

USING THE LAW TO PROMOTE
FAIRER HOUSING CHOICES
FOR GYPSIES AND
TRAVELLERS
Helen Mountfield QC

The problem



- EHRC policy research and engagement with relevant communities suggests that Gypsies and travellers are very vulnerable because they are
- marginalised,
- the subject of legitimised public prejudice, and because of this,
- planning authorities often fail to provide sufficient stopping places and traveller sites to enable them to practice a nomadic habit of life.

The result



- Leads to homelessness (DCLG estimate 13%) and unlawful stops, community tension and cost
- For those where travelling is part of their culture and way of life, Gypsies and Travellers are sometimes forced (in effect) to choose between their traditional lifestyle and cultural identity and a lifestyle based on a cycle of unstable unauthorised encampments and eviction, with limited access to health, education and employment opportunities.
- To force Gypsies and Travellers to make this painful choice is unlawful and unfair. It can create conflict and distrust which damages community cohesion and imposes considerable enforcement costs on local authorities.

Duty of special consideration



- *“The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in arriving at decisions in particular cases. To this extent there is ... a positive obligation ... to facilitate the gypsy way of life”.*
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- *Chapman v United Kingdom* (2001) 33 EHRR 18 at [96]

Can the law help?



- Repeal s225 and 226 Housing Act on cards;
- But planning law and
- Public sector equality duty may help

- Duty to assess housing needs of gypsies and travellers should continue.
- This is not 'special treatment'. Local authorities have a duty to identify and keep up to date a deliverable five year housing land supply under the National Planning Policy Framework (NPPF).
- Assessing housing need means everyone's needs:
- Discrimination not to feed everyone's housing needs into local plans – can lead to more refusals of PP

In summary ...



- **So to ensure equal treatment for Gypsies and Travellers in obtaining planning permission for housing:**
- **Gypsy and Traveller housing need should be specifically included in housing needs assessments, and**
- **Available, suitable and economically viable land for Gypsy and Traveller sites must be included in local authorities' Strategic Housing Land Availability Assessment.**

Negotiated stopping



- Local authorities can help Gypsies and Travellers to practice their travelling lifestyle – and save considerably on enforcement costs and harm to community cohesion - by introducing a ‘negotiated stopping policy’.

The Leeds Gate example



- Leeds Council and Leeds Gypsy and Traveller Exchange created a new approach to managing temporary roadside encampment by Gypsy and Traveller people.
- Instead of resorting to legal means to shift unauthorised camps, they now use dialogue and negotiation to enable travelling families to stay for limited periods of time, on ground where it isn't causing great inconvenience to anyone.

Win: win



- The families make an agreement with the authority about acceptable behaviour, waste disposal, and when the camp will leave, and the authority more or less leaves them alone.
- Trust is increased, conflict and exclusion are reduced, and Leeds Council calculates it makes a saving of £2000 a week on enforcement costs compared on expenditure before the policy was introduced.

Non-discriminatory planning criteria



- **Ensure only relevant planning considerations are taken into account in determining planning applications made by Gypsies and Travellers.**
- Because of deep-seated prejudices and distrust, planning applications for Gypsy and Traveller sites often encounter many community objections
- Planning officers should be aware of this, and should ensure that objectors are told that only relevant planning considerations will be taken into account.
- They should also ensure that only relevant planning considerations are taken into account.

- **What it means in this context**
- Local authorities have to give effect to the public sector equality duty in carrying out planning functions, including the conduct of housing needs assessments and devising local plans.

“it is incumbent upon every institution to examine their policies and the outcome of their policies and practices to guard against disadvantaging any section of our communities”

Sir William MacPherson

What is the PSED for?



- To guard against the creation *or continuation* of policies and practices which, if their impact remains unexamined, may disadvantage particular sections of our communities. (*R (Brown) v SSBIS* at [30])
- To 'avoid the inadvertent' creation of disadvantage (*R(Luton Borough Council & Ors) v Secretary of State for Education*[2011] EWHC 217 (Admin) at [115])
- To require decision makers to recognise and address equality issues: *R(Bapio) v RCGP & GMC* [2014] EWHC 1411 Admin

- The duty is to have due regard to the need to (a) eliminate unlawful discrimination, (b) advance equality of opportunity, and (c) *foster good relations between people with the protected characteristic and those without it.*

- Local authorities have to give effect to the public sector equality duty in carrying out planning functions, including the conduct of housing needs assessments and devising local plans, individual planning decisions and enforcement

So ...



- This means that they have to give due regard to the needs to:
 - Avoid unlawful discrimination against Gypsies and Travellers;
 - Advance equality of opportunity for Gypsies and Travellers; and
 - Foster good relations between Gypsies and Travellers and other groups in society.

- Widespread community distrust against Gypsies and Travellers means applications for planning permission for Traveller sites sometimes generate a large volume of objections.
- This type of prejudice must not adversely influence planning decisions.
- Remind councillors on planning committees that they must not discriminate against Gypsies and Travellers or take irrelevant considerations into account in reaching decisions on planning applications for Traveller sites.

A community cohesion strategy?



- Duty to give due regard to the need to promote good relations between gypsies and travellers and others can be a challenge:
- What do you do?
- What could you do?
- What should you do?

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