

By: Oliver Mills, Managing Director, Adult Social Services

To: Gypsy and Traveller Advisory Board – 5 December 2008

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

Classification: Unrestricted.

Summary: Proposed response to a Government consultation on which parts of the Mobile Homes Act 1983 should be included in future agreements between Councils and those who live on Council-run Traveller sites.

Recommendations

Members of the Gypsy and Traveller Advisory Board are asked to support a KCC response to the consultation as detailed in the report below, and in particular:

- a) to oppose assignment of plots on publicly-run Traveller sites being permitted by law, recognising that such assignment could be introduced locally, by site or area, if circumstances make it desirable.
- b) to support succession to plots on death, but not allowing pitch agreements to be inherited under the wills, or on the intestacy, of existing licensees or those with pitch agreements in the future.
- c) to support the following proposal for the introduction of new pitch agreements across all council-run Traveller sites in England: **“Authorities should have to make new plot agreements by a set deadline; if they did not, then the new implied terms would be added in on that date.”**
- d) to make the additional comments on the consultation as detailed in the report below.
- e) to support circulation of the KCC response to other Councils in Kent, in time for them to support it or use it for a response before the 19 December deadline.

Background

1. At the last meeting of this Board, Members received a report on the passing of the Housing and Regeneration Act 2008, which will make most or all of provisions of the Mobile Homes Act 1983 apply, for the first time, to agreements between councils and Gypsies and Travellers who live on Traveller sites run by those Councils.

2. As allowed by the Act, the Communities and Local Government Department is now consulting on proposed changes, and responses must be received by 19 December 2008.

3. A summary of the consultation, showing the key questions and suggested options is attached at Appendix 1. However, Question 12 of the consultation invites comments on other matters on which there should be transitional provisions. The whole consultation document can be accessed on the weblink:

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

4. Discussions have already taken place or are planned with the Countywide Officer Group, within the Gypsy and Traveller Unit, who manage 8 of Kent and Medway's 17 Council Traveller sites and other Kent and Medway Site Managers (who manage the other 9). There are also plans to get the views of people on people on sites managed by the Gypsy and Traveller Unit.

Key Areas of consultation

A – Assignment of Agreements

5. CLG suggests two alternative options. Either (1) it should not be possible for existing licensees to sell on the caravans on their plots and assign their pitches or (2), if they wish to do so, the landlord Council should be able to refuse the request because of the need in the area for pitches for those on the waiting-list.

6. There is a third option (3), which is the position in the Mobile Homes Act itself, which is to allow assignment of pitch agreements, unless the Council can reasonably refuse permission for assignment because of information or evidence it has about the individual to whom the assignment is due to be made.

Discussion

7. It is worth noting that a Council can introduce its own assignment arrangements, if it wishes, either for one or more of the sites it manages. What is being discussed here is what the law should specify as the minimum requirement.

8. Data for applications for the eight sites managed by KCC shows that, during the past five years, 159 households have applied to and been accepted on KCC's site waiting list. 78 households have subsequently been allocated plots. A considerable number of applications result in the applicant losing touch with the Unit, or not renewing their application annually. Some at least probably acquire accommodation elsewhere.

9. Allocations to vacant pitches are currently made under the allocation policy, which is attached as Appendix 3, and where allocation is made primarily on grounds of greatest need, but also allows applications to be refused on specific "management considerations" grounds.

10. The number of site waiting-lists applications, although high, almost certainly do not reflect the full scale of need. The same is true with ordinary housing applications not reflecting the scale of housing need. Therefore, the potential demand for sites currently managed is clearly greater than the numbers applying for pitches.

11. There are various reasons for this. One is the contact that families have with each other. Many will know if a plot is going to become vacant, and applications may well rise when there is one. Conversely, unless families are in dire need for accommodation, they are unlikely to apply for most or all of the sites managed, and, if they are in dire need for accommodation, they will not want to be on a long list. There is also the issue of compatibility of families. Applicants rarely apply for a site where they have no relatives, friends or contacts. That is also an issue that dissuades those from communities like Irish Travellers from making applications, although they are treated in the same way as any other applications, and their applications welcomed.

12. If assignment is not mandatory under the law, then those applying for site pitches know they have a better chance of being offered a vacant plot, based primarily on their need for one.

13. If assignment under (3) is allowed, then the link between offers of pitches and need for them will be broken, and this will work heavily against those families in greatest need. It would also effectively allow sale of pitches, because caravans could be sold on.

14. Assignment under options (2) or (3) could be confusing for people, and it would involve a series of potentially complex decisions, open to challenge, by Councils.

15. In conclusion, option (1) comes out as the clearest and best option under the law, with the possibility of it being modified locally, where required.

Recommendation

16. It is therefore **recommended** that KCC should oppose assignment of plots on publicly-run Traveller sites being permitted by law.

Additional comment

17. Once there are additional sites to meet needs, it would be possible to allow assignment of pitches for individual sites, or across an area or county, on the terms we decide.

B – Succession to plot agreements

18. Up to now, there have been no rules on Council Traveller sites on who should succeed to a plot on the death of the licensee.

19. In practice, where a couple are joint licensees, and one of them dies, the other will usually take over the licence.

20. However, where someone is a sole licensee, or a sole surviving one, and they die, then it is important to have standard rules about succession to the plot agreement.

Discussion

21. The consultation document does not ask questions about the Mobile Homes Act succession arrangements, but there are some important points that need to be clarified. These include:

a) The list of people who could succeed to the plot includes a “spouse” or “civil partner”, but there many couples in the Romany Gypsy and other Traveller communities who are not legally married, but who are married as far as their community is concerned. It is important that they are able to succeed to the plot agreement.

b). On the death of someone from the Romany Gypsy community, their caravan and all their belongings are customarily burnt. Should this be their main living caravan, then it is important that the survivor who takes over the pitch can live in a new caravan on the pitch.

22. The question asked in the consultation document is whether, if there is no one to succeed to the plot, the pitch agreement can be inherited by the person entitled under the deceased licensee's estate. This would be either under a will, or under the rules for intestacy, if there is no valid will.

23. One difficulty with that proposal is that the person entitled to inherit may or may not be eligible to, or wish to, live on the site themselves (they may or may not be a Gypsy or Traveller) and they may well have perfectly good accommodation elsewhere.

24. A second difficulty is that it could lead to delays during probate, a vacant plot which would need to be protected, until the issue is resolved, and loss of income to the landlord council.

Recommendation

25. It is recommended that KCC support succession to plots on death, but not allowing pitch agreements to be inherited under the wills, or on the intestacy, of existing licensees or those with pitch agreements in the future.

26. Therefore, a pitch to which no-one is entitled to succeed would come back into the pool that the Council can allocate to someone on the waiting-list.

The way that new plot agreements replace current licences

27. There is just one other important matter for discussion from the consultation document, the question of whether:

a) Authorities should have to make new plot agreements by a set deadline;* if they did not, then the new implied terms would be added in on that date; or

b) Current licences should have all the new implied terms automatically added in to them from the date this part of the Act comes into force.

28. To avoid the confusion of current licence agreements having lots of extra implied terms added in to them automatically, it is **recommended** that option a) should be pursued.

Other matters

29. Most of the remaining questions asked in the consultation appear to be much less significant, and it is recommended that all the options suggested are agreed to.

30. However, it is recommended that KCC's response to the consultation also comments on other matters of detail, referred to in this agenda item.

* some time after a date in the middle of 2009, when these provision are likely to come into force.

Recommendation

31. Members of the Gypsy and Traveller Advisory Board are asked to support a KCC response to the consultation as detailed in the report above, and in particular

- a) to oppose assignment of plots on publicly-run Traveller sites being permitted by law, recognising that such assignment could be introduced locally, by site or area, if circumstances make it desirable.
- b) to support succession to plots on death, but not allowing pitch agreements to be inherited under the wills, or on the intestacy, of existing licensees or those with pitch agreements in the future.
- c) to support the following proposal for the introduction of new pitch agreements across all council-run Traveller sites in England: **“Authorities should have to make new plot agreements by a set deadline; if they did not, then the new implied terms would be added in on that date.”**
- d) to make the additional comments on the consultation as detailed in the report below.
- e) to support circulation of the KCC response to other Councils in Kent, in time for them to support it or use it for a response before the 19 December deadline.

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APPENDIX 1 – SUMMARY OF THE PROPOSED CHANGES

Annex A

Summary of issues for consultation

Applying the Mobile Homes Act provisions to local authority Gypsy and Traveller sites

Assignment (paragraphs 21 – 30)

We have identified two options for dealing with the issues raised about assignment by the current shortage of authorised sites:

- do not apply the right of assignment to local authority Gypsy and Traveller sites; or
- require that in considering whether to approve a proposed assignee, local authorities must consider the needs of Gypsies and Travellers in their area as well as those of the proposed assignee.

Question 1: Which of these two options do you think the Government should pursue to deal with the issues raised by the right to assignment on local authority Gypsy and Traveller sites? Please explain why.

Succession (paragraphs 31 – 38)

Where there is no spouse or family member living with a resident when they die, the MHA enables the person that inherits the caravan (either through a will or, if there is no will, under the laws of intestacy) to sell it and assign the agreement.

Question 2: Do you agree with the proposal that the provision in the MHA relating to succession, where no family member is living with a resident when they die, should not be applied to local authority Gypsy and Traveller sites, whichever option we decide to pursue in respect of assignment generally?

Re-siting a caravan (paragraphs 49 – 50)

Question 3: Do you agree with the proposal to amend the implied terms to enable local authorities to require a resident on one of their Gypsy and Traveller sites to move their caravan to a pitch on another site, as well as another pitch on the same site, for example when they need to carry out repairs to the pitch?

Question 4: Do you agree with the proposal to amend the implied terms to clarify that local authorities will continue to be responsible for repairing any amenities provided by them on the pitch as well as the base (or hardstanding)?

Site owners responsibility for repairs (paragraphs 51 – 52)

Question 5: Do you agree with the proposal to amend the definition of “essential repair and emergency work” in the implied terms to specify that these works include repairs to amenities provided by the local authority, as well as the base (or hardstanding)?

Moving from licences to agreements (paragraphs 57 – 73)

We have identified two options for moving from a position where existing residents have licences under the CSA to one where they have agreements under the MHA:

- local authorities would be required to make agreements under the MHA with existing licence holders by a specified date. If a local authority failed to make an agreement by the specified date, residents would be deemed to have agreements from that date which include the terms of their licence; or
- all existing licences would be deemed to be agreements to which the MHA applies from the date section 318 of the HRA is brought into force.

Question 6: Which of the two options do you think is the better option for moving from licences to agreements? Do you agree with the assessment of the pros and cons of each option? Is there a further option which we have not identified?

Breaches of licence relevant to the agreement

(paragraphs 77 – 78)

Where a term of the licence has been breached and the local authority has written to the resident before the agreement is made, asking them to remedy this breach within a certain timescale, we propose that the local authority should be able to apply to the court to terminate the agreement once it is made, without writing to the resident again as the implied terms would require. However, the local authority would only be able to do this where the term of the licence that had been breached was also in the agreement.

Question 7: Do you agree with this approach to breaches of a licence relevant to the agreement?

Overpayments (paragraph 79)

Question 8: Do you agree with the proposal that residents should also be able to use the implied terms to recover any payments made under a licence that might cover the period after an agreement is terminated?

Pitch fees (paragraphs 80 – 84)

Question 9: Do you agree with the proposal that if a licence includes a review date for the pitch fee, this date should continue to be the review date in the agreement? Do you also agree that if no review date is included in a licence then the last review date for the purposes of calculating the change in RPI should be a year prior to whatever review date is included in the agreement?

Question 10: Do you agree with the proposal to delay applying the implied term in the MHA that makes the presumption about pitch fee changes and the RPI to Gypsy and Traveller site owned by county councils until after the DWP has made the changes necessary to resolve the anomaly in the way housing benefit is paid for these sites?

Improvements proposed before agreement (paragraphs 85 – 86)

Question 11: Do you agree that where a local authority has already consulted residents on proposed improvements to a site prior to an agreement being made they should not have to consult them again, as the implied terms would require?

Question 12: Do you think there are any other implied terms under the MHA which may require transitional provisions?

APPENDIX 2 – CURRENT GYPSY AND TRAVELLER UNIT ALLOCATION PROCEDURE

KCC Gypsy and Traveller Caravan Sites Allocation Policy and Procedure

Aim

Our aim is to ensure allocations are made according to the needs of applicants, and to ensure effective management of sites and protect the interests of other residents. The Gypsy Unit aims to treat all applicants and all applications fairly.

Applications for Plot Allocation and the Waiting List

If you want to go on to our Site Waiting List (for a pitch or new pitch on any one or more of the sites we manage) you must fill out – or ask us or someone else to help you fill out – this form. We will let you know, in writing, that we have got your form and respond to any letters within 10 days. We will ask you to come to an interview so we can discuss your accommodation needs and personal details. If we cannot offer you a place on our Waiting List, we will write and let you know why within 30 days of getting your form. If we need to know more we will ask you more questions, and it may take longer. We need evidence to support information you provide on this form. You must also let us know if any of your circumstances change.

If we cannot immediately offer you a Plot on a site you want to live on, we may put you on our Waiting List for the site or sites you have named, unless we tell you why we cannot do so. We will take you off the list for any site after 12 months unless you let us know your latest details, and say that you want to remain on the list. It is up to you to keep in touch with us, by phone, letter or e-mail, so we can let you know if a Plot become available on one of your chosen sites. If you give us an address or number, we will write or ring you to remind you 11 months after you go on the list, unless you have rung us, or you

have accepted a plot offer in the meantime. The more sites you apply for, the bigger your chances of being allocated a Plot. Our form is for sites managed by Kent County Council – these are listed at the beginning of this form. Other Kent public sites especially for Gypsies and Travellers are also listed, telling you which Council to apply to. Contact them and apply direct.

Only a few Plots become available for letting each year, and some can only take a single trailer, or have limits on space or facilities, meaning that they cannot be offered to any family on the list.

We want plot offers to be fair. We need accurate and current information from you, the applicant, so we can assess need and/or possible management problems at an early stage (including comments from other services, local authorities, the Police and local knowledge). When you apply, you agree we can make suitable and confidential inquiries to help us decide on your application, and you agree that agencies and other organisations can give us personal and confidential information about you.

If you apply for more than one of our sites, an offer of a plot on any site cancels the other applications.

Allocation Criteria

(not in order of importance)

Special Need – This includes the following:

Urgent Housing Need – to include:

- Presently homeless or threatened with homelessness, under English law, whether a homelessness application has been made or not.
- Living in overcrowded circumstances/a victim of violence or harassment.

Vulnerability

- As assessed or advised by a Social Services or Education Authority, including currently receiving or needing support services in the area.
- Medical – as advised by a doctor, health visitor or similar medical advisor, including currently receiving or needing support services in the area.

Other Factors

- Applicant or household member has regular employment in the County or area near the site applied for.
- Can prove travelling links with the County.
- Family has a child of school age regularly attending a school within the County.
- Has immediate family within the County – defined as parent, child, sibling, grandparent or similar close relationship.

Management Considerations

The council will take due account of any potential management problems which may arise from, amongst other factors (which will be specified in any decision letter), any reasonably held belief as to incidents, especially within the previous three years, of violence, damage to site facilities or property elsewhere or nuisance or antisocial behaviour to Gypsy & Traveller families or other residents within the Council's area or neighbouring areas.

In addition, due account will be taken of the need to ensure that those who are allocated plots are compatible with other existing family groupings both within any official Gypsy & Traveller site or to residents within the locality of such a site, whether or not they have had any previous contact with each other.

Site Rules/Licence Conditions

All successful applicants will be asked to sign a licence (both applicants where the licence is joint) which sets out the rules governing the good conduct of sites and advising that a breach of the licence is likely to result in formal action being taken to seek the removal of the licensee responsible from the site. A sample copy is attached for information. Once signed, each applicant /joint applicant will be issued with a copy.

KCC Gypsy and Traveller Caravan Sites Allocation Policy and Procedure

Appeals

There is no specific appeals procedure in respect of the Council's refusal to allocate a plot or the non-inclusion of an applicant on the Council's waiting list. Any grievances can be handled via the Kent County Council's formal complaints procedure, a copy of which can be obtained on request from the Head of the Gypsy Unit, Brenchley House, 113-115 Week Street, Maidstone, Kent ME14 1RF.

Who can go on the Site Waiting List

To apply to be a licensee, you need to be all of these:

- At least 16 years old.
- A Gypsy or Traveller, either by ethnic group or under the current legal definition.
- Not "intentionally homeless" under the Housing Act 1996.

Restrictions

We have a waiting list to achieve a balance between meeting accommodation needs, managing resources and fostering an acceptable quality of life on sites in accordance with our allocation procedures. Applicants may not, therefore, be eligible if there is evidence of recent behaviour, **by an applicant or a member of their household**, likely to affect the management of the Council's site and/or adversely impact on the Site Community.

Examples of exclusions could be where an applicant, or a member of their household, has, especially recently:

- Convictions for violent or other serious offence(s).
- Convictions for drug use or drug dealing.
- Used threatening language or behaviour to any officer of a Council.
- Been subject to an injunction over violent behaviour in the past three years.
- Behaved in an antisocial manner towards neighbours.
- Supplied false or misleading information when making a Plot Waiting List application.
- Deliberately worsened their housing situation without reasonable cause.
- Moved onto one or more of our Sites without permission in advance.
- The applicant, or a member of their household, has property in Kent which they can reasonably be expected to occupy.