Traveller Law Research Unit

LAW REFORM - GYPSIES AND OTHER TRAVELLERS

Occasional Discussion Paper No. 2
(linked to the conference on Traveller Law Reform held on 26 March 1997)

The responses to the government's consultation paper *Reform of the Caravan Sites Act 1968* (issued August 1992) were overwhelmingly in favour of a retention of (i) the duty on local authorities to provide sites and (ii) the Exchequer grant.[1] The subsequent repeal of the duty and the grant by the Criminal Justice & Public Order Act 1994 has done nothing either to alleviate the difficulties faced by Gypsies in obtaining secure accommodation or to reduce local authorities' administrative difficulties in dealing with unauthorized encampments.

The philosophy underlying the 1994 reforms (if such existed) was probably the concept of replacing public with private provision: the private sector (primarily Gypsies themselves) providing the sites which public sector had failed to provide. This was based upon the mistaken premise that the public provision had failed - whereas it had in fact achieved a great deal. The Gypsy count of 22 March 1965 analysed in *Gypsies and other Travellers*[2] recorded 3,400 caravans (in England and Wales) accommodating 15,000 persons.[3] Only ten council sites existed at that time, accommodating only 4% of all Travellers. The report did not record the number of Gypsies on 'unauthorized' sites, but only 29 licensed private Gypsy sites were recorded and it is likely that the 'unauthorized' figure was almost 80%.[4] The last Gypsy counts before the abolition of Part II of the Caravan Sites Act 1968 recorded 13,329 caravans in England and Wales; of these, 6,063 were on a total of 324 council sites and 3,204 on private licensed sites, while 4,062 (appox 30%) were on 'unauthorized' sites. Despite the apparent quadrupling of Gypsy caravan numbers in the intervening period, the unauthorized encampment figure had reduced from 80% to 30%.

It is also questionable whether private planning solutions, propounded by the 1994 reforms, could even in theory succeed in making adequate provision, even if underpinned by all local authority structure plans containing realistic attainable Gypsy site provision policies. Land is generally only developed when it is in the interests of the land owner; policies alone do not create sites. Gypsy site development does not (necessarily) significantly enhance the value of land (as opposed to planning permission for other types of development[5]).

Whilst the 1994 reforms have produced no obvious benefits, it has to be said that neither has there (as yet) been any spectacular deterioration in the site arrangements for Gypsies. We may, however, be in the lull before such a deterioration does become apparent. During the last two years there have continued to be a number of public sites coming to fruition,[6] being those for which Exchequer grant approval had already been given in principle prior to 1994.[7] The possibility exists, however, that in the coming years there will be a steady loss of public sites (if not an exponential loss) as they

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1 Of the 1400 responses to the consultation paper the majority believed the proposals to be unworkable, *per* Lord Avebury *House of Lords Parliamentary Reports* 7 June 1994 Vol 55 No. 96 column 1118.
2 HMSO (1967)
3 The report emphasized (as did the subsequent Cripps Report) that this count was considered an underestimate.
4 Extrapolated from Table 3.3 p20 (*ibid*) and Ministry of Housing and Local Government Circular 26/66 para 1(e).
5 That is, a planning regime which made Gypsy site development subject to the same criteria as housing development would discriminate in favour of housing development, because of the substantially greater value paid for housing land as opposed to land accommodating Gypsy caravans.
6 During 1995 there was a net increase of 173 pitches on council sites (a total of 5,387 pitches) in England (DoE Gypsy Sites Branch data (April 1996)).
7 On 18 August 1992 the DoE announced substantial restrictions in the availability of grants (limited in practice to cases where sites had reached an advanced stage of planning; the grant was abolished by s80 Criminal Justice and Public Order Act 1994.

deteriorate and funds are not available for refurbishment. Public sites for Gypsies are traditionally expensive to maintain with high cyclical maintenance costs and generally requiring regular programmes of refurbishment.

The need for reform of the present legal situation is not in question. Indeed, there already appears to be considerable agreement (between local authorities[8] and many Gypsies and other Travellers themselves) on the necessary reforms. Such reform will need to be imaginative and cannot assume much in the way of new Treasury funding.

Compared with other pressing national issues, law reform in this area requires only minor statutory amendment and probably no new resources in net terms. The July 1996 Gypsy caravan count recorded 3,469 caravans (not families) in England who were not on 'legally authorized' sites. Many of the people living in these caravans will be on land where they are causing no social or environmental harm or highway danger. Some of them, however, will be seeking an alternative legal pitch. Compared with the nation's new housing requirements (for which planning authorities cater fully) the resources required to provide for families who occupy this relatively small number of caravans are modest.[9]

The proposed reforms could include:-

1 The reintroduction of the local authority duty to provide sites:

There is wide acceptance that it is imperative that a public agency be identified as having a primary responsibility where Gypsies and other Travellers are otherwise without suitable accommodation.[10] The importance of such a (target[11]) duty lies in its restraining influence upon councils (by encouraging the stabilization of existing sites); the right itself is not enforceable in the sense of enabling individual Gypsies to claim compensation where there is a breach of the duty.

2 The reintroduction of 100% Exchequer grants:

The grants[12] were introduced in the Local Government, Planning & Land Act 1980 and, until their repeal, the gross cost to the tax-payer was 'about £100 million'.[13] This averages out at less than £7 million per annum or approximately £15,000 per local authority. The figure is small when compared with the Housing Corporation grants for public accommodation and probably is significantly less than local authorities spend on anti-Gypsy measures such as eviction, highway ditching/obstruction of traditional sites, and in relation to public complaints. The importance of 100% Exchequer grants was emphasized by Sir John Cripps[14] and accepted in the Department of the Environment Circular 57/78. The short-term public spending effect of reintroducing such a grant would be negligible; it would take at least two years for any new sites to be approved by the DoE and most probably it would be five to seven years before the grant payments returned to their pre-1994 levels.

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8 Association of District Councils

9 The situation revealed in *Buckley* v *UK* gives a graphic example of this paradox: Mrs Buckley was refused planning permission for her caravan in the Willingham area, because (in the local authorities' view) the area had already reached a 'saturation' point of Gypsies. In fact the permission would have increased the local Gypsy population in the area to 23, the population of Gypsies having grown from 8 in 1981 to 23 in 1991. During the same period the population of house-dwellers in Willingham had grown from 2,513 to 3,319.

10 The repeal of the duty in 1994 was opposed by all the local authority organizations as well as by the National Farmers Union and the Country Landowners Association.

11 *R* v *Inner London Education Authority ex parte Ali* (1990) Admin LR 822

12 Grants, although of crucial importance, are not a 'cure-all'; the Environment Committee in its Third Report 1989-90 (373) on the DoE's Main Estimates (1990-91) noted that despite the fact that the Exchequer grants were having the desired effect of substantially increasing public site provision, there were '*other authorities which would ... even if they had the £5 notes put in front of their eyes, be reluctant*' (at para 54).

13 Para 1.37 United Kingdom Memorial (*Buckley* v *UK*)

14 *Accommodation of Gypsies* (1976) par 4.4 (HMSO)

3 The replacement of DoE Circular 1/94 by more robust planning guidance:

Such planning guidance, which would apply to all applications until local authorities have adopted similar (or more positive) provisions within their own development plans, would be backed up by a reformed Gypsy Sites Branch within the DoE. The branch would have authority (backed up by appropriate political will[15]) to see through the new policy changes. At present the refusal rate for Gypsies who have applied for planning permission is approximately 90%, in contrast to the general success rate for all applications of over 80%.[16]

4 The repeal of sections 77-80 of the Criminal Justice & Public Order Act 1994:

The eviction provisions are contrary to the European Convention on Human Rights and have proved in any event to be unworkable (see, for instance, *R* v *Wealden District Council - ex parte Atkinson and Others* (1995) *The Times* 22 September). The European Court of Human Rights in its decision *Buckley* v *UK* restricted its consideration to the law prior to 1994, because Mrs Buckley's complaint arose prior to the implementation of the 1994 Act. Section 77 criminalizes camping on roadside or on unoccupied land even where the owner of the land consents to the encampment and the camping is causing no nuisance, annoyance, or highway danger; it therefore (without any democratic justification) out-laws the very places where Gypsies traditionally camp (roadside, waste land, or unoccupied land).[17]

5 The extension of the remit of housing associations:

Housing associations should be enabled to identify, acquire, build, sell, and/or manage Gypsy and other Traveller sites. Housing associations have (in this respect) the distinct advantage of being independent of political interference. At present housing associations in England (unlike, it appears, in Scotland) are restricted to the provision of housing accommodation, and Housing Corporation revenue deficit grants are also restricted to housing activities (s51 Housing Act 1988). The reform legislation would need, therefore, to amend the Housing Corporation finance structure, to enable grants to be made to associations for site construction, refurbishment, management, and sale. Such independent providers would also be eligible for external financial support from, for instance, local authorities, the European Union, and the National Lottery. They would be more likely to provide caravan sites than local authorities because the latter frequently do not seek planning permission of suitable 'surplus' land in their ownership, for purely political purposes. Such specialist organizations would also be more likely to succeed because they could develop in-house planning expertise.

6 Other measures for housing associations with specialist expertise:

In addition, consideration could be given to granting housing associations which developed particular expertise in this field:

(i) specific grant aid to support and assist private Gypsy (and other Traveller) site applications; and

(ii) exempted status under the First Schedule of the Caravan Sites & Control of Development Act 1960. Under paragraph 12 of this schedule the Minister is

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15 In the 24 years that Part II of the Caravan Sites Act 1968 was in force, despite the wholesale breach of duty by virtually every local authority in England and Wales, the Secretary of State only issued seven directions (under s9) and never sought to enforce such directions by *mandamus*. In every case where a direction was issued, it was done to fend off court action against the Secretary of State by Gypsies.

16 Column 1132 - 7 June 1994 *House of Lords Parliamentary Reports - per* Lord Irvine of Laird.

17 Of section 77 Lord Avebury asked if the Government would say '*whether they have considered the possibility of a flood of applications under Articles 8 and 14 being declared admissible by the Commission and how they answer the charge that I now make, that what they are doing ... is a deliberate violation of our obligations under the convention?' House of Lords Parliamentary Reports* 7 June 1994, Vol 555, No. 96 column 1117.

empowered to grant a certificate of exemption[18] to any organization where he or she is satisfied that its objects include the encouragement or promotion of recreational activities. Minor amendment to this provision could enable approved housing associations to benefit in much the same way as already enjoyed by the Caravan Club and the Boy Scouts.

7 Other suggestions for reform:

Of course, the list of reform proposals above is not exhaustive. Other suggestions include a proposal that farmers be permitted to grant short-term licences for a limited number of Travellers[19] - as an enlargement of their already existing powers under Schedule 1 of the 1960 Act; and that as a general measure (via the planning provisions or as part of a reinvigorated housing/accommodation role) the government could encourage an extension of the 'self-build' movement to include Travellers' sites by means of a range of loans targeted on the self-build movement.

None of these proposals is particularly radical. Many have been put forward by local authorities and other agencies who have historically been stereotyped as being 'anti-Traveller'. There is, however, a great desire by Gypsies and other Travellers and those who come into contact with them to see effective mechanisms developed to enable the settled and Traveller communities to live in harmony. Given both communities' mutual distrust, any improvement will be far from easy. The problem is made more difficult by the available legal tools: all too often these appear designed to cause rather than to resolve problems. In 1976 John Cripps produced his report on the (then) *Accommodation of Gypsies*;[20] it rewards re-reading today. Unfortunately, however, many of Cripps's recommendations were not followed. He outlined several straightforward steps which could be taken to improve matters; above all, however, he identified the need for 'Government to demonstrate a much higher commitment to achieving rapidly the purposes of the 1968 Act'.[21] He, too, was troubled by the inability of the UK to cope with what appears to be a relatively minor administrative matter, commenting:[22]

> *... it is important to keep the problem in perspective. It must surely be possible, in two countries with a combined population of 49 millions, for the majority to come to terms with a minority, albeit non-conforming, who number fewer than 50,000, if Gypsies now living in houses are excluded. Certainly it is in the interests of the majority to do this rather than to perpetuate the distress which they, in part, bring upon themselves, and to incur the avoidable cost of evictions, fencing and trenching, and makeshift arrangements to the tune of hundreds of thousands of pounds annually.... Time costs money, and the amount of time now being spent by government officials, by members and officers of local government, by the courts and members of the police and probation services, and by individuals in numerous capacities is out of all relation to the size of the problem. The eviction of men, women and children with nowhere else to go is also increasingly distasteful to the men who are expected to use force, if necessary, against them.*

Luke Clements
Solicitor and Research Fellow, Cardiff Law School, University of Wales, Cardiff
and Co-Director of the Traveller Law Research Unit

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18 From the need for a site licence and, in consequence, planning permission.
19 See for instance 'Short Term Licensing' by S Rawle 1992 (unpublished)
20 HMSO (1976)
21 *Ibid* at para 4.4
22 Para 1.3. These sentiments have been repeated by virtually every official who has officially researched this area (see, for instance, the Report of Professor Wibberley (DoE 1986) para 7.4).