



## Gypsies and Travellers: Parliamentary Activity since 2005

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Author: Christopher Barclay  
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This note covers backbench activity relating to Gypsies and Travellers since 2005. Two other notes, *Gypsies and Travellers: camp sites and trespass* (SN/SC/1127) *Gypsies and Travellers: unauthorised development* (SC/SC/3248) cover related issues, including the *Anti-Social Behaviour Act 2003*.

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### A. **Gerald Howarth's *The Trespassers on Land (Liability for Damage and Eviction) Bill* 2004-5**

Gerald Howarth's Bill has the same title as Crispin Blunt's Bill of 2001-2. The Bill was printed but did not secure a second reading. The Bill had the following long title:

Make a person liable for damage caused to land, or proper on that land, on which he is trespassing with the purpose of residing there; to amend the Criminal Justice and Public Order Act 1994 in respect of the removal of trespassers from land, the seizure of property of trespassers and payments to occupiers of land in respect of damages arising from trespass; to establish a register of persons whose identity has been given to a constable after the giving of a direction under part 5 of the Criminal Justice and public Order Act 1994; and for connected purposes.

## **B. John Baron's Adjournment Debate, July 2005**

John Baron described the huge Crays Hill site in Billericay where eviction had been delayed for two years but was now due. He noted the familiar weaknesses in planning law enforcement when applied to unauthorised development in the countryside. He also regretted the decision in 1994 to remove the duty on councils to provide Gypsy sites. He then proposed his solution:

What needs to be done? I have no doubt that the law is to blame, as it is outdated and ineffective. We urgently need to adopt a twin-track approach, as outlined in my private Member's Bill, the Greenbelt Protection Bill of 2003. My aim was to change the law, on the one hand by obliging councils to provide authorised sites where there was sufficient demand and for which an honest rent and council taxes could be charged, and on the other by giving them much stronger powers speedily to evict those Travellers who insisted on breaking the law. Also, my Bill would have allowed councils to put right any damage caused and to recover the cost from those who had caused it. Moreover, my Bill provided that those powers would have been available to councils only when the required sites had been provided. I felt that that was the fair way to go about dealing with the problem.

I could give further details of the proposals in my Bill, but I refer the Minister to the explanatory notes, of which his Department has a copy. The change in the law that I proposed would have been fair to those Travellers who respect the law and it would have allowed those who do not to be dealt with speedily. That would have prevented the development of the large-scale illegal sites, such as Crays Hill, that are often so much more difficult to deal with.

The Government's response to my proposals was disappointing, to say the least. A long consultation was held, which involved many site visits, public hearings and meetings with residents, Travellers, councillors, police and Basildon council's planning department. In addition, I sought—and had no trouble securing—very good cross-party support in the Chamber, but the Government blocked my Bill without explanation.

After continually raising the issue in Parliament and meeting Ministers from the Office of the Deputy Prime Minister and, indeed, the Prime Minister, there are tentative signs that the Government are now at least considering adopting a twin-track approach, but progress is far too slow. I should therefore like to ask the Minister a number of questions, to which I hope he will respond directly.

First, the Minister is fully aware that I raised the issue of eviction costs with the Prime Minister, by way of letter, and with the Deputy Prime Minister during Prime Minister's questions last week. The two-year extension given in 2003 to the Travellers at Crays Hill before they must move on has resulted instead in the number of caravans increasing significantly. The precise figures are difficult to come by, but there is no doubt that there has been a significant increase. The cost of eviction has increased accordingly and, according to Basildon council, now stands at about £2 million, which represents approximately 15 per cent. of a year's council tax revenue.

Will the Minister now commit the Government to assist Basildon council financially with those increased eviction costs, which are a direct result of the Deputy Prime Minister's decision to give a two-year extension, or will he at least promise to look into the issue? If the answer is no, Ministers are, in effect, unfairly penalising local council tax payers for a mistake made by the Government.

The response from the Deputy Prime Minister last week was totally inadequate. He suggested that the money could be better spent on providing land for the Travellers, but such a view displays an ignorance of the situation locally, while nationally, it would spell disaster for our green belt because it would allow Travellers to drive a coach and horses through our planning laws, for there would be no disincentive to buy and illegally develop large chunks of the green belt, as councils would be encouraged by the Government not to meet evictions costs, but to spend the money instead on providing sites.

Secondly, will the Minister update me on what progress is being made on the much-needed reform of our planning laws?...

I am concerned to learn that there is talk that the Government have dropped the idea of direction and are instead considering leaving the solution to regional spatial strategies. That simply will not work, for there is nothing to force councils to comply with those strategies, except for the Travellers themselves resorting to the appeals process. The Minister will be aware that paragraph 20 of the draft circular on planning for Traveller sites advised that the regional spatial strategy should include provision for Gypsy sites. Yet the draft east of England plan, published very recently, says nothing about Gypsy sites. The draft spatial strategy is meant to guide development in the east of England for at least the next 20 years, yet no mention is made of Gypsy sites whatsoever. I hope that the Minister will appreciate that such confusion needs to be sorted out by the Government.

The Government have consulted on whether to give stronger power to councils. They proposed a 28-day temporary stop notice in response to the pressure to give much stronger powers to councils. Indeed, such notices became law on 7 March this year. The main difference from the existing law is that local authorities will have power to serve a temporary stop notice without first serving an enforcement notice. That sounds good, but when we consider the detail and the exemptions the power is actually quite ineffective. Basildon council has several concerns. Within the 28-day period, for example, the local authority has to serve an enforcement notice and a normal stop notice, which gives right of appeal against those notices. However, such an appeal also has the effect of putting into abeyance not only the enforcement and normal stop notices but also the 28-day temporary notice itself. That is a real concern for my local planning department...

The conclusion is that the law will not help local authorities to take effective, swift action against Traveller families who move on to green belt sites without planning permission... May I ask the Minister to address some other issues? Will he clarify some of the terminology on needs-based assessment under the Housing Act 2004? He will be aware that the Act stipulates that the needs of Gypsy communities should form part of a local authority's homelessness needs assessment—rightly so. However, little or no methodology has been given as guidance and councils are wondering how

to undertake that task. It has been suggested that the number of unauthorised caravans is one way of measuring the needs of local travellers; in other words, if there is a large number, there must be a need. However, in Basildon district, there are about 220 unauthorised caravans—representing a 700 per cent. increase since 1990—while some neighbouring districts have very few or none at all, so if that methodology was used, it would suggest that only in Basildon district was there a further requirement for Traveller sites, which is clearly nonsense. Will the Minister clarify the methodology councils are to use to meet their obligations under the Act?

A twin-track approach is required. With regard to the provision of authorised sites, clear direction must be given to local authorities, while councils must be given much stronger powers speedily to evict Travellers who insist on breaking the law and to put right any damage. Otherwise, the unnecessary and sad conflict that we have seen in the past between settled and Traveller communities, and that we will see again at Crays Hill in the coming months, will continue and intensify in future in other parts. Given that the Government have been aware of the issue for a good number of years, they have a moral obligation to act, and to act quickly, before too much more pain is caused. I look forward to hearing the Minister's response.<sup>1</sup>

The Minister (Jim Fitzpatrick) explained the Government's policy of requiring provision of sites as a condition for approval of development plans.

There have been calls for the reintroduction of a duty on local authorities to provide sites. The current problem is clear—there is a significant lack of authorised sites. However, the solution is not to reintroduce a statutory duty on all local authorities. A duty has been tried before, but often did not produce appropriate provision, and meant that the public purse funded provision. Even with the introduction of 100 per cent. Exchequer funding in 1979, Gypsy site provision failed to keep pace with the growth in the number of caravans.

The arrangements that I have outlined for local authorities to carry out needs assessments and make provision for sites in their local plan, amount effectively to a duty.

**Mr. Baron:** I accept what the Minister has said, but is he concerned that the draft east of England regional spatial strategy does not contain any mention of the provision of Gypsy sites? Does not that suggest a failing that needs, somehow, to be put right?

**Jim Fitzpatrick:** The hon. Gentleman kindly gave me the opportunity to consider the point that he wished to emphasise. We will respond to the draft RSS in due course and if it does not contain details on how accommodation needs will be met, the Secretary of State could refuse to finalise and approve it. I assure the hon. Gentleman that such provision will be considered as part of the process.

In assessing need, local authorities should not be able to rely simply on the situation within their boundaries. Situations such as that in Basildon illustrate a need to look

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<sup>1</sup> HC Deb 14 July 2005 cc1045-50

across regions and sub-regions to ensure an equitable distribution of provision. We shall explore the best way to achieve that as part of the guidance on needs assessments currently in preparation. I would also point out to the hon. Gentleman that despite the repeal of the Caravan Sites Act 1968, local authorities continue to have the power to create sites as they see fit.

Basildon council has called on the Government to help with the cost of enforcement. The enforcement of planning control is a statutory function of local authorities for which they need to budget and the costs of which are not generally recoverable. The Government have provided significant investment in local authorities since taking office, with a 33 per cent. real terms increase in Government grant in that time. Although I recognise that the costs in this case are significant, I regret that the principle must remain. However, we are prepared to help with the cost of new site provision, and are offering practical assistance by providing funding. In 2005–06, the Gypsy sites refurbishment grant is available for new sites as well as for the refurbishment of existing ones. The aim of the grant is to increase the number of authorised pitches available to Gypsies and Travellers, and thus reduce the need for unauthorised sites. In addition, mainstream funding via the regional housing pot of some £56 million will be made available for local authority and registered social landlord sites from 2006–07.<sup>2</sup>

### **C. James Paice's *Trespass with a Vehicle (Offences) Bill 2005/6***

Mr. James Paice (South-East Cambridgeshire) (Con): I beg to move,

That leave be given to bring in a Bill to create an offence of criminal trespass with a vehicle; and for connected purposes.

The House is familiar with the many issues surrounding the Traveller population and the local uproar that arises, particularly in rural areas, when a group of Travellers arrive with one or more caravans and set up home on land which they do not own. Such land may be owned by public authorities, most often the county council, or privately owned. Fences and gates can often be broken to gain access. While the Travellers remain, they frequently desecrate the surrounding area, cutting down fences and trees for fires and then leaving piles of rubbish and detritus, sometimes including human excrement. The costs of clearing it all up fall on the local taxpayer or the individual owner of the land.

I am sure that I am not the only one to have had numerous cases of that in my constituency. Recently, in the small village of Swaffham Prior, Travellers camped on the village playing field, preventing the football club from using it and costing the parish council more than £4,000 the first time to clear up and £1,600 the second time in legal fees to get them evicted and to clear up. That is unacceptable. A direct consequence is that property owners, including local authorities, have to take action to prevent access. Large unsightly mounds of earth or rubble are put in gateways and

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<sup>2</sup> HC Deb 14 July 2005 cc1050-1051

farmers use redundant machinery to block access to their fields. Why should law-abiding people have to do those things?

The House will be well aware that Cambridgeshire is particularly affected by unauthorised encampments. Some say that that is for historical reasons deriving from casual labour for fruit and vegetable harvesting, but a minimal number of Travellers, if any, are engaged in such activities today. A far more likely reason for the large number of Travellers in the county is that successive Government policies have created a honeypot effect. While the Government use half-yearly counts of unauthorised sites to indicate demand, it is inevitable that it can never be satisfied. The Travellers know that and therefore go to the areas where the problem is greatest, in full knowledge that the Government will then put pressure on the local council to provide more sites. Nowhere is that more obvious than in south Cambridgeshire. In the past two years, the number of unauthorised sites has risen by 63 per cent., yet the number of authorised sites has also risen. Last July, at the time of the last count, in the whole of the eastern region there were 325 unauthorised sites on land not owned by Gypsies.

Before I go any further I want to make two specific points. First, most Members of the House know that the village of Cottenham is my constituency. Unfortunately, it has received a considerable amount of unwelcome publicity over the past few years as the result of a substantial incursion by Irish Travellers. However, this Bill is not directed at that issue because those Travellers own the land, and the problems there are issues of planning and enforcement. The second point follows from that—namely, that not all Travellers cause the problems that I have described. Inevitably, there are generalisations, but illegal encampments, however tidy, must be stopped. In Cottenham, whatever the planning issues, the pitches are generally clean and tidy, although it has to be said that the surrounding area appears to suffer, and certainly a privately owned orchard has been destroyed.

There have been a number of attempts by successive Governments to resolve those problems, some designed to help, some to hinder, but few, I am afraid, have made any difference. Section 34 of the Road Traffic Act 1988 makes it an offence to drive a vehicle more than 15 yd from the highway on to private land without consent, yet there have been few, if any, prosecutions. The Criminal Justice and Public Order Act 1994 gives police officers the power to move on Travellers if the landowner has asked them to leave, and the Anti-social Behaviour Act 2003 slightly strengthened that legislation as a result of amendments tabled by myself. Yet in the last three years there have been no prosecutions.

It is clear to me that more must be done. In doing so, we should look at Ireland, which has addressed the problem robustly. In 2002, the Irish Government made trespass a criminal offence. The result for them was as expected: the problem reduced significantly. The result for us was unexpected—it led to a significant increase in the number of Irish Travellers in Britain. I quote from a letter that I received only this morning from an individual who had seen the publicity surrounding my presentation of the Bill:

"My wife, who is of Irish descent, and myself often holiday in the Republic where the Irish people cannot believe their good fortune to be getting rid of their problem. There are thousands of these gypsies wanting to come to the UK".

Even allowing for a little exaggeration, that underlines the problem as seen from the Irish perspective. My Bill does not go as far as the Irish legislation, which made all trespass a criminal offence. I seek only to make trespass with a vehicle a criminal offence if someone does not move on when told to do so by a constable. There can be no ifs or buts about this, and no spurious arguments about welfare—the people in question should have thought about that before they arrived at the site.

My Bill also addresses other activities, not involving Travellers, where motor vehicles are used in trespass. My hon. Friend the Member for Isle of Wight (Mr. Turner) has drawn my attention to serious problems on the Tennyson trail, where off-roaders have killed sheep and caused serious damage to the landscape. Similarly, vehicles are used to gain access to property for an illegal rave, yet the police frequently decline to act to prevent them.

Quite rightly, many people will ask where the Travellers should go. There is a shortage of sites in some areas, and in my view their provision should be included in local plans, but that is not the point at issue here. I came to the House believing that we are all equal under the law. It is not acceptable for some sectors of society to be able to get away with activities which the rest of us could not; nor is it acceptable for owners of private land to have to spend several thousands of pounds obtaining eviction orders and clearing up the abominable mess that is left behind.

I conclude with a reference to a Bill that is currently before the House. Through the Natural Environment and Rural Communities Bill, the Government are, rightly, trying to prevent further damage to green lanes and byways by off-road vehicles. Why bother, if Travellers can continue to use them with impunity?

Question put and agreed to.

Bill ordered to be brought in by Mr. James Paice, Mr. Peter Ainsworth, David T. C. Davies, Mr. Dominic Grieve, Gregory Barker, Mr. Geoffrey Clifton-Brown, Mr. Mark Prisk, Andrew Selous, Mr. Andrew Turner and Bill Wiggin.<sup>3</sup>

## **D. Julie Morgan's Caravans (Security of Tenure) Bill 2005/6**

Julie Morgan (Cardiff, North) (Lab): I beg to move,

That leave be given to bring in a Bill to make provision for security of tenure for Gypsies and Travellers on local authority caravan sites; and for connected purposes.

I should like to begin by describing a case that brings security of tenure for Gypsies and Travellers into sharp focus and demonstrates the vulnerability of their position

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<sup>3</sup> HC Deb 28 February 2006 cc130-132

and the resulting injustice. In May 2004, the European Court of Human Rights decided the case of *Connors v. the United Kingdom*, in which the claimant had been evicted from an official local authority Gypsy site on which she had resided for many years. There were allegations of nuisance, but the local authority did not have to plead those allegations nor prove its case in the possession action that it took in the county court because the Caravan Sites Act 1968 provides that all that a local authority has to do to gain possession of a pitch on a Gypsy site is to provide 28 days' notice of termination of the Gypsy's or Traveller's licence and then obtain a court order. In *Connors v. the United Kingdom*, the local authority had served such a notice, leaving the occupant without a defence. The court could neither scrutinise the allegations that had prompted the local authority to serve the notice nor decide whether they were proved and, if proved, decide whether it was reasonable for a possession order to be made. The European Court of Human Rights decided that that lack of any procedural safeguard was a clear breach of the occupant's rights under article 8 of the European convention on human rights, which provides a right to respect for that person's home, private life and family life.

Looking back on that case now, one could say that that appears to be an obvious conclusion. Most council tenants in bricks and mortar housing have full security of tenure under the Housing Act 1985. Only those on a trial period under an introductory tenancy, those whose tenancy has been demoted for antisocial behaviour, or those in accommodation for the homeless do not enjoy those full rights. If a local authority wishes to take possession proceedings against a council secure tenant, it must establish one of the grounds of possession in the Act. In the case of discretionary grounds, as in cases involving rent arrears or nuisance allegations, the court must also be satisfied that it is reasonable to grant a possession order.

In November 2004, the Government sent a memorandum to the Council of Ministers indicating that they accepted that they would have to change the law to introduce security of tenure on official local authority Gypsy and Traveller sites. The indications given at the time were that this would be achieved by referring the matter to the Law Commission, which was working on reforms to security of tenure with regard to tenancies of bricks and mortar dwellings. While that was awaited, Gypsies and Travellers on official sites remained without security of tenure.

In the meantime, on the face of it, local authorities were still entitled to seek a possession order without pleading or proving any grounds of possession. Relying on the *Connors* case, lawyers representing Gypsies and Travellers facing eviction were compelled to resort to article 8 of the European convention and to argue that this could provide a defence to the county court claim for possession of the land, oblige the court to investigate the allegations and decide the issues, and entitle the court to refuse to make a possession order where it considered it disproportionate to do so.

However, to succeed in that argument Gypsies and Travellers had to overcome the decision of the House of Lords in *London Borough of Harrow v. Qazi*, decided in July 2003. The House of Lords decided that the defendant could not rely on article 8 as a defence, as the domestic legislation provided an automatic justification for any interference with his right to respect for his home and family life.

The challenge to Qazi returned to centre stage in March this year, when the House of Lords, sitting as a seven-member court, heard the cases of *Kay v. London borough of Lambeth* and *Price v. Leeds city council* together. By a majority of four to three, the House held that the Connors ruling was, to a limited degree, inconsistent with its decision in the Qazi case. It decided that the Qazi ruling must be modified to the extent that in cases of a special and unusual kind, such as the Connors case, interference with the occupier's article 8 rights would have to be justified by a decision-making process that ensured that some special consideration was given to those interests.

In May 2006, the Law Commission produced a consultation document entitled "Renting Homes: The Final Report". It is the commission's final report—now out for consultation—on the question of reform of security of tenure for tenants of dwelling houses. Despite what had been indicated soon after the Connors decision, there is no reference by the Law Commission to the situation on Gypsy sites. Moreover, it would appear to be by no means certain that the Law Commission's draft legislation—appended to its report—will go any further. In the light of that, there are still no firm proposals from the Government on what should be done about security of tenure for Gypsies and Travellers on permanent official sites.

I ask this: why should the clearly delineated statutory protection afforded to a council "bricks and mortar" tenant not also be available to a Gypsy or Traveller occupying a pitch on a permanent local authority site in the same circumstances? Both the European Court of Human Rights and the House of Lords have held the present law enacted by Parliament to be in breach of article 8 of the convention, which provides for the right to respect for a person's home and family life. The rights of Gypsies and Travellers on official sites are also in stark contrast with the charter of rights—recently significantly strengthened by the Housing Act 2004—given to occupants of pitches in park homes regulated by the Mobile Homes Act 1983.

More than 50 years after the United Kingdom signed the European convention on human rights, why should Gypsies and Travellers on local authority sites be compelled to rely on the ingenuity of housing and human rights lawyers—and, of course, their availability—to gain what can only be called basic human rights, whereas "bricks and mortar" dwellers have their rights clearly enshrined in statute and readily applied by the courts? The threat of losing one's home, with the risk of children being taken into care, is a frightening experience, not just for the tenant or licensee of a pitch but for the whole family.

Parliament's intervention in the form of section 211 of the Housing Act 2004, which gives the courts power to suspend possession orders, does not deal with the mischief that I seek to cure in the Bill. The current state of the law continues to be a source of anxiety, distress and hardship to Gypsies and Travellers on official sites, and clearly defined rights need to be enacted. I tabled the Bill for that reason, and I thank Chris Johnson of the Community Law Partnership and Andrew Ryder for their help in drafting it.

The Bill is designed to adapt the provisions that apply to secure tenants under the Housing Act 1985 to the circumstances of Gypsies and Travellers on official sites. It provides for such rights to be acquired after a successful trial period, and to be lost by

means of a demotion order when abused through antisocial behaviour. All that I seek to do is put occupants of local authority official sites on a par with occupants of local authority “bricks and mortar” accommodation. If Gypsies and Travellers on official sites are to be given equivalent security of tenure, it follows logically that they should also have the rights enjoyed by tenants of council housing in relation to succession, assignment, right to exchange and relevant repairing obligations. Accordingly, those matters are also included in the Bill.

In passing, I should like to mention the initiative of Oxfordshire county council, which, in producing new licence agreements for its six county council sites in July 2005, included such rights as a matter of contract.

The Bill is intended to have effect in England and Wales. According to the latest caravan count figures, nearly 50 per cent. of Gypsies and Travellers who live in caravans in England live on official local authority sites. There are no up-to-date statistics for Wales, but I am glad to note that the recent Niner report on Gypsy and Traveller accommodation needs in Wales, commissioned by the Welsh Assembly Government, has recommended that an up-to-date count be undertaken.

The time has come to make sure that Gypsy and Traveller occupiers of local authority sites receive the same protection, corresponding to local authority “bricks and mortar” tenants. We must respect their rights to a secure home and family life. The Bill will provide such protection and security, so I commend it to the House.

Question put and agreed to.

Bill ordered to be brought in by Julie Morgan, Mr. David Amess, Ms Karen Buck, Mr. Martin Caton, Harry Cohen, Jeremy Corbyn, Mr. David Drew, Nick Harvey, Kelvin Hopkins, Bob Russell, Mr. Andrew Slaughter and Mrs. Betty Williams.

#### Caravan Sites (Security of Tenure)

Julie Morgan accordingly presented a Bill to make provision for security of tenure for Gypsies and Travellers on local authority caravan sites; and for connected purposes: And the same was read the First time; and ordered to be read a Second time on Friday 20 October, and to be printed [Bill 206].<sup>4</sup>

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<sup>4</sup> HC Deb 4 July 2006 cc655-7