

COUNCIL BUSINESS COMMITTEE

Consultation on implementing the Mobile Homes Act 1983 on local authority Gypsy and Traveller sites 13TH November 2008

Report of the Principal Housing Manager

PURPOSE OF REPORT

To advise Members about implications of the Housing and Regeneration Act 2008 and how it will apply the Mobile Homes Act 1983 to local authority Gypsy and Traveller sites, and to enable the Committee to respond to the Government's Consultation Paper.

This report is public

RECOMMENDATIONS

- (1) **That the Committee indicate its views on the questions set out in the Consultation Paper, and that the Principal Housing Manager, in consultation with the Chairman, be authorised to finalise and submit the Committee's response to the Government on behalf of the Council.**

1.0 Introduction

- 1.1 The Council manages the Mellishaw Park Gypsy and Travellers site, one of three County Council Gypsy and Travellers sites within Lancashire, under a management agreement. The Housing and Regeneration Act 2008 which is now on the statute book is introducing changes in the way that Gypsy and Travellers sites are managed by bringing local authority sites within the provisions of the Mobile Homes Act 1983 to provide greater security of tenure and further rights.
- 1.1 Section 138 of the Housing and Regeneration Act 2008 (HRA 2008) will amend the Mobile Homes Act 1983 (MHA 1983) so that Gypsies and Travellers on local authority sites will have the same security of tenure and responsibilities as Gypsies and Travellers on private sites and occupants of other residential caravan sites. This follows the decision in *Connors v United Kingdom* (App No 66746/01 ECHR) in which the European Court of Human Rights held that the existing statutory scheme breached Article 8 of the European Convention for Human Rights.
- 1.2 Section 318 of the HRA 2008 will be brought into force by order. This order will include the amendments to the implied terms or other provisions of the MHA 1983 considered necessary for local authority Gypsy and Traveller sites following this consultation, and the transitional provisions for existing residents. The order will be laid before Parliament for approval by both the House of Commons and the House of Lords.

- 1.3 The Department for Communities and Local Government is also establishing a working group of local authority officials and residents on their Gypsy and Traveller sites to prepare a model agreement. This will include standard express terms on issues that are not covered by the implied terms of the MHA 1983 which could be included in agreements on local authority Gypsy and Traveller sites.
- 1.4 The Department for Communities and Local Government has published a consultation paper, "Implementing the Mobile Homes Act 1983 on local authority Gypsy and Traveller sites", seeking views on the implementation of the changes and any amendments to the MHA 1983 that are needed, a copy of which is appended to this report.
- 1.5 The consultation document seeks views on:
- whether some of the provisions of the MHA 1983 need to be amended for local authority Gypsy and Traveller sites
 - how we should move from a position where existing residents have licences under the CSA to agreements under the MHA 1983
 - the other transitional provisions that we may need in applying some of the provisions of the MHA 1983 to existing residents.

2.0 Proposal Details

- 2.1 The Consultation Paper deals with the proposed details of the arrangements that will be needed to implement the provisions of the HRA 2008 together with proposed amendments to the MHA 1983.
- 2.2 Members may wish to consider all the questions set out in the Consultation Paper; however a number of issues that may be of the most significance to the Committee are highlighted in this report.
- 2.3 **Assignment (paragraphs 21 – 30)** The MHA 1983 enables a resident that either sells their caravan, or gives it to a family member, to pass on (or assign) the agreement to live in the caravan on the pitch to the person that buys it or it is given to, providing the site owner approves of that person. The Government has identified two options for dealing with the issues raised about assignment by the current national shortage of authorised sites:
- do not apply the right of assignment to local authority Gypsy and Traveller sites; or
 - require that in considering whether to approve a proposed assignee, local authorities must consider the needs of Gypsies and Travellers in their area as well as those of the proposed assignee.

Question 1 asks "Which of these two options do you think the Government should pursue to deal with the issues raised by the right to assignment on local authority Gypsy and Traveller sites?"

The Principal Housing Manager, on balance, is of the view that the right to assign should be granted subject to the provisions set out in option two. However clear guidance would need to be established on how the relative needs of Gypsies and Travellers in the area as well as those of the proposed assignee are assessed.

- 2.4 **Succession (paragraphs 31 – 38)** Where there is no spouse or family member living with a resident when they die, the MHA enables the person that inherits the

caravan (either through a will or, if there is no will, under the laws of intestacy) to sell it and assign the agreement.

Question 2 asks “Do you agree with the proposal that the provision in the MHA relating to succession, where no family member is living with a resident when they die, should not be applied to local authority Gypsy and Traveller sites, whichever option we decide to pursue in respect of assignment generally?”

Currently we already pass on the licence to a spouse or family member residing on the pitch at the time they died with the agreement of the County Council The Principal Housing Manager is of the view that extending this to family members not residing on the pitch or site would seriously effect the ability to properly manage the site , and therefore recommend supporting the Governments view that succession should not be extended in this way.

2.5 **Re-siting a caravan (paragraphs 49 – 50).**

Question 3 asks: “Do you agree with the proposal to amend the implied terms to enable local authorities to require a resident on one of their Gypsy and Traveller sites to move their caravan to a pitch on another site, as well as another pitch on the same site, for example when they need to carry out repairs to the pitch?”

It is suggested that the proposals set out within the consultation document should be supported to ensure that the effective delivery of repairs and improvement works can be maintained.

2.6 **Site owners responsibility for repairs (paragraphs 51 – 52).**

Question 4 asks: “Do you agree with the proposal to amend the implied terms to clarify that local authorities will continue to be responsible for repairing any amenities provided by them on the pitch as well as the base (or hardstanding)?”

The proposals would appear to be non-contentious, are common sense, and should be supported.

Question 5 asks: “Do you agree with the proposal to amend the definition of “essential repair and emergency work” in the implied terms to specify that these works include repairs to amenities provided by the local authority, as well as the base (or hardstanding)?”

The proposals would appear to be non-contentious, are common sense, and should be supported..

2.7 **Moving from licences to agreements (paragraphs 57 – 73)** The Government have identified two options for moving from a position where existing residents have licences under the CSA to one where they have agreements under the MHA:

- local authorities would be required to make agreements under the MHA with existing licence holders by a specified date. If a local authority failed to make an agreement by the specified date, residents would be deemed to have agreements from that date which include the terms of their licence; or
- all existing licences would be deemed to be agreements to which the MHA applies from the date section 318 of the HRA is brought into force.

Question 6 asks: “Which of the two options do you think is the better option for moving from licences to agreements? Do you agree with the assessment of the pros and cons of each option? Is there a further option which we have not identified?”

The Principal Housing Manager is of the view that the first option producing a new agreement is the preferred approach as it would ensure that all residents on the site would be covered by the same terms. The Government is producing a model agreement for local authorities to use which will reduce the burden of formulating a new agreement. By using a model agreement there will be clarity and consistency in the approach.

- 2.8 **Breaches of licence relevant to the agreement (paragraphs 77 – 78)** Where a term of the licence has been breached and the local authority has written to the resident before the agreement is made, asking them to remedy this breach within a certain timescale, we propose that the local authority should be able to apply to the court to terminate the agreement once it is made, without writing to the resident again as the implied terms would require. However, the local authority would only be able to do this where the term of the licence that had been breached was also in the agreement.

Question 7 asks: “Do you agree with this approach to breaches of a licence relevant to the agreement?”

Again the Principal Housing Manager is of the view that this is the right approach to ensure continuity of management following the move from the licence to a tenancy agreement.

- 2.9 **Overpayments (paragraph 79).**

Question 8 asks: “Do you agree with the proposal that residents should also be able to use the implied terms to recover any payments made under a licence that might cover the period after an agreement is terminated?”

The proposals being made seem to be fair and equitable.

- 2.10 **Pitch fees (paragraphs 80 – 84).**

Question 9 asks: “Do you agree with the proposal that if a licence includes a review date for the pitch fee, this date should continue to be the review date in the agreement? Do you also agree that if no review date is included in a licence then the last review date for the purposes of calculating the change in RPI should be a year prior to whatever review date is included in the agreement?”

The proposals being made are broadly in line with the current practice where pitch fees are raised by a general inflation factor agreed by the County Council.

Question 10 asks: “Question 10: Do you agree with the proposal to delay applying the implied term in the MHA that makes the presumption about pitch fee changes and the RPI to Gypsy and Traveller site owned by county councils until after the DWP has made the changes necessary to resolve the anomaly in the way housing benefit is paid for these sites?”

This is a question directed at County Councils and is one for them to consider.

2.11 Improvements proposed before agreement (paragraphs 85 – 86).

Question 11 asks: “Do you agree that where a local authority has already consulted residents on proposed improvements to a site prior to an agreement being made they should not have to consult them again, as the implied terms would require?”

The Principal Housing Manager is of the view that this is a sensible and practical proposal and should be supported.

Question 12 asks: “Do you think there are any other implied terms under the MHA which may require transitional provisions?”

No other considerations have been identified.

3.0 Conclusion

3.1 The Committee is asked to consider its response to the questions set out in the Consultation Paper, and to authorise the Principal Housing Manager, in conjunction with the Chairman, to finalise the Committee’s response to the Government on behalf of the Council.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

A full impact assessment of the proposal has been undertaken by the Government and are set out in Annex C of the consultation document

FINANCIAL IMPLICATIONS

There are no financial implications arising directly out of the report. Subject to the requirements of the implementation strategy adopted by the Government when finalised there may be some minimal costs, however any cost incurred the City Council would be reimbursed by the County Council within the terms of the management agreement that is in place.

SECTION 151 OFFICER’S COMMENTS

The Deputy s151 Officer has been consulted and has no further comments.

LEGAL IMPLICATIONS

There are no additional legal implications arising out of this report.

MONITORING OFFICER’S COMMENTS

The Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS

Government Consultation Paper

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