

Planning for Gypsies and Travellers

RTPI Good Practice Note 4

Part D: Enforcement

About these Guidelines

One of the key roles of planning is to, “address accessibility for all members of the community to jobs, health, housing, education, shops, leisure and facilities”.¹

Whilst there are examples of good practice, planning has not addressed these issues well for Gypsy and Traveller communities. There are insufficient sites, services and opportunities for people who wish to pursue a nomadic lifestyle. New guidance from the Department for Communities and Local Government (DCLG) seeks a step change in approaches and practice.

This Good Practice Note is presented in a series of five complementary parts. It aims to help practitioners deliver satisfactory services to Gypsy and Traveller communities. There is a strong focus on integrated, effective service delivery through the optimum use of stakeholder resources and partnership working.

This GPN series provides advice under five headings:

- **Communication, Consultation and Participation (Part A)**
- **Accommodation Needs Assessment (Part B)**
- **Accommodation and Site Delivery (Part C)**
- **Enforcement (Part D)**
- **Sources of Further Information and Advice (Part E)** only available online

The series is primarily intended for planning practitioners. However, it will provide assistance for other stakeholders involved in planning and service delivery processes.

¹ Planning Policy Statement 1: Delivering Sustainable Development
www.communities.gov.uk/index.asp?id=1143804



RTPI

mediation of space · making of place

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Part A: Communication, Consultation and Participation

Part B: Gypsy and Traveller Accommodation Needs Assessment

Part C: Accommodation and Site Delivery

Part E: Sources of Further Information and Advice

All five parts of this Good Practice Note are available to download in full from the RTPI website at www.rtpi.org.uk

1. Introduction

Part D of this good practice note relates to enforcement action arising from breaches of planning permission by members of Gypsy and Traveller communities. It has been drafted with reference to decided cases. The preceding sections give advice on:

- **Part A – Communication, Consultation and Participation;**
- **Part B – Assessment; and**
- **Part C – Delivery.**

In light of latest government guidance relating to Gypsy and Traveller communities, local authorities should review and revise their existing planning enforcement policies. Interim procedures to take account of changing circumstances identified by the accommodation needs assessment and identification of sites could be introduced. Any policy development should include input and support from stakeholders.

It is important that enforcement officers are proactive, as relying on reactive enforcement drains resources, can be frustrating and damage community cohesion. Cultural awareness training for enforcement officers may increase understanding and reduce hostility. The RTPI Enforcement Handbook provides additional good practice advice for planning enforcement officers².

All reasonable alternatives to enforcement action should be explored. Taking enforcement action should be the final option, not the first³.

² RTPI Enforcement Handbook www.rtpi.org.uk/download/394/Enforcement-Handbook-England-.pdf

³ PPG18: Enforcing Planning Control.

www.communities.gov.uk/pub/90/PlanningPolicyGuidance18EnforcingplanningcontrolPDF23Kb_id1144090.pdf

2. Complaints and Action

2.1 Is There a Breach?

All potential breaches of planning control will need to be investigated. As part of any investigation, the responsible officer should:

- Notify a senior officer;
- Assess whether the encampment is a matter for planning enforcement or the responsibility of another agency;
- If appropriate, carry out a site visit;
- Discuss with the occupiers all the issues and options, providing as much information as possible;
- Gather all relevant information, including photographs; and
- Brief relevant councillors, in-house departments and support agencies.

The responsible officer should consider the possibility that the complaint may not have a sound planning basis. Planning complaints against Gypsy and Traveller communities are sometimes lodged on insubstantial or even discriminatory grounds. Enforcement should be equally fair to all parties.

2.2 Out of Hours Provision

Gypsies and Travellers may set up camp outside normal working hours, therefore the provision of an out-of-hours service is important. Where a site visit takes place out of hours, the responsible officer should discuss as many issues and the options with, and provide as much information as possible to, the occupiers, and arrange a time to return to the site.

2.3 Record Keeping

Any breaches of planning control should be recorded. The record should include the date of the complaint, site visit and when the land became occupied; along with the site location, number of caravans and the identity of the occupants. These records may supplement information collected by the

accommodation needs assessment and will assist the planning authority if taking enforcement action becomes unavoidable.

Using standard software templates for witness statements and site visits will help the responsible officer to collect basic information. This will also help with exchanging information, both in-house and with neighbouring authorities. However, the circumstances of each individual case should be taken into account and as much additional information gathered as appropriate.

2.4 Managing Complaints and Gathering Evidence

Evidence must be gathered in a professional and considerate manner. The responsible officer should ensure the evidence relates only to the matter in hand, is factual, accurate and not based on assumption or hearsay.

When investigating a new encampment, the responsible officer should undertake a risk assessment⁴. If the responsible officer feels threatened they should return, either with a colleague or the police, if there is a likelihood of a breach of the peace.

There should be formal procedures to support the following actions.

- Notification of stakeholders, i.e. environmental health, housing, councillors and community support organisations.
- Information exchange with the Gypsy and Traveller liaison officer, who may be able to provide background information.
- A site visit to identify how long the occupiers intend to stay and the correct parcel of land.
- A review of the site history including any past planning applications, permissions or enforcement action.
- Collection of personal details of the occupiers, sufficient to identify them for any future proceedings and to enable the planning authority to understand any special or extenuating circumstances that may be put forward to support a planning application.

⁴ Detailed information is available in RTPI GPN 3: Personal Safety at Work. www.rtpi.org.uk/download/366/RTPI-GPN3-Safety-v1-2006.pdf

- Liaison with stakeholders to gather additional information and evidence, ascertain any special or extenuating circumstances and to explore alternatives to enforcement action;
- Contact the complainants to inform them whether a breach has occurred as soon as it becomes clear this is the case.
- Maintain accurate records of all site visits, meetings and discussions (with photographs, where appropriate).

2.5 Deciding Whether to Take Action

Examples of the circumstances of the Gypsies and Travellers identified by an investigation, with a summary of the likely consequences include:

- Agricultural Workers - traditionally, Gypsies and Travellers undertake seasonal agricultural employment. They temporarily settle on farms, usually with the consent of the landowner. Due to the short term nature of this work there is often no need for the planning authority to be involved;
- In Transit - Gypsies and Travellers often stop on land without consent en-route to other parts of the country. Provided the number of caravans is not excessive, they are not causing a nuisance, there are no safety implications, and the expected duration of their stay is short, the local authority may adopt a policy of toleration. There are not likely to be any immediate planning implications;
- Intending to Stay on Local Authority Land – if it becomes clear that a longer stay is intended, the local authority can require occupiers to vacate by serving a notice to regain possession. It will be important to check that there are no circumstances that would make immediate action inexpedient. These could include the consideration of hardship/human rights considerations or could be stem from planning e.g. the land is subject to an application or is proposed as a future allocated site. It is reasonable to allow 48 hours to vacate, prior to starting proceedings, but planning powers are not likely to be used;

- Intending to Stay on Privately Owned Land without Consent - the landowner should take action to regain possession of the land, but can request that the local authority serves a notice on their behalf. Planning powers may become relevant if the stay is prolonged and involves a change in use or development; or
- Intending to Stay on Land they Own or with the Consent of the Landowner - planning becomes relevant to the lawfulness of the proposed or ongoing use or development of the site. However, due to the necessary legal processes involved it is unlikely that any notices can be served quickly and complainants should be advised of this.

Following a complaint, action may be taken by a number of local authority departments. Action by the planning authority is only likely to be valuable in cases where:

- There is (or is likely to be) an unlawful use or development of land;
- This is likely to cause significant harm to local amenity or the environment which cannot be reasonably mitigated;
- There is no policy basis for supporting an application to make the use or development lawful; and
- More immediate legal remedies seeking possession of the land are either not available or practical.

Action against Gypsy and Traveller communities should not be entered into lightly. Information about complaints should be shared across local authority departments and a corporate view about if, when and how to take action, and the implications for related service areas, such as children's services, education and housing should be reached. A 'joined-up' approach is essential to avoid circumstances where, for example an order for possession of land might be sought, but the site might be considered suitable for allocation or capable of gaining retrospective planning permission.

2.6 Initiating Planning Enforcement Action

If the decision to take planning enforcement action is taken, the means of obtaining authority should be considered, as should the need to obtain specialist legal advice.

A local authority scheme of delegated authority may provide sufficient powers to enable enforcement action to be taken without the need to report to a formal committee meeting. If the responsible officer envisages that an injunction (see below) is a likely outcome of any enforcement action, it must be made clear that this action may be taken without seeking further authorisation.

The scheme of delegation should allow action to:

- Issue and serve enforcement notices, to determine relevant dates and settle the reasons for taking action;
- Serve stop notices, to determine relevant dates, carry out the necessary cost/benefit assessment, and where appropriate to bring a stop notice into effect less than 3 days after service and to settle the special reasons ;
- Issue, serve and settle the reasons for a temporary stop notice, and where a caravan is already stationed on land and is occupied as a main residence, to decide if “the risk of harm to a compelling public interest arising from the stationing of the caravan is so serious so as to outweigh any benefit to the occupier of the caravan in the stationing of the caravan for a period for which the temporary stop notice has effect”⁵;
- Commence prosecutions in the Magistrates’ Court under relevant legislation in the event of failure to comply with any notices; and
- Apply for injunctions in the High Court or County Court where necessary for any current or anticipated breach⁶ of planning control.

Even where there is clear delegated authority, it is advisable to provide a report for information outlining the action taken to relevant managers and committees. This ensures that the potential policy, administrative and political implications of the action can be properly considered and supports ‘joined-up’ working.

⁵ Circular 2/05 Temporary Stop Notice www.communities.gov.uk/index.asp?id=1500349

⁶ Different legal terms are sometimes used. An ‘actual’ breach is where there is a current breach of planning control. An ‘apprehended’ breach is where there are reasonable grounds for anticipating that a breach will occur.

Where authority to commence action rests with elected members the responsible officer will require a committee resolution. Committee reports should include:

- A clear explanation of why enforcement action is necessary;
- A precise statement of the options open to the local authority, including no action - allowing the unauthorised development to continue;
- Details of the relevant planning and enforcement history of the site;
- A statement of the risks involved;
- Information on achieving a balance between the need to protect the environment and maintaining respect for human rights; and
- A clear recommendation.

Once authorisation is in place, effective and early communication between enforcement officers and legal representatives is extremely important to avoid delays, frustration and additional costs. If a local authority legal department or contractor lacks resources, or has little or no experience of Gypsy and Traveller issues, specialist legal advice should be sought.

2.7 Working and Communication Styles

Taking enforcement action against Gypsy and Traveller communities can lead to a conflict of working and communication styles. Once formal enforcement and related legal proceedings are commenced, the planning authority must adhere to all formal requirements i.e. the provision of written notices, making statements of evidence etc in their proper forms for enforcement action to proceed successfully and to not be open to challenge.

However, as Part A of this good practice note emphasises, members of Gypsy and Traveller communities will often prefer verbal to written communication, and informal agreements to formal procedures.

Great care and some resource commitment will be required to ensure that informal dialogue between Gypsies and Travellers and the planning authority with the aim of reaching a mutually agreed solution continues, in a manner that

does not prejudice or delay the eventual outcomes of formal action. For example, plain English, verbal explanations of the situation and of key legal documents help, as can a discussion of practical options to avoid the more stringent personal effects of enforcement and related action.

2.8 Enforcement Standards and Targets

Standards and targets in planning enforcement must be developed from a neutral base. They should be equitable and applied fairly to all communities and individuals. All standards and targets should be set within the context of relevant government policy and legislation. Therefore, given the recent changes in relation to provision for Gypsy and Traveller accommodation and recent research findings by the Commission for Racial Equality planning authorities should review, and where appropriate revise, their existing enforcement standards and targets.

3. Other Relevant Bodies of Law

Before taking enforcement action, local planning authorities should consider the possible impact of other bodies of law on the application of planning powers.

Two key bodies of law are in respect of:

- Human rights; and
- Race relations.

At the outset, it must be understood that these can be complex fields of law, and planning officers should seek early and specialist legal advice to reduce the risk of a successful legal challenge to their actions.

3.1 Human Rights

The European Convention on Human Rights was brought into domestic law by the passage of the Human Rights Act 1998⁷. The articles and relevant protocols of the convention can now be seen in schedule 1 to the Act. The following are

⁷ Human Rights Act 1998 www.opsi.gov.uk/acts/acts1998/19980042.htm

most likely to be relevant:

- The Convention, Article 8: respect for private and family life - can be relevant to decisions that involve the loss of accommodation, eviction proceedings or site clearance;
- The Convention, Article 11: freedom of assembly and association - can be relevant in respect of decisions about the assembly of groups of people on land;
- The Convention, Article 14: prohibition of discrimination - reinforcing the already strong position of other domestic law prohibiting discrimination;
- First Protocol, Article 1: protection of property; and
- First Protocol, Article 2: the right to education.

Care is required when taking enforcement action to ensure that it does not breach these or other rights or represent a disproportionate response to the issue under consideration by the planning authority.

The development of this good practice note has generated a resource of a large number of decided cases in this area⁸. However, it should be remembered that there is no substitute for up-to-date, expert legal advice on the particular facts of an individual case.

3.2 Race Relations Law

Romany Gypsies and Irish Travellers are recognised as racial groups. Racial discrimination occurs if a person is treated less favourably on racial grounds than another person would be in the same or similar circumstances.

The Race Relations (Amendment) Act 2000⁹ places local authorities under a general statutory duty to, eliminate unlawful racial discrimination, promote equality of opportunity between persons of different racial groups and promote good relations between persons of different racial groups. The local authority should consider the impact of this duty before making any enforcement decisions. In addition since 2006 local authorities have been required to have a Race Equality Scheme outlining how they will implement the duty, summarising their overall approach to racial equality.

⁸ These can be accessed by contacting the RTPI. www.rtpi.org.uk

⁹ Race Relations (Amendment) Act 2000 www.opsi.gov.uk/acts/acts2000/20000034.htm

4. Types of Action

This section examines the types of planning enforcement action that can be taken. It covers:

- Injunctions;
- Enforcement and stop notices; and
- Prosecutions.

Action may include more than one of these approaches. It should be noted that every step taken in enforcement proceedings is susceptible to a challenge by judicial review. The risk of challenge tends to rise as proceedings become more protracted or contentious or where outcomes are likely to seriously adversely affect a person's interests. It is essential that the decision making process is transparent, and documentary evidence is retained for future use.

4.1 Injunctions

An injunction is an order of the court that requires people to stop an unlawful activity. Planning authorities can seek an injunction against current or anticipated breaches of planning control. However, the court has discretion as to how it deals with any such application.

Such orders can be sought in a number of ways and circumstances:

- An interim injunction can be sought whilst other proceedings are under consideration or ongoing in order to prevent or control a breach that would otherwise continue in the time before the other proceedings are resolved;
- An injunction can form part of a final remedy sought from the court in other proceedings, requiring people to stop an unlawful activity on an ongoing basis;
- Injunctions are normally sought against named people and notice of the court proceedings is provided to them (referred to as service).

- Some injunctions (referred to as ex parte) can be granted without the named people being present;
- They can be granted against persons unknown; and
- If an injunction is breached, anyone in breach can be committed to prison¹⁰.

Interim Injunctions

If a planning authority obtains information that a breach of planning control is imminent or intended, it can seek an interim injunction against named individuals or persons unknown. Similarly, an interim injunction can be sought as a holding position to prevent an existing breach of planning control being prolonged, whilst negotiations for a more permanent resolution or other types of enforcement are pursued.

An interim injunction should be considered as a temporary, emergency step. An application for an interim injunction must be associated with action seeking a more permanent remedy and will not be granted by the court unless the planning authority either demonstrates that they have commenced such action or have provided an undertaking to do so as soon as possible. Any court order is likely to specify a timetable for permanent action to commence and to provide that an interim injunction will lapse if this timetable is not adhered to.

The activities to be stopped would be those involving breaches of planning control (i.e. stationing caravans and depositing hardcore where the authorised planning use was for agriculture) or breaches of enforcement notices, which are harmful to amenity and involve unacceptable breaches of planning policy. These are matters of planning judgment¹¹.

An interim injunction is sought through an application to the court with supporting witness statements. Usually this is done without providing notice to the people who are the subject of the complaint. The court is likely to order a further hearing where they will have the right to be present and both sides will have the opportunity to make representations as to whether the injunction should be continued.

¹⁰ Fines are available, but tend not to be used as they can lead to a further round of action to recover them.

¹¹ See *S Bucks CC v Porter* [2003] 2 AC 558 paragraph 30.

Evidence

Witness statements or affidavits set out evidence in support of an application for an injunction. Responsible officers should check with their legal advisers about the content of their witness statement, which will depend on the facts of the individual case. A witness statement is likely to include details of the:

- Name and position of the person making the statement;
- Description of the site and its condition;
- Land ownership, and how that information has been obtained (i.e. informal enquiry, HM land registry searches) or why it has not been obtained;
- Current or anticipated breach of planning control;
- Relevant planning policies; and
- Planning history of the land.

Witness statements are written in the words of the person making them. They can be supported by documentary evidence or exhibits, e.g. photographs.

If an injunction is being sought without notice an explanation of why this is appropriate should also be given. If it is because the injunction is needed to prevent an anticipated breach of planning control this will normally speak for itself, but an explanation still needs to be given to comply with court rules.

If the planning authority is reacting to an existing breach of planning control, it will be essential to demonstrate the existence of and conclusions drawn from a human rights assessment¹². This should include details and results of the investigations, along with the report of the responsible officer and details of the decision to pursue injunctive relief. Copies of all relevant documentation should be included with the witness evidence.

Unnamed or Unknown Persons

Frequently, the names of the people intended to be bound by an injunction are unknown, or names provided to the responsible investigating officers may not always be accurate. Given the possibility that other Gypsies and Travellers may subsequently settle on the site, it is advisable to seek an injunction against people who are not currently occupying it.

¹² See *S Bucks CC v Porter* [2003] 2 AC 558 paragraph 30. Further pointers to case law can be obtained from practice@rtpi.org.uk

An injunction in respect of a breach can be granted against persons unknown. The witness statement must verify that the applicant has been unable to identify the identity of the people to be made subject to the injunction within a reasonable time and set out the action taken to ascertain their identity and activity.

In South Cambridgeshire District Council v Persons Unknown [2004] EWCA Civ 1280 the Court of Appeal held that section 187B of the Town and Country Planning Act 1990, coupled with the relevant court rules¹³ gave the court power to grant an injunction against persons unknown causing or permitting hardcore to be deposited and caravans, mobile homes or other forms of residential accommodation to be stationed or existing caravans and mobile homes to be occupied.

The underlying principle emerging from this and other decided cases is that the description of the unnamed or unknown persons used must be sufficiently certain as to identify both those who are included within the scope of the injunction and those who are not.

Notice or Service

Notice of an application to court is provided by giving copies of the claim form and the injunction to the people to whom it is intended to apply,, known as service. Service is normally carried out by issuing the papers directly to a named person. When the papers are served their contents should be explained in plain English and a record kept of what is said.

Documents can be served by alternative means. An application to do so must be supported by evidence explaining why this is necessary, and the steps taken to serve the documents by normal means.

In the South Cambridgeshire District Council case, the Court of Appeal permitted service by placing the claim form and copies of the injunction in clear plastic envelopes and nailing them to a stake or gatepost, in a prominent location on the site. The court order included a requirement for the planning authority to attend the site at least once a week and replace any of the plastic envelopes that had been removed.

¹³ County Court Rules (CCR) 49

Breach of an Injunction

If an injunction is breached, the planning authority can apply for a committal order. This normally seeks to have people responsible for the breach committed to prison. It is a serious step and requires proof beyond all reasonable doubt of the breach and its link to the people sought to be committed. Evidence must show that a defendant has caused or permitted e.g. the deposit of hardcore or the stationing of caravans. Photographic evidence will be essential, as will evidence to show that the person in question owned the plots or was in control of the activities on them.

Committal proceedings are available in cases where an injunction was granted against persons unknown, if it can be proven that notice of the injunction was given to the relevant individual and that they proceeded to breach its terms¹⁴.

Committal proceedings should be started promptly, as delay in enforcing the injunction may suggest to the court that this remedy is inappropriate¹⁵.

Where there are ongoing injunction proceedings, committal proceedings are started by an application with an affidavit identifying the breaches, along with supporting photographic evidence. It is also necessary to prove service and so the planning authority should ensure it has affidavits of service. The application must be served directly to the people sought to be committed.

If a committal order is made it is likely to be an order for committal to prison, rather than a fine, which is likely to be inappropriate. It may be suspended to allow time to comply with conditions imposed by the court, such as vacating the land and removing caravans.

People subject to committal proceedings will often argue that the original injunction or committal order should be varied, discharged or suspended to allow for the determination of further planning permission applications or appeals against refusal of planning permission. The current attitude of the courts is that it is not their role to carry out a planning inquiry and to assess the likely merits of any such applications or appeals¹⁶. Rather, the court has to

¹⁴ See *South Cambridgeshire District Council v Gammell & Ors*; *Bromley Borough Council v Winne Maughan & Ors* [2005] EWCA Civ 1429

¹⁵ See *Salisbury DC v Le Roi* [2001] EWCA Civ 1490.

¹⁶ See *South Bucks District Council v Porter* [2003] UKHL 26; *Mid Bedfordshire District Council v Brown* [2004] EWCA Civ 1709; *South Cambridge District Council v Gammell* [2005] EWCA Civ 1429; *Wychavon District Council –v- Rafferty* [2006] EWCA Civ 628; *Mid Bedfordshire District Council –v- Brown* [2006] EWHC 1362 (QB)

decide if a breach has occurred and if so what punishment is warranted. However, the planning authority should still provide information about any linked planning applications or appeals and, so far as possible, about the likely chances of success.

4.2. Enforcement and Stop Notices

Temporary Stop Notices

The notice can only be issued once for the same activity, and must:

- Specify the activity incurring the breach;
- Entirely or partially prohibit that activity; and
- Set out the reasons for issue.

The notice runs for up to 28 days and stands alone, unlike a stop notice. The use of a building as a dwelling house, or a caravan occupied as main residence cannot be stopped, unless there is compelling public interest to do so.

The planning authority should:

- Carry out a cost/benefit analysis;
- Display a notice on the land; and
- Photograph the notice on the land¹⁷.

Stop Notices

- Can only be issued once for a particular activity and is used to prohibit any activity within breach of planning control that is alleged within an enforcement notice;
- Is served with an enforcement notice or during the period up to the time the enforcement notice takes effect;
- Is served on anyone who appears to have an interest in the land or is engaged in activity prohibited by the notice.

Before issuing a stop notice, the planning authority must consider whether a stop notice is proportionate to the activity, and consider such issues as claims for compensation.

¹⁷ Circular 02/2005 Temporary Stop Notice provides guidance.
www.communities.gov.uk/pub/322/Circular0205TemporaryStopNotice_id1144322.pdf

Enforcement Notices

Planning authorities have the power to serve an enforcement notice if there is an apparent breach without the need for conclusive proof. However, there must be a change of use or development and the time limit for taking action must not have expired.

The notice must be served within:

- 4 years - operational development (building, engineering or other); or
- 10 years - material change of use or breach of condition.

The notice must be served:

- On all persons with interests in the land; and
- No later than 28 days from the date of notice.

The notice should contain:

- Name of the recipient;
- Description and plan of the land or planning unit;
- Full description of the alleged breach;
- Reasons for issuing the notice;
- Actions required to remedy the breach;
- Date the notice takes effect (minimum 28 days from service);
- Period allowed for compliance; and
- Background information i.e. appeal booklets, forms, fees.

Procedures

The planning authority should:

- Carry out a cost/benefit analysis;
- Serve a planning contravention notice to negate costs;
- Display a notice on the land;
- Photograph the notice on the land; and
- Maintain proof of service.

4.3. Prosecutions

Under the terms of The Town and Country Planning Act, 1990¹⁸ a planning authority can prosecute for non-compliance with the following:

- Under s171G – breach of a temporary stop notice
- Under s179 – breach of an enforcement notice
- Under s187 – contravention of a stop notice.

Responsible officers should refer to the relevant section of the above Act and current government guidance to establish the value of instigating proceedings. Prosecution penalties can reach £20,000, but the local authority must consider how likely it is that the fine will be paid and that prosecution will not remove the offenders from the land.

Responsible officers must undertake an assessment of the weight of admissible evidence to establish the likelihood of the planning authority proving the case. In the assessment, the possibility of the accused providing a satisfactory defence must be considered. Allowing other appropriate stakeholders, not directly involved in the preparation of the case, to scrutinize and challenge evidence is often beneficial.

Factors that influence the decision to prosecute may vary depending upon whether sites or development land are available locally, but are likely to include:

- Would it be appropriate as a way of drawing attention to the need for compliance with the law?
- The impact of a prosecution on community cohesion and relationships between Gypsies and Travellers and service providers;
- Is there potential or actual harm arising from the breach?
- Is there a continued significant risk to health and safety, harm to minors, financial or other loss to the community or damage to the quality of the environment?
- Without prosecution will the breach intensify?
- The failure of other forms of enforcement action;

¹⁸ The Town and Country Planning Act 1990 www.opsi.gov.uk/ACTS/acts1990/Ukpga_19900008_en_1.htm

- Does the alleged offence relate to the failure to comply in full or with a significant part of a statutory notice?
- Is there evidence of fraud, gross negligence or guilty knowledge?
- Does the alleged offence relate to obstruction, failure to disclose information or knowingly making a false statement to the responsible officer?
- Taking account of legislation and government guidance in relation to the provision of services to Gypsies and Travellers;
- Taking account of legislation and guidance in relation to planning enforcement; and
- Taking account of the guidance given in the Code of Practice for Crown Prosecutors¹⁹ to assess whether prosecution of the offence is in the public interest.

Prosecutions are time consuming. Court attendance will be required and accurate, detailed witness statements must be prepared. There may be a long period before the court date and during this time responsible officers must keep all participants and stakeholders fully informed. Local authorities may find that action to clear the site is a quicker and more cost effective way of remedying a breach than initiating a prosecution alone.

5. Clearing a Site

Taking action to clear a Gypsy or Traveller site should normally be taken as a last resort, when all other routes have failed or are likely to take too long to effectively manage significant harm to amenity or the environment.

Before embarking on this route, responsible officers must:

- Review the current position, including the reasons for the failure of previous negotiations and enforcement action;
- Seek expert legal advice;

¹⁹ Code of Practice for Crown Prosecutors www.cps.gov.uk/publications/docs/code2004english.pdf

- Consider the options;
 - Start new injunction proceedings;
 - Instigate committal proceedings;
 - Take action to clear the site;
 - Do nothing; or
 - Grant planning permission;
- Ensure the necessary resources are available; and
- Report to planning committee.

If the planning committee endorses taking action, the responsible officer should:

- Continue liaison with stakeholders to establish whether there is a feasible alternative;
- Ensure all service providers understand the full implications e.g. the homelessness of evicted occupants;
- Check what the occupants intend to do following their eviction; and
- Serve all occupants with papers outlining the planning position and detailing the procedures that will take place.

The affected Gypsy and Travellers and their representatives should be allowed to address the committee meeting. The responsible officer's report must be comprehensive and include:

- A full history;
- Details of the current situation;
- Implications of clearing the site;
- The potential impact on human rights; and
- Any special circumstances of the Gypsy and Travellers.

If the planning committee resolves to take action, the Gypsy and Travellers and their legal representative of the decision, and continue must be informed and kept updated of progress. The planning authority should wait until it is clear either that a judicial review has commenced or the time in which one could commence has expired.

Background work to implement the site clearance will include:

- Establishing a stakeholder working party;
- Identifying budgets, other resources, timeframes;
- Carrying out a risk assessment;
- Preparation of a joint project plan with stakeholders;
- Developing a joint communication strategy;
- Agreeing with police and appointed contractors a plan for the day; and
- Informing the occupants, in writing of the site clearance date.

On the site clearance day, no local authority staff should be permitted on or near the site. Other service providers will need to:

- Carry out a risk assessment;
- Assemble the management team;
- Establish a management post at the local authority offices;
- Establish a second management post accessible to the Gypsy and Travellers being evicted, attended by housing, communication and responsible officers;
- Arrange any necessary transport for Gypsy and Travellers from the site to the second management post;
- Set up appointments with the housing service regarding potential homelessness applications; and
- Implement necessary road closures.

Following the site clearance, service providers will continue to be involved in:

- Processing homelessness applications;
- Providing on-going security as clearance works continue;
- Processing claims against the local authority for damages and loss;
- Continuing legal action to recover costs and discontinue the Gypsy and Traveller interest in the land; and
- Managing and responding to criticisms against the local authority's action.

6. Appeals

Gypsy and Traveller enforcement appeals are usually public inquiries. Written representation processes and hearings are uncommon²⁰.

The local authority should assemble a team to manage the appeal process. Local authority counsel should be included from the outset.

Good administrative support is important, and the local authority should have a responsible officer who is familiar with appeal processes. Strict adherence to appeal timetables is required to avoid a notice being quashed through that route.

Statement of Case

Counsel will advise on the best approach to evidence, including the statement of case, which must set out all the issues the local authority considered when it made the decision to take enforcement action. The statement should identify the main issues and the relevant development plan policies which the local authority seeks to rely upon, and respond to each of the grounds of appeal. It is good practice to use a statement template, which acts as a reminder as well as ensuring a professional looking document.

6.1 Inquiries

Statement of Common Ground

Usually there is no direct evidence from the Gypsy or Travellers about their circumstances until the day of the inquiry, when they will give evidence verbally. However, there are usually matters that can be agreed in advance, e.g. which policies are relevant and a history and description of the appeal site etc. It may also be possible to agree a set of core documents. The local authority should try to have these documents prepared and agreed by the other side as quickly as possible²¹.

²⁰ Guidance available in ODPM Circular 2/2002: Enforcement Appeals Procedures. www.communities.gov.uk/index.asp?id=1144349

²¹ Annex 4 to ODPM Circular 02/2002, provides a guide to the Statement of Common Ground and Proofs.

Proofs

The proof of the planning witness should identify the main issues, relevant planning policies and an assessment of the development against those policies. It should also include any additional information, not included in the statement of common ground that is necessary to identify particular issues. It is important to ensure there is a response to all the grounds of appeal.

If the adopted development plan preceded Circular 1/2006, the planning authority must explain its approach to the guidance.

Local authority evidence should provide a view as to whether the appellant is a Gypsy or Traveller within the statutory definition. In Clarke-Gowan v SSTLR & N Wilts (2002) it was found that someone who worked away from home and stayed in a caravan was not a Gypsy or Traveller. If there is little or no evidence that the appellant is a Gypsy or Traveller then the local authority may wish to challenge this status.

The Planning Inspector must establish the level of local need and will require the following information:

- Identified need from the Gypsy and Traveller accommodation needs assessment;
- An estimate of need based on other information sources;
- How the planning authority intends to respond to the identified need;
- Details of the use of existing sites including vacancies and turnover; and
- Records of unauthorised encampments in the area:

If the Gypsies and Travellers have particular health or educational needs, these matters can carry significant weight. However, verification may be required. If the details arise as part of verbal evidence at an inquiry, the local authority can request an adjournment to provide time to develop a response.

Circular 01/2006 provides advice on how Gypsy and Travellers should approach their search for a site and the question of planning permission. The proof should include whether the planning authority has received legitimate enquiries related to securing planning permission and whether there is a history of enforcement.

The planning witness should be familiar with any recent cases within the local authority area and other Inspector's findings relating to the general need in the area. It is possible the appellant's case will refer to other planning decisions and the planning witness must be prepared to read the whole case quickly to assess the relevance and differences in circumstances between that case and the current appeal.

Conditions

The planning authority should produce a draft list of conditions in the event that the Planning Inspector grants planning permission.

Post Decision

Counsel should receive a copy of the decision as soon as possible. If the decision is made against the local authority the wisdom of making a legal challenge must be evaluated. If the appeal has been dismissed there may be a challenge by the defendant and the local authority will have to prepare a response.

7. Monitoring

Monitoring is an important function of the planning enforcement team. However, it should have a wider purpose than gathering evidence with a view to taking enforcement action. This is particularly relevant during the transition period towards provision that satisfies current and projected need. The enforcement team should monitor any unauthorised activity with a view to:

- Gathering information to inform enforcement decisions;
- Informing the accommodation needs assessment team of households in need of sites or accommodation;
- Advising other service providers of any households that require advice, e.g. relating to health or education;

- Taking steps that will help to prevent hostility and promote community cohesion;
- Building and maintaining positive relationships with site occupants; and
- Achieving negotiated solutions to actual or intended planning breaches.

This good practice note goes onto give advice on:

- **Accommodation Needs Assessment (Part B);**
- **Accommodation and Site Delivery (Part C);**
- **Enforcement (Part D); and**
- **Sources of Further Information and Advice (Part E).**

8. Sources of Further of Information

RTPI GPN 3: Personal Safety at Work

www.rtpi.org.uk/download/366/RTPI-GPN3-Safety-v1-2006.pdf

RTPI Enforcement Handbook

www.rtpi.org.uk/download/394/Enforcement-Handbook-England-.pdf

PPG18: Enforcing Planning Control

www.communities.gov.uk/index.asp?id=1144089

Circular 2/05 Temporary Stop Notice

www.communities.gov.uk/index.asp?id=1500349

ODPM Circular 2/02: Enforcement Appeals Procedures

www.communities.gov.uk/index.asp?id=1144349

ODPM Circular 02/2002 Statement of Common Ground and Proofs

Circular 10/97: Enforcing Planning Control: Legislative Provisions and Procedural Requirements

www.communities.gov.uk/index.asp?id=1144430

Human Rights Act 1998

www.opsi.gov.uk/acts/acts1998/19980042.htm

Race Relations (Amendment) Act 2000

www.opsi.gov.uk/acts/acts2000/20000034.htm

Town and Country Planning Act 1990

www.opsi.gov.uk/ACTS/acts1990/Ukpga_19900008_en_1.htm

Code of Practice for Crown Prosecutors

www.cps.gov.uk/publications/docs/code2004english.pdf

Civil Procedure Rules - CCR Order 49: Injunctions to Prevent Environmental

Harm www.dca.gov.uk/civil/procrules_fin/contents/schedule2/ccrorder49.htm

This guidance is written for town planners working within the English planning system, however much of the advice is relevant to all parts of the UK.

In 2007, the Royal Town Planning Institute assembled a Gypsy and Traveller advisory group of expert individuals to research and debate, the lack of suitable accommodation for Gypsy and Traveller communities. The advisory group has steered the publication of this good practice note.

The RTPI established specialist sub-groups of expert volunteers and staff to draft this guidance; volunteers came from the RTPI Associations and Networks, Planning Aid and external organisations. In order to draw in yet more experience, specialist practitioners participated throughout the ongoing consultation process.

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