

Home Office consultation on Strengthening police powers to tackle unauthorised encampments

London Gypsies and Travellers response

3rd March 2020

London Gypsies and Travellers is an organisation which challenges social exclusion and discrimination, working for change in partnership with Gypsies and Travellers. We work with the community and a range of trusted partners to contribute to the development of local, regional and national policy.

We support the detailed submissions to this consultation made by Friends, Families and Travellers, Community Law Partnership and other organisations supporting Gypsies and Travellers and equality and human rights issues. The following response focuses on providing evidence, commentary and recommendations for alternative approaches based on our expertise working with Gypsy and Traveller communities in London and stakeholders such as the London Gypsy and Traveller Forum.

Q1: To what extent do you agree or disagree that knowingly entering land without the landowner's permission should only be made a criminal offence if it is for the purpose of residing on it? Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree Please explain your answer

This question is not in compliance with the Cabinet Office's 'Consultation Principles 2018' because it is misleading and ambiguous.

We strongly disagree with the criminalisation of trespass under any circumstances.

These proposals directly attack a culture and way of life that have existed in this country for hundreds of years. Criminalising trespass would automatically criminalise nomadic communities, including those with protected ethnic status. Our view is that these proposals are unjustified and disproportionate.

Flaws in the consultation process

A major failing of this consultation is to provide sufficient information to the broader public to explain: the context of historic under-provision to facilitate the nomadic way of life; the duties that local authorities have under equalities and human rights legislation; the severe and unacceptable prejudice and discrimination that Gypsies and Travellers continue to face. There are parts of the consultation document that are inaccurate and misleading, for example the interpretation of the law in Ireland, which is used as the basis for these proposed changes to legislation. The wider public should be provided with correct and sufficient information to be able to respond to this consultation.

According to the submission from Community Law Partnership to this consultation, to imply that there is a correlation between the function of the local authority as a housing authority and the use of criminal trespass law in Ireland is incorrect. Furthermore, this document does not make any reference to introducing a methodology that would force councils in England to carry out a statutory duty to provide sites.

Another significant flaw of this consultation is the lack of alternative options, in line with case law on consultation principles, in order to allow the wider public the intelligent consideration of the proposals and to respond in a way which enables them to participate meaningfully in the decision-making process.

Potential breach of equality and human rights legislation

London Gypsies and Travellers has successfully challenged local authority injunctions against 'persons unknown' stopping on council land¹. Anyone found to be in breach of such injunction orders can be fined and have their property seized; in effect injunction orders criminalise trespass on public land. Injunction orders disproportionately target Gypsies and Travellers who are pursuing a nomadic way of life.

A recent Court of Appeal judgment (21 January 2020) in the case of *Mayor and Burgesses of London Borough of Bromley v Persons Unknown, London Gypsies and Travellers & ors* [2020] EWCA Civ 12² has very significant implications for the government's proposals to criminalise trespass.

¹ <http://www.londongypsiesandtravellers.org.uk/news/2020/01/21/injunctions-criticised-in-landmark-ruling/>

² The full judgment can be accessed at: <https://www.bailii.org/ew/cases/EWCA/Civ/2020/12.html>

The judgment states: ... *it must be recognised that the cases referred to above make plain that the Gypsy and Traveller community have an enshrined freedom not to stay in one place but to move from one place to another. An injunction which prevents them from stopping at all in a defined part of the UK comprises a potential breach of both the Convention and the Equality Act, and in future should only be sought when, having taken all the steps noted above, a local authority reaches the considered view that there is no other solution to the particular problems that have arisen or are imminently likely to arise.*

We believe that this judgment means that any criminalisation of trespass or extreme increase in police powers (as proposed by the Government) would immediately amount to a breach of the European Convention on Human Rights and the Equality Act.

Local authority duties and existing guidance

In considering existing government guidance to address unauthorised encampments, the Court of Appeal Judges have stated in the judgment quoted above:

100. I consider that there is an inescapable tension between the article 8 rights of the Gypsy and Traveller community (as stated in such clear terms by the European caselaw summarised at paragraphs 44-48 above), and the common law of trespass. The obvious solution is the provision of more designated transit sites for the Gypsy and Traveller community. It is a striking feature of many of the documents that the court was shown that the absence of sufficient transit sites has repeatedly stymied any coherent attempt to deal with this issue. The reality is that, without such sites, unauthorised encampments will continue and attempts to prevent them may very well put the local authorities concerned in breach of the Convention.

101. This tension also manifests itself in much of the guidance documentation to which I have referred at paragraphs 54 - 56 above. That guidance presupposes that there will be unlawful encampments, and does not suggest, save as a last resort, that such encampments should be closed down, unless there are specific reasons for so doing.

Local authorities are subject to Public Sector Equality Duties and other duties in terms of safeguarding and the best interest of children. Existing government guidance makes it clear that local authorities are required to meet some of these duties for example through conducting welfare assessments on roadside camps to ensure that the needs of vulnerable people are taken into consideration and inform any decision to take enforcement action. Making trespass a criminal offence would circumvent existing guidance that should support local authorities in meeting to some extent their PSED.

Lack of suitable accommodation for Gypsies and Travellers

In the absence of transit sites, emergency stopping places or effective practices of negotiated stopping³, Gypsy and Traveller families stopping in an area would automatically be criminalised through no fault of their own.

In London there are no transit sites or stopping places, and the practices of 'negotiated stopping' are relatively limited, as highlighted in our recent research report supported by the Greater London Authority⁴. In addition, 15 out of 32 local authorities in London currently have injunction orders in place preventing 'persons unknown' from occupying land for residential purposes, as explained above.

This consultation document wrongly states that 'the majority of travelling communities reside in caravans on authorised traveller sites'. Over 75% of Gypsies and Travellers across the country live in bricks and mortar housing and in London this proportion is even higher. Not everyone living in a house has ceased travelling, as this remains a significant part of Gypsies and Travellers culture and way of life.

Increasing the provision of permanent sites is a significant component of addressing the accommodation crisis facing Gypsy and Traveller families, particularly in London. Evidence supporting the draft London Plan shows that only 10 new pitches have been provided on local authority sites in London out of approximately 800 which were identified as needed in the period 2007-2017⁵. Ensuring sufficient permanent affordable site provision is also an essential requirement in meeting the needs of those Gypsies and Travellers for whom conventional housing is unsuitable for cultural reasons⁶.

However, only providing permanent sites is not sufficient in order to facilitate the rights of Gypsies and Travellers to practice a nomadic way of life. Permanent site accommodation particularly in places like London where it is a scarce resource, cannot be accessed by families passing through an area. Therefore the most effective way to address what is currently poor management of roadside camps is to embed in local authorities' policies and practices alternative approach such as negotiated stopping, which are proven to reduce social costs on the Gypsy and Traveller community, reduce local tensions and reduce public

³ <https://www.negotiatedstopping.co.uk/what-is-negotiated-stopping>

⁴ The potential for negotiated stopping in London, 2019, http://www.londongypsiesandtravellers.org.uk/wp-content/uploads/2019/11/LGT_report_28Nov_web.pdf

⁵ https://www.london.gov.uk/sites/default/files/gla_topic_paper_gypsy_and_traveller_accomodation.pdf

⁶ See proposed London Plan definition in Policy H14 , p 223

https://www.london.gov.uk/sites/default/files/intend_to_publish_-_clean.pdf

spending. Please see our response to Q18 for a more detailed summary of our recommendations around negotiated stopping.

Not having safe and secure places to stop compounds the inequalities faced by Gypsy and Traveller families who are practising this important element of their culture and ethnic identity, which is a protected characteristic under the Equality Act 2010.

Q2: To what extent do you agree or disagree that the act of knowingly entering land without the landowner's permission should only be made a criminal offence if it is for the purpose of residing on it with vehicles?

This question is not in compliance with the Cabinet Office's 'Consultation Principles 2018' because it is misleading and ambiguous.

We strongly disagree with the criminalisation of trespass under any circumstances.

Q3: To what extent do you agree or disagree that the landowner or representatives of the landowner should take reasonable steps to ask persons occupying their land to remove themselves and their possessions before occupation of the land can be considered a criminal offence? Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree Please explain your answer.

We strongly disagree with the criminalisation of trespass under any circumstances.

Local authorities already have extensive powers to take enforcement action to move Gypsy and Traveller families stopping on their land, and the police have powers to seize vehicles under S62 of the CJPOA. Other types of public and private landowners can resort to bailiffs to evict. From our experience supporting Gypsy and Traveller families living roadside, the powers and enforcement action taken in many cases are already disproportionate and heavy-handed.

As summarised in the response to question 1, local authorities have duties to engage with roadside families and assess their welfare and any medical or educational needs there are, in order to make an informed decision whether to evict or not. We believe that other public

landowners should implement as best practice a protocol for managing camps on their land which ensures that these requirements are met, working closely with the relevant local authority⁷. Similarly, there should be joint working on this issue between private landowners and local authorities. While safeguarding duties do not apply to private landowners, families are still within the boundary of a local authority that has those duties and therefore the council should be more proactive in supporting them to move to a more suitable location, for example a piece of land identified for negotiated stopping.

Q4: To what extent do you agree or disagree that a criminal offence can only be committed when the following conditions have been met?

- a) the encampment prevents people entitled to use the land from making use of it;
- b) the encampment is causing or is likely to cause damage to the land or amenities;
- c) those on the encampment have demanded money from the landowner to vacate the land; and/or
- d) those on the encampment are involved or are likely to be involved in anti-social behaviour.

Please explain your answer.

This question is not in compliance with the Cabinet Office's 'Consultation Principles 2018' because the framing of this question makes it misleading and ambiguous.

We strongly disagree that trespass should be made a criminal offence in any circumstances.

We are very concerned about the condition in point d) which suggests that individuals could be automatically criminalised without any proof of guilt, if the landowner has a suspicion that they are 'likely' to be involved in anti-social behaviour. Prejudicial attitudes against Gypsies and Travellers which are deep rooted in the population mean that some landowners are likely to have suspicions that those stopping at the roadside are likely to be involved in

⁷ For example, public landowners such as Network Rail, Transport for London/Greater London Authority and others such as housing associations and churches.

anti-social behaviour, whether or not this is in fact the case. These attitudes are constantly being reinforced by damaging media representation, as well as public comments by MPs and other elected members.

Q5: What other conditions not covered in the above should we consider?

We strongly disagree with the criminalisation of trespass under any circumstance.

Q6: To what extent do you agree or disagree that police should be given the power to direct trespassers to suitable authorised sites in a neighbouring local authority area?

Strongly disagree.

We strongly oppose all the proposals to strengthen police powers to evict.

The proposal that the police be given the power to direct Gypsies and Travellers to another local authority may disrupt schooling and healthcare, and access to other services being used by families at the time. It is also likely that this will disincentivise local authorities from making the adequate provision, as they would rely on others to do so.

The proposal would also mean that in parts of the country where there is no transit site provision, such as the Greater London area and surrounding local authorities, Gypsies and Travellers living a nomadic way of life would effectively be excluded. This goes against the duties placed on local authorities under the Equality Act.

Our research on the potential for negotiated stopping in London has found that the majority of Gypsy and Traveller accommodation needs assessment studies do not effectively assess the need for transit sites, despite this being a requirement under the Planning Policy for Traveller Sites. Evidence presented in most of these studies suggests small numbers of camps, yet the same local authorities have obtained injunction orders on the basis of overwhelming number of camps. For example, the London Borough of Kingston's GTAA published in September 2018 says "Whilst there is some evidence of a small number of unauthorised encampments in RBK in recent years, it is recommended that there is currently no need to provide any new transit pitches at this time." Yet the council have secured a permanent injunction for the next 3 years – arguing they had too many encampments. In January 2019, evidence in the GTAA is contradicted by the Council Leader in a quote for an

article for the Surrey Comet newspaper: “Last year we had an unprecedented number of illegal encampments...”⁸

This failure in the planning system is a significant consideration that would make such proposals unworkable in practice.

Q7: Should this be subject to conditions around agreements being in place between local authorities?

We strongly oppose all the proposals to strengthen police powers to evict.

Q8: Should there be a maximum distance that a trespasser can be directed across? Yes / No If yes, what distance should that be?

We strongly oppose all the proposals to strengthen police powers to evict.

Q9: Should there be any other conditions that should be considered when directing a trespasser across neighbouring authorities. Yes / No If yes, what should these be?

We strongly oppose all the proposals to strengthen police powers to evict.

Q10: To what extent do you agree or disagree that the period of time in which trespassers directed from land would be unable to return should be increased from three months to twelve months?

Strongly disagree.

We strongly oppose all the proposals to strengthen police powers to evict.

No evidence at all is provided to justify this proposal.

It is completely disproportionate to seek to increase the period. This can have severe impacts on peoples’ ability to access services, opportunities, and make a living, as well as on family and support networks.

Research conducted by Friends, Families and Travellers shows very significant opposition from police forces across the country to proposals to increase their eviction powers.

⁸ P 13 http://www.londongypsiesandtravellers.org.uk/wp-content/uploads/2019/11/LGT_report_28Nov_web.pdf

These proposals would have much the same effect if adopted as the criminalisation of trespass. Therefore, please also see our answer to question 1.

Q11: To what extent do you agree or disagree that the number of vehicles needing to be involved in an unauthorised encampment before police powers can be exercised should be lowered from six to two vehicles?

Strongly disagree.

We strongly oppose all the proposals to strengthen police powers to evict.

This proposed amendment would also affect some of the more vulnerable families, who by the very nature of being on a smaller encampment are less likely to have a family and community support network around them, and are more likely to experience race hate incidents as they are alone.

This proposed amendment is disproportionate and totally unreasonable.

Q12: To what extent do you agree or disagree that the police should be granted the power to remove trespassers from land that forms part of the highway?

Strongly disagree.

We strongly oppose all the proposals to strengthen police powers to evict.

Local authorities have the use of Section 77 & 78 of the Criminal Justice and Public Order Act (1994) which can be used on virtually any land (including the highway) and can be implemented extremely quickly. Given this, it is unnecessary to extend this power for use by the police.

Q13: To what extent do you agree or disagree that the police should be granted the power to seize property, including vehicles, from trespassers who are on land with the purpose of residing on it?

Strongly disagree.

We strongly oppose all the proposals to strengthen police powers to evict.

The consultation paper refers to the seizure of '*property from trespassers*' without making it clear to consultees that it would include the seizure of caravans in which Gypsies and

Travellers live. This would amount to a clear and immediate breach of Article 8 of the Human Rights Act 1998(right to respect for private and family life and home).

Q14: Should the police be able to seize the property of: i) Anyone whom they suspect to be trespassing on land with the purpose of residing on it; ii) Anyone they arrest for trespassing on land with the purpose of residing on it; or iii) Anyone convicted of trespassing on land with the purpose of residing on it? Please explain your answer.

Strongly disagree.

We strongly oppose all the proposals to strengthen police powers to evict.

This would amount to a clear and immediate breach of Article 8 of the Human Rights Act 1998(right to respect for private and family life and home).

Q15: To what extent do you agree or disagree that the proposed amendments to sections 61 and 62A of the Criminal Justice and Public Order Act 1994 contained in this consultation are sufficient measures to tackle the public disorder issues which are associated with unauthorised encampments without the requirement for introducing specific powers that criminalise unauthorised encampments? Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree Please explain your answer.

This question is misleading and ambiguous. Accordingly, it is not in compliance with the Cabinet Office's 'Consultation Principles 2018'.

We strongly oppose all the proposals to strengthen police powers to evict and also the criminalisation of trespass.

We are concerned to see in this question the conflation of anti-social behaviour and unauthorised encampments.

Q16: Do you expect that the proposed amendments to sections 61 and 62A of the Criminal Justice and Public Order Act 1994 contained in this consultation would have a positive or negative impact on the health or educational outcomes of Gypsy, Roma and Traveller communities? Highly positive impact / Positive impact / Neither positive nor negative impact / Negative impact / Highly negative impact If so, do you have any evidence to support this view, and/or suggestions for what could be done to mitigate or prevent any negative impacts?

Highly negative impact.

The question is extremely offensive as it implies that the more rapid eviction of families, which in some cases can make people homeless would have positive impacts.

An inquiry led by the Women and Equalities Committee in 2019 found that *'There has been a persistent failure by national and local policy makers to tackle long standing inequalities facing Gypsy, Roma and Traveller communities in any sustained way.'*⁹

No measures could prevent or mitigate the negative impact that these proposals would have if put in practice. Instead the government should seek to implement strategies that would genuinely facilitate the nomadic way of life, as well as meet the needs of Gypsies and Travellers for culturally suitable accommodation. Safe and secure accommodation is an essential factor in reducing health and education inequalities.

⁹ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/news-parliament-2017/grt-tackling-inequalities-report-published-17-19/>

Q17: Do you expect that criminalising unauthorised encampments would have a positive or negative impact on the health or educational outcomes of Gypsy, Roma and Traveller communities? Highly positive impact / Positive impact / Neither positive nor negative impact / Negative impact / Highly negative impact If so, do you have any evidence to support this view, and/or suggestions for what could be done to mitigate or prevent any negative impacts?

Highly negative impact.

The question is extremely offensive as it implies that the criminalisation of people living their traditional way of life, which in some cases can make people homeless and break down families, would have positive impacts.

An inquiry led by the Women and Equalities Committee in 2019 found that *'There has been a persistent failure by national and local policy makers to tackle long standing inequalities facing Gypsy, Roma and Traveller communities in any sustained way.'*¹⁰

No measures could prevent or mitigate the negative impact that these proposals would have if put in practice. Instead the government should seek to implement strategies that would genuinely facilitate the nomadic way of life, as well as meet the needs of Gypsies and Travellers for culturally suitable accommodation. Safe and secure accommodation is an essential factor in reducing health and education inequalities.

Q18: Do you have any other comments to make on the issue of unauthorised encampments not specifically addressed by any of the questions above?

As stated previously, we consider that a severe flaw in this consultation is the lack of positive and reasonable options to inform the wider public and stakeholders such as local authorities and other public landowners of alternative approaches to criminalisation, eviction and injunction, such as negotiated stopping. In addition to the increased provision of permanent culturally suitable accommodation for Gypsies and Travellers, this has a very

¹⁰ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/news-parliament-2017/grt-tackling-inequalities-report-published-17-19/>

significant potential to reduce negative impacts on the community and also to make better use of public funds.

The following section is a summary of key issues arising from our research on the potential for negotiated stopping in London and some of the recommendations arising for local authorities.

Travelling is a significant part of Gypsies and Travellers' culture and way of life and many families continue to travel in and around London following in the footsteps of past generations. Being able to stop in safe and secure conditions and having access to basic facilities such as sanitation and waste disposal are essential to travelling.

Negotiated stopping is a balanced and humane approach to managing roadside camps, based on a mutual agreement between the local authority and Gypsy and Traveller families on matters such as correct waste disposal and basic temporary facilities, sometimes directing Gypsy and Traveller communities away from contentious public spaces to more appropriate council land.

This approach is proven to achieve significant savings in public spending and decreased social costs for Gypsy and Traveller communities. However, across London the preferred approach for most local authorities is rapid eviction of roadside families which has significant negative impacts.

Our recommendations for local authorities in London, which are also relevant beyond London

- Cabinet members for housing to include Gypsy and Traveller accommodation (both permanent and temporary) in their portfolios of responsibility.
- Launch in depth investigations to review current practices of enforcement and assess how they meet requirements under the Public Sector Equality Duty and government guidance on dealing with unauthorised encampments.
- Commit to provide at least a minimum standard of dialogue and provision of basic facilities to all Traveller families stopping on public land in the borough
- Undertake financial modelling for negotiated stopping, for example to identify budgets that could be used to resource the approach (this should also include a cost benefit analysis that considers wider social costs).

- Use local plans and other mechanisms to identify land for meanwhile use as negotiated stopping places.
- Prepare for a transition to a planned approach to roadside stopping when existing injunctions will expire.

We are also calling on politicians to make commitments to facilitate the nomadic way of life as an essential part of Gypsy and Traveller culture and advance the broader equality agenda for these communities. This could include:

- Promoting dialogue, provision of basic facilities and stopping time for roadside families as a first response to encampments.
- Challenging councils that take an unnecessarily tough approach and disproportionate enforcement action, particularly where alternative sites are not available
- Proactive and positive messaging on roadside issues and negotiated stopping in meetings, on social media, and through press coverage.
- Organising cultural awareness training for colleagues, officers and other stakeholders to promote the better understanding of equality issues, challenges facing roadside families and best practices.

Q19: Full name Ilinca Diaconescu

Q20: Job title or capacity in which you are responding to this consultation exercise (for example, member of the public) Policy Officer

Q21: Date 3 March 2020

Q22: Company name/organisation (if applicable) London Gypsies and Travellers

Q23: Address Mildmay Community Centre, Woodville Road

Q24: Postcode N16 8NA

Q25: If you would like us to acknowledge receipt of your response, please tick this box (please tick box) Address to which the acknowledgement should be sent, if different from above Yes, please acknowledge our response

Q26: If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

London Gypsies and Travellers is an organisation which challenges social exclusion and discrimination, working for change in partnership with Gypsies and Travellers. We work with the community and a range of trusted partners to contribute to the development of local, regional and national policy.

www.Londongypsiesandtravellers.org.uk