

By: Oliver Mills, Managing Director, Kent Adult Social Services

To: Gypsy and Traveller Advisory Board – 18 November 2010

Subject: **APPLICATION OF THE MOBILE HOMES ACT 1983 TO COUNCIL-RUN GYPSY AND TRAVELLER SITES**

Classification: Unrestricted.

Summary: Summary of Government proposals for implementation of the 1983 Act, and recommendations for KCC response.

Background

1. (1) Following national consultation across England and Wales in autumn 2008, the Coalition Government published, on 12 October 2010, the results of that consultation, and its proposals for how the Mobile Homes Act 1983 provisions should apply to existing licence and tenancy agreements for those on Council-occupied Gypsy and Traveller sites.

(2) The reasons why the 1983 Act did not apply previously to such sites are complex, and the law of security of tenure has also had a different history for sites “occupied” by County Councils from those “occupied” by other Councils.

(3) Section 318 of the Housing and Regeneration Act 2008 aimed to put all Council sites on the same footing, with the majority of the 1983 Act applying to such sites, but with a few matters, such as the right to assign a pitch agreement to someone else, and the right to leave a pitch agreement in the will of an existing site licensee or tenant, being consulted on, to see if different arrangements would be more appropriate.

(4) Current Government plans are to bring in the amended version of the 1983 Act, by statutory instrument which still has to be approved by the relevant Joint Parliamentary Committee, from February or April 2011.

Key Points from the Consultation Response Document

2. (1) Government lawyers have concluded that, due to the effect of various pieces of legislation and their impact on each other, the Mobile Homes Act 1983 has applied, in an unamended form, to all sites “occupied” by County Councils since January 2005. This was the date when the Housing Act 2004 came into force, and sections in that Act made sure that licensees or tenants on County Council sites had more protection from eviction than prior to then.

(2) KCC is currently working with all other County Councils affected to obtain counsel’s opinion on whether this interpretation of the law is correct. If the advice is that it is not, further action will be considered.

(3) On assignment of pitch agreements, the consensus of respondents to the consultation was very much in favour of not allowing such assignments to take place. The Government proposes that such assignments should not be possible for any licensees or tenants on non-County Council sites when the 1983 Act applies to their existing agreements, and for County Council sites for all new licensees or tenants (assuming that the 1983 Act already applies to such sites, and therefore existing agreements cannot have a modified version of the 1983 Act applied to them.)

(4) On succession to pitch agreements on the death of the licensee or tenant, although consultees favoured it not being possible to leave such an agreement in a will, and that is the Government's view, too, further legal advice to Government has said that it is not possible to limit this right by a statutory instrument (which is what would bring in the new law) and so it will be possible for people to leave such pitch agreements in their will to another person.

(5) There are a number of other helpful amendments to the 1983 Act application to these sites, such as that a dispute about rent levels cannot allow the licensee tenant to delay agreement of their new pitch agreement, and that a failure to sign a new agreement will lead to a licensee or tenant facing a repossession of their pitch.

Standard Pitch agreement for licensees or tenants

3. (1) In an effort to avoid every single site-managing Council in England having to seek their own legal advice on the effect of the 1983 law on their own current licence or tenancy agreements, KCC, other Councils and the National Association of Gypsy and Traveller Officers (which is chaired by Bill Forrester) proposed back in 2008 that a standard recommended pitch agreement should be devised and promoted. This would include all the standard "implied terms" which the 1983 adds by law to any pitch agreement, as well as reasonable "express terms" which could be adopted by site-running Councils.

(2) Although in 2008, the Department for Communities and Local Government (CLG) were keen on the idea, it appears that they have since been advised against recommending any particular terms for inclusion in agreements made between local authorities and Gypsy or Traveller licensees. The latest CLG document is very lukewarm on the idea.

(3) Indeed, CLG recommends that no changes should be made by Councils to their agreements before the new law comes in, but the new law should simply apply to existing agreements on non-County Council sites and new agreements on County Council sites, whatever the confusion that results from that for Councils and site residents.

(4) However, there is still great support for the idea of a standard recommended pitch agreement in Councils across the country, especially with the need to avoid unnecessary spending.

Implications for KCC-managed sites

4. (1) Seven of the ten sites currently managed by the KCC Gypsy and Traveller Unit are in the freehold ownership of KCC, and are therefore definitely "occupied" by KCC, and have been since before January 2005.

(2) The Windmill Lane site in West Malling is within the freehold ownership of Tonbridge & Malling Borough Council and therefore advice will need to be taken on whether it is “occupied” by KCC, who have managed it since 1993.

(3) The two Maidstone Borough Council sites are managed under a written contract, and are therefore “occupied” by Maidstone Borough Council.

(4) Joint legal advice with other County Councils is being pursued over the question of whether the Mobile Homes Act 1983 has applied since January 2005, and any decisions will need to await the advice.

Conclusions

5. (1) The current position is complex, and there is a need to find clarity for County Councils, especially, on what law currently applies to agreements with licensees or tenants on sites they manage.

(2) There is a need to obtain the best legal advice on that issue, jointly with other County Councils. There may well be other issues which need legal advice, jointly with a wider range of Councils.

(3) There are clearly benefits, to help bring in the new law, in having a new standard recommended pitch agreement, capable for local modification where the 1983 Act allows, and local circumstances dictate.

(4) There is a need for Councils to have enough time to bring in the changes with the least confusion to all parties as is possible.

(5) All Councils across the country, and including KCC and other Kent and Medway Councils who currently manage sites, need to communicate the impact of these changes to those on sites they manage, and working closely together on how best to do that.

Recommendations

6. (1) Members of the Board are asked to recommend to the Cabinet Member for Adult Social Services:

a) support for seeking joint legal advice with other County Councils about the current application of the 1983 Act to Gypsy and Traveller sites occupied by county councils, and, if necessary, other issues of joint concern with other County Councils or other Councils.

b) support for a joint or solo approach to CLG, including an approach to a Minister, if appropriate, about the benefits of a standard recommended pitch agreement for all such Council sites, and seeking their support for this.

c) if CLG are unwilling to support this, support for work with other Councils and other interested parties to devise such a recommended agreement, with costs shared amongst interested parties.

d) support an approach to CLG to ask for a reasonable time (perhaps until June 2011) for the change to be able to be brought in smoothly and with least confusion and expense being risked.

e) support the work of the joint Kent and Medway site managers group in working jointly to bring the new law in effectively across Kent and Medway sites.

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Background paper: Consultation on Implementing the Mobile Homes Act 1983 on local authority Gypsy and Traveller Sites - Summary of responses