

UPR. Submission by The National Federation of Gypsy Liaison Groups.

Gypsy people are an ethnic minority group as are Irish Travellers and both are protected under the Race Relations Act 1976 however the contentious issues of 'gypsy' status for the purposes of planning law undermines their protection as a minority, as 'gypsy' status in relation to land use is not defined by a traditional right, but is determined by work patterns at the time of the application for planning permission. Recent homelessness legislation has assisted, but the issues now appear very unclear, blurring those that may be statutory homeless with a want to adopt the gypsy way of life as a 'life style' and those that have a perceived traditional and ethnic right to live in caravans, knowing no other way of life and who are statutory homeless because there is nowhere legal to place their caravans.

The planning circular 1/2006, (February 2006) Planning for Gypsy and Traveller Caravan Sites and the amendments to the Housing Act 2004 which set out that there should be assessments of Gypsy & Traveller accommodation needs, have meant that over the last four years there has been progress; however, recently, the new Coalition Government announced its intention to revoke this circular with 'light-touch guidance' with regard to Travellers sites.

To stop us regressing, Statute specifically for Gypsy people, Irish Travellers and Show men is the only answer.

There has been historic legislation against Gypsy people as a people¹ and other legislation through many centuries, much intended for greater good has had a negative impact on the traditional Traveller community.

As shared access to common land has been reduced in the latter five decades the Gypsy people have been locked in a struggle for recognition of their traditional way of life, which is not just one of movement but of cultural practice, and to many, identifies itself as a cultural aversion to bricks and mortar

¹ The Egyptian Acts, starting in 1530 were directly targeted at the Gypsy people others for example that have influenced and changed the people are, Vagrancy Act 1714 Enclosure of the Commons Act 1876, The Highways Act 1959, Caravans Sites Act 1960.

accommodation. Culturally acceptable accommodation² has caused further interpretation with regard to housing law. There is something fundamentally wrong with a system where a person has to often have a combination of ill health through the material considerations³ in planning law and prove a mental anguish with regard to a cultural aversion to present their case.

The system does not recognise that the Show people also have a traditional and hereditary right, which is not ethnic but a traditional right all the same.

There needs to be improved access to culturally appropriate accommodation for the Gypsy and Traveller communities and these needs to be undertaken by appropriate statute and in time for the new planning policy proposed by the Government.

We would urge that in the light of the abolition of Regional Spatial Strategies and the proposed new Planning Policy Statement for Gypsy and Traveller sites [this PPS loses the word Gypsy and spells traveller with a small t] that we are at a convenient time to re-discuss the issue of status and statute for the indigenous Gypsy and Traveller communities of England and Wales and we would hope that this can be put forward as a recommendation.

Human Rights Act 1998 [HRA]

In *Chapman*⁴

“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 framework and in reaching decisions in particular cases.....there is a positive obligation imposed

2 With regard to offer of conventional housing see *Clarke v Secretary of State for the Environment, Transport and the regions and Tunbridge wells BC* [2001] EWHC Admin 800

3 Material considerations with regard to planning law can be health, education and other issues and are a consideration for the Planning Inspector in making a planning decision.

4 *Chapman v UK* [2001] 33 EHRR 399

*on Contracting States by virtue of Article 8 to facilitate the gypsy way of life*⁵

Our question for the review is where is our statute as a positive obligation? It is likely that there will be further cases brought before the EU Court on this issue.

The HRA has brought about some significant changes around the area of eviction and the instability of families residing on local authority Gypsy sites that were exempt from the Mobile Homes Act 1983. The *Connors*⁶ judgement meant that UK law was incompatible with the HRA. It has been frustrating for many that for many years after the *Connors* judgment; there was no headway.⁷ The Housing and Regeneration Act 2008, had provisions within it under s318 to bring local authority sites under the provisions of the MHA. However, cases still followed *Connors* for many years where families could be evicted within the 28 day notice rule⁸ In *Doherty*⁹ The family were evicted and not allowed to put their case.

One of the more positive aspects of the coalition government is their intention to bring in security of tenure and to do this they announced that they would amend s5 (1) MHA 1983, which in effect bring in the excluded local authority Gypsy Sites under the MHA provision.

The Race Relations Act 1976 has ensured that the communities are protected, but only so far, **the issue of traditional land and accommodation use** remains to be unaddressed.

5 *ibid* (p96)

6 *Connors v UK* (2005) 40 EHRR 9

7 Post *Connors* the Department of Communities and Local Government produced *Gypsy and Travellers Site Management: Good Practice Guide* July 2009. This guide alludes to how pitches should be allocated and sites managed

8 Before *Connors*, families could be evicted from a site with only 7 days notice,

9 *Doherty v Birmingham City Council* [2008] 3 WLR 636

Planning law is necessary, but within it there needs to be recognition of traditional nomadic rights for this small community. Housing law has definitely assisted especially around the issue of evictions, but unfortunately it cannot seem to retract itself from the conventional form of accommodation.

The combination of planning and housing law gives concern in that the system requires an individual to be too old, too ill, can't work and in danger of psychiatric problems to live as their forefathers lived. Arguably, the traditional Traveller communities are indigenous and cultural land rights should now be within an improved definition and statute and supported by European legislation.

The HRA1998 can only assist by influencing domestic law and it is time now for Europe to revisit the subject of definition with regard to its' indigenous nomadic groups. Previous definitions have been written without the most important aspect, that is the use of the land and traditional accommodation practices. Other criteria such as linguistic leaves communities weak¹⁰, it does not give protection where it matters. We would like the consideration of a revisit to 'definition' for a recommendation; this would also help and assist other nomadic groups like the Sami in Europe

All indigenous minorities have comparable characteristics, based around community: very often shared community rights not an individual right, when it comes down to individuals, the fact that the economic definition discriminates against Gypsy and Traveller women is the same as the non-status Native Indian argument that developed in the USA and Canada¹¹ and it is quite plainly wrong. At this present time in Britain at the onset of the Equality Act, Gypsy and Traveller women are at a disadvantage which fundamentally effects their human

10 For example the Sami people

11 Men inheriting the headrights to land

rights, the present definition of 'gypsy status' being one as an economic one and not one of tradition.

The explanation of what the community means by 'genuine Gypsy' does not mean blood quantum, it never has and often representative groups have been purposely misrepresented on this issue, but a definition that is of a traditional and hereditary right could be the way forward.

To apply a community traditional definition will assist families who have children who may work from an established site. Splitting families into those that deserve the right and those that are undeserving¹² is again quite plainly wrong and not helpful in the present climate where social inclusion and improved employment prospects can be circumvented by a planning decision and in the light of the European Framework for National Roma Integration Strategies up to 2020 announced in April 2011.

¹² Decisions that will find the Father a 'gypsy for the purposes of planning law' but his mother not, or the children of a traditional family not because they have organised paid work have been made. For women in particular see the case of *McCann v Secretary of State for Communities and local Government Basildon District Council* [2009] EWHC 917 (Admin).