

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.

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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>