therefore agreed that individual Members of the Board would be invited to express any views they wished to make direct to Mr Feasey as soon as possible, so that these could be co-ordinated and made available to the Cabinet Member so that he could take them into account in sending a response to the consultation on behalf of the County Council.

Tour of Kent Gypsy and Traveller Sites

(5) At the request of the Advisory Board, Mr Forrester said that he would arrange in the early Autumn for Members of the Advisory Board to visit a number of Gypsy and Traveller encampments within the county.

6. Gypsy and Traveller sites in Kent 2009 - Oral Report

(Item. 8 -Presentation by Mr Bill Forrester)

1) Mr Forrester gave the Advisory Board a presentation with regard to the provision of Gypsy and Traveller sites within Kent.

2) During the course of discussion, Mr Forrester responded to a number of questions particularly in relation to the planning laws relating to Gypsy & Traveller Encampments. He said that during the past 2 years or so, the Planning Inspectorate had shown an increasing tendency to grant planning permission for single family or small sites. What would be interesting to see now would be how the Planning Inspectorate interpreted the situation over the next 2 to 3 years in the light of the local planning policies in districts which would come into force once the South East Plan had been adopted. Mr Forrester said that he would prepare a flow chart showing who was responsible for what when it came to dealing with unauthorised caravans and encampments and would arrange for that to be circulated to Members of the Council.

By: Oliver Mills, Managing Director, Adult Social Services
To: Gypsy and Traveller Advisory Board – 26 November 2009
Subject: **NEW GYPSY AND TRAVELLER SITE PROJECTS**
Classification: Unrestricted.

Summary: A progress report on new site projects with which KCC is involved.

Background

1. (1) Since 2007, officers from Tonbridge & Malling Borough Council and from the Adult Social Services Directorate of KCC have been working closely on a project to replace the Coldharbour Traveller Caravan site in Aylesford.

(2) KCC Officers have also been working closely with officers from Swale Borough Council and Swale (now Amicus) Housing Association to replace the Three Lakes site at Murston in Sittingbourne.

The Coldharbour Site Project

2. (1) This is a project to replace the existing site, built in 1981 with planning consent for twenty-two pitches and a maximum of twenty-six caravans.

(2) Since the early 1990's, when major problems on the old site resulted in a substantial number of evictions and departures, only eight pitches on the site have been used, and the remaining amenity blocks, many unfit for use, were demolished.

(3) The new site will be established on land acquired to the north of the current site, and to the west of the Coldharbour police premises. The plan attached as annex 1 shows the location and surroundings.

(4) It will consist of eighteen pitches, including one single pitch (which caters for just one caravan or mobile home) and the remainder are double pitches (each catering for up to two caravans or mobile homes). Each pitch will accommodate one household.

(5) The site was recommended for grant aid by the South East Region's Housing and Regeneration Board and a decision from the Minister is expected any day and, if received, will be reported orally to the Board.

(6) The project will go out to tender late in 2009, for construction commencing Spring 2010 and completion by autumn 2010.

(7) Eight of the pitches will be allocated to existing households on the current site, while the additional ten will be allocated on a basis that has been agreed between the Borough Council and KCC, and which gives priority to meeting local accommodation need of people from Gypsy and Traveller communities in Tonbridge & Malling Borough.

Swale Site Needs

3. (1) Swale Borough Council is currently compiling a list of possible sites which it will consider in January 2010. These are sites to meet the overall needs in the Borough up to 2016.

(2) KCC is keen that, as soon as possible, there will be no need for people to live on the fourteen-pitch Three Lakes site in Sittingbourne, built in 1990, and not only no longer fit for purpose, but which would also be enormously costly to refurbish in its present location. The site, when opened, was half a mile from other development, but it is now bordered by the Eurolink Business Park, with land raised ten feet higher than the site, there is a greater risk now of the site being flooded in heavy rain, which has happened again within the last fortnight and, ironically, no adequate mains water pressure to fight any fire on site.

(3) KCC has also established, by agreement with Tesco Stores, the Borough Council and other stakeholders, a temporary managed encampment at the former Sittingbourne Industrial Park.

(4) The combination of the sixteen households at Three Lakes site, the seven households on the temporary managed encampment and further public site needs in Swale means that a number of public sites appear to be required.

(5) Discussions between KCC and the Homes and Communities Agency (HCA) have taken place to seek the best way of meeting and funding the remaining accommodation needs. Contacts have been maintained with the Borough Council and Amicus Horizon Housing Association, as interested parties working with members of the same Gypsy and Traveller communities.

(6) From recent discussions with the HCA, it is clear that they want to see any new site as also being a new community, and not just a replacement for an existing site. As with any new housing development, it is critical that any new site is set up on a sustainable footing, with firm and fair management from the outset, and excellent joint working between site residents, and all public and third sector agencies involved. The priority for the HCA and the Region is the provision of additional pitches towards the 550 additional pitch target they have for England over the three years to 2011. 2010 grant bids are clearly going to be prioritised according to how many new pitches they produce.

(7) The Three Lakes site and other sites and unauthorised encampments in Swale have presented enormous challenges to public agencies over the years, and the ambition is to create new sites in Swale which meet needs, support the independence of individuals, and promote the necessary education, training and employment opportunities which enable much better quality of life than many in Gypsy and Traveller communities have enjoyed.

(8) A further report will be prepared in due course for the Board on the work in Swale Borough.

Recommendation

4. (1) Members of the Board are asked to NOTE the report and ENDORSE the actions taken to secure the necessary additional site provision, to meet requirements likely to be specified in the South East Plan from 2010, following completion of the current Partial Review on the subject.

Bill Forrester
Head of Gypsy and Traveller Unit
01622 221846

Background papers: none

This page is intentionally left blank

This page is intentionally left blank

By: Oliver Mills, Managing Director, Adult Social Services
To: Gypsy and Traveller Advisory Board – 26 November 2009
Subject: **SECURITY OF TENURE**
Classification: Unrestricted.

Summary: A report on the issues and timings around the forthcoming application of the Mobile Homes Act 1983 to public Traveller sites across England

Background to security of tenure

1. (1) Ever since 1970, when Part 1 of the Caravan Sites Act 1968 came into force, those living on caravan sites specially for Gypsies and Travellers, provided and managed by local authorities, have had less protection from eviction than people living on Park Home or other caravan sites, whether privately or publicly provided.

(2) The Government of the time reasoned that “gipsies” (as they were then legally known) were nomadic, might only stop for short periods on sites, and that local authorities should be able to evict them easily, if they breached the rules of the site, or even for some other reason that was not in their licence agreement, or for which there might be little hard evidence.

(3) The landmark *Connors v UK* Ruling by the European Court of Human Rights in 2004 resulted from Leeds City Council evicting someone from a public site without going through the same processes as would have applied in housing. It resulted in some improvements to protect people on public sites from capricious eviction by local authorities, and promises by Government to do more. Under changes made in the Housing Act 2004, for example, County Councils who run sites have to give a licensee or tenant at least 28 days notice of eviction. Due to a legal anomaly, there was previously no period of time specified as a minimum for such sites.

(4) What “security of tenure” means is that a tenant or licensee of property has an agreement which must specify all of the possible reasons under which they can be evicted. It is something that people on Park Home and similar sites have enjoyed ever since the Mobile Homes Acts of 1975 and then 1983.

Housing and Regeneration Act 2008

2. (1) Section 318 of the above Act extends the overall protection of the Mobile Homes Act 1983 (as amended) to everyone who lives on publicly-provided Gypsy and Traveller sites. It gives those licensees or tenants, broadly, the same security of tenure as others on residential caravan or mobile home sites.

(2) However, there was provision in the Act for consultation to take place on whether certain Mobile Homes Act provisions should apply to public Gypsy and Traveller sites.

Consultation in autumn 2008

3. (1) Although there are still some residential caravan and mobile home sites across the country provided by local authorities, they are mainly provided by companies and individuals. The Mobile Homes Acts are therefore designed with an assumption that the agreements for people to live on them do not involve public bodies.

(2) The Communities and Local Government Department (CLG) therefore consulted on a number of issues.

(3) The most important of these were a) whether licensees or tenants on public Gypsy sites should have the right to sell their caravan and assign their pitch agreement to someone of their choosing and b) whether, when a licensee or tenant died, and there was no-one living with them in the months leading up to that, they should be able to leave their pitch agreement in their will.

(4) KCC, following consideration by this Board, responded to the consultation by saying “no” to both those suggestions. In the case of a) because the original allocation of pitches on sites is not made in return for cash, and so people should not be able to assign a pitch that they do not have any legal right to own and in b) because the sites are only for Gypsies or Travellers, and the person left the pitch agreement may well not be a Gypsy or Traveller. In both cases, with the demand for places on public sites being generally continuing and sometimes high across Kent and Medway, both these changes, if made, would further reduce the number of pitches becoming available on public sites, for those without a legal pitch.

(5) The results of the Autumn 2008 consultation, and CLG’s decisions for the next stage, are due to be published by CLG during November 2009, and will be orally reported if they have been before the Board meets.

(6) While we do not know what the response will be on the vital areas of assignment and succession, it is to be hoped that CLG will support the position that KCC and many others supported in response to the Autumn 2008 consultation, detailed in 10. above.

The timetable and what the changes will mean

4. (1) Providing the regulations pass successfully through Parliament, section 218 of the Housing and Regeneration Act is likely to come into force on 1 April 2010.

(2) On that date, all existing licence and tenancy agreements for Council-run sites will have all the implied new terms added into them (replacing or partly-replacing what is there now in those agreements). They will be called “pitch agreements” from then on, and Mobile Homes Act law will apply.

(3) This was not the option KCC favoured, when responding to the Autumn 2008 CLG consultation. We supported the option that there would be a deadline date, after section 218 came into force, by which authorities should have produced new agreements, with the new implied terms, or else the new implied terms would be automatically added in. We believed that a “big-bang” approach is much more likely to lead to confusion and possibly even legal challenge of some sort.

(4) Within 28 days after 1 April 2010, all Councils will need to provide all licensees/tenants with a “written statement” about the changes of terms. The Written Statement is in a form prescribed by the 1983 Regulations and, amongst other things, it allows the licensees or tenants of sites to challenge any of the “express terms” (that is, the terms of the agreement which are not compulsory “implied terms” through a county court or an arbitrator. The agreement itself can specify that an arbitrator will resolve express terms matters in dispute.

The need for a recommended model pitch agreement

5. (1) The National Association of Gypsy and Traveller Officers (NAGTO), which represents officers in the public sector on these matters, and which Bill Forrester, in the KASS Directorate, chairs, recommended to CLG early in 2008 that, to avoid the costs and potential confusion of every local authority having to include these new implied terms, and challenges to express terms, in its processes, that a recommended new pitch agreement should be drawn up.

(2) CLG civil servants agreed, and said that such a group would be established in March 2009.

(3) However, no such group has been established, and the commitment has apparently been withdrawn.

(4) This is likely to lead to extra costs for individual legal advice falling on all local authorities in England who currently manage Gypsy and Traveller sites.

(5) The Board is asked to support efforts to establish a standard recommended pitch agreement, even if CLG remains reluctant to co-ordinate it. Any costs falling on KCC budgets would be relatively small, and would be absorbed within current budgets for 2009/10.

Consultation Requirements

6. (1) If express terms of a pitch agreement are to be altered, then consultation in advance would be required with residents.

(2) However, as the new pitch agreements will begin on 1 April 2010, and as the licensees can object to the terms of the agreement, such consultation may not be necessary. Legal advice will be sought on this issue.

Planning Aspects

7. (1) Once new pitch agreements are in place, and assuming that the agreements will be tenancies rather than licences, then those who are party to the new agreements will have an interest in the land.

(2) As such, they would be liable for planning enforcement if they are in breach of planning requirements.

(3) This would put them in the same position as tenants of social or private housing within the same area, and is an improvement on the current position, where people are licensees, and therefore do not have an interest in the land.

(4) It may be necessary to review the existing planning consents for all sites that KCC owns and manages, to see if changes need to be made which ensure that KCC is not also subject to planning enforcement for breaches on individual pitches. Legal advice is being sought on this.

Recommendation

8. (1) Members of the Board are asked to:

- a) RECOMMEND to the Cabinet Member for Adult Social Services that CLG are asked to support a national recommended model pitch agreement for publicly-run Traveller sites
- b) SUPPORT the measures being taken to prepare for the changes to security of tenure in Kent, likely to be from April 2010
- c) SUPPORT the fullest communication with existing residents of KCC sites over the changes that will affect them
- d) AGREE that the measures to review rents need to be tied in with the changes to security of tenure and the Mobile Homes Act 1983 (with certain amendments) applying to new pitch agreements.

Bill Forrester
Head of Gypsy and Traveller Unit
01622 221846

Background papers:

Implementing the Mobile Homes Act 1983 on local authority Gypsy and Traveller sites
Consultation – September 2008 – available at:

<http://www.communities.gov.uk/documents/housing/doc/implementingmobilehomes.doc>