



The Traveller Movement

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A Place to call home: Ethnicity, culture and planning for Traveller sites



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About TM: The Traveller Movement (TM) was established in 1999 and is a leading national policy and voice charity, working to raise the capacity and social inclusion of the Traveller communities in Britain. TM act as a bridge builder bringing the Traveller communities, service providers and policy makers together, stimulating debate and promoting forward-looking strategies to promote increased race equality, civic engagement, inclusion, service provision and community cohesion. For further information about TM visit www.travellermovement.org.uk

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1. Executive Summary and Recommendations

This is a report on Gypsies and Travellers, ethnicity and planning. It focuses on 'gypsy status', the technical planning definition that is currently used in Government planning guidance to define who can and cannot live on a Gypsy and Traveller site.

The current 'gypsy status' definition is:

*'Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependant's educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show-people or circus people travelling together as such.'*¹

On 17th January 2014, Brandon Lewis (Minister for Local Government) made a statement regarding the continued recovery of Gypsy and Traveller planning appeals in the Green Belt, in which he stated:

"we want to consider changes to the planning definition of 'travellers' ('gypsy status') to reflect whether it should only refer to those who actually travel and have a mobile or transitory lifestyle. We are open to representations on these matters and will be launching a consultation in due course."

On 14th September, 2014, the promised consultation was announced by the same Brandon Lewis:

"We will not sit back and allow people who bypass the law to then benefit from the protection it can offer."

We have already strengthened the powers that councils have to enforce planning rules and take action against breaches which fuel community tensions. This will not only tackle the abuse of the system but prevent long drawn-out cases like Dale Farm."

The consultation concerns a raft of proposals to dramatically change planning and accommodation policy as it applies to Gypsies and Travellers and includes a significant change to the 'gypsy status' definition.

The proposed change is:

"that the definition of travellers in planning law will be changed so that local authorities would only be asked to plan ahead to meet the needs of those who lead a genuine travelling lifestyle."

The consultation document states that:

"The Government therefore proposes amending the current definition of both "gypsies and travellers" and "travelling showpeople" in Annex 1 to Planning

¹ <https://www.gov.uk/government/publications/planning-policy-for-traveller-sites>

Policy for Traveller Sites to remove the words or permanently to the effect that it would be limited to those who have a nomadic habit of life.”

It also states that:

“decision takers should give close scrutiny to whether the applicants are in fact living a nomadic lifestyle.”

The consultation also includes the proposal to remove the existing cultural/ethnic dimension of Housing Act 2004 definition (used for Gypsy Traveller Accommodation Needs Assessments) and bring it into line with the proposed change to the planning definition of ‘gypsy status’.

The Traveller Movement believes that these changes exacerbate an already discriminatory and anachronistic definition of Gypsies and Travellers for the purposes of determining who gets to live on a Traveller site. The majority of Gypsies and Travellers on Traveller sites; or wishing to live on Traveller sites, no longer follow the kind of nomadic life that may have been the norm when the ‘gypsy status’ planning category came into being in 1959. By reinforcing the requirement for Gypsies and Travellers to be *“living a nomadic lifestyle”* to be eligible for permanent sites, the proposed changes to the definition are Kafkaesque and will literally set many Gypsy and Traveller families back 54 years by forcing them back onto the roads and highways. The effects of these changes, and the increased requirement on *“decision takers to give close scrutiny”* to ‘gypsy status’; will fall heaviest on the young, the elderly, single women and the disabled and infirm.

In publishing this report, the Traveller Movement (TM) aims to explain how Gypsy and Traveller ethnicity should and could relate to planning and accommodation. We also highlight the key issues relating to ‘gypsy status’ that we believe should be considered in both the Government’s forthcoming consultation, and, if positive change in this area is not an outcome of that consultation; by those campaigning for such change under future administrations. We also suggest a ‘Gypsy and Traveller status’ planning definition of our own. One that recognises the ethnicity, heritage and cultural preferences of Gypsies and Travellers without restricting them to whatever *“decision takers”* decide is a *“genuine travelling lifestyle.”*

Key issues

- **‘gypsy status’ does not recognise the ethnicity or culture** of the UK’s Gypsy, Irish Traveller or other traditional Travellers. It is based on an outdated idea that Gypsies and Travellers are purely ‘nomadic’ – or constantly travelling in the search for certain types of work.
- **The definition not only impacts on planning, it also feeds public perceptions** (note the non-use of capitals in the definition). The fact that the definition does not reflect the ethnicity of Romany Gypsies and Irish Travellers (both legally recognised ethnic minority groups with protected characteristics)

too often results in the public, policy makers and the media not recognising their culture and heritage (see example below).²

- **Requires Gypsies and Traveller to travel in order to stay still.** Applicants for planning permission for a permanent site have to show they are nomadic for economic purposes, but they need somewhere permanent to live precisely because it is increasingly impossible to live an economically viable nomadic life. On the roadside they are harried from pillar to post. When they buy a piece of land and make a planning application they usually face vociferous local opposition. They are, thus, caught in a classic vicious circle.
- **Confines Gypsies and Travellers to traditional and often insecure occupations** because sedentary professions such as teaching or retail pose the danger of an individual losing 'gypsy status' because they can no longer prove they are travelling for an economic purpose
- **Discriminates against women** as they are more likely not to have worked or not to have worked recently because they are involved in childcare and are less likely to work in the types of employment to qualify for 'gypsy status'; like tree cutting, ground work, roofing, and tarmacing, which tend to be male dominated. This restricts women to home-making and caring for children and older relatives, and leaves them vulnerable to losing that status if a relationship breaks down and they are left as single parents.
- **The Governments proposed changes (September 2014) to tighten up the current 'gypsy status' definition will only exacerbate the existing negative/adverse impacts outlined above. The Government should be aware that the proposed changes will most likely:**
 - **discriminate against the elderly and infirm**
 - **increases the discrimination against women, both married and single**
 - **restrict the life choices and occupational opportunities of young Gypsies and Travellers who were born on Traveller sites, or who live in houses but want to maintain a culturally preferred way of life**

Key findings

- TM's analysis of the Government's previous public engagement on 'gypsy status' in the 2011 'Planning policy for traveller sites' consultation found that the issue caused significant confusion reflecting a large number of conflicting responses and a wide lack of understanding from many respondents resulting in the consultation giving no clear and definitive answer on 'gypsy status'.

² In April 2014 the Government website titled 'Reducing inequalities experienced by Gypsies and Travellers' was not using capital letters to describe these groups and only amended this after the TM raised the issue. Non-use of capitals in reference to Gypsies and Travellers is common place in policy documents, media reports etc and from TM's experience stems from the non-recognition of ethnicity in the planning definition and a wider attempt by the government to play down the question of ethnicity.

- The conflicting responses and lack of understanding in the 2011 consultation were mainly for two reasons: The first was that some organisations wished to retain some form of 'gypsy status' as a protection in planning, but also wished to radically reform it and were divided between the yes or no question on whether to retain the current definition. Secondly, our analysis of the comments revealed that many of the respondents failed to understand the question because of either a lack of knowledge about 'gypsy status' and how it is applied in the planning system or confusion arising from the wording of the consultation paper.
- From TM's analysis of the 2011 consultation comments it is clear that there is a significant body of support from local authorities (LAs), Gypsy and Traveller organisations, legal firms etc (25% or 107 out of 436 respondents who commented) for a broader definition in line with section 225 Housing Act 2004 and/or including ethnic recognition.
- Other comments included 52 respondents who stated that 'gypsy status' should be based on a current and in some cases past nomadic lifestyle; 27 respondents who believed the definition should be removed altogether and eight respondents who provided comments that were inappropriate and in some cases abusive and discriminatory. The rest of the respondents commented on 'gypsy status' or related issues, such as the inclusion of Show People and Bargees, or local issues concerning applications for Traveller sites, but did not directly address the definition.

Key Recommendations

- **The Government need to ensure they engage in a meaningful and robust consultation process on 'gypsy status'** with all parties involved (in line with Government guidance on Consultation Principles)³ and that those groups who will be directly affected by a revised definition are given every opportunity to represent their knowledge and expertise on this hugely important issue. The process should include regional consultation meetings.
- **The Government should ensure that all their documents/publications use upper-case G and T when referring to Gypsies and Travellers** and that they actively promote the use of capitals and full acknowledgement of the ethnic status of these groups when engaging with other statutory organizations, the public and the media.
- **The TM recommends a revised workable definition which recognises the culture and heritage of traditional Gypsies and Travellers whilst encompassing a wider dimension which would include all Traveller groups possibly in line with the current definition being introduced by the Welsh Assembly in its new Housing Bill.**

³ <https://www.gov.uk/government/publications/consultation-principles-guidance>

2. Introduction

The significant difficulties Gypsies and Travellers experience gaining permission through the planning system is one of two major barriers to providing accommodation – the other being the continued lack of public site provision and the building of new public sites. A key part of that planning barrier is the anachronistic ‘gypsy status’ definition that applicants for residential Gypsy and Traveller sites have to meet. Initially intended as a tool to address inequalities in the outcomes of accommodation provision for Gypsies and Travellers, it has become yet another hurdle to be cleared for those wishing to develop Traveller sites.

The restrictive definition of ‘gypsy status’ not only impacts on planning, it also feeds public perceptions. The fact that the definition does not reflect the ethnicity of Romany Gypsies and Irish Travellers (both legally recognised ethnic minority groups with protected characteristics) too often results in the public, policy makers and the media not recognising their culture and heritage. It is the basis for “if they are travellers then why don’t they travel”, the often repeated anti-Gypsy comment that can be found in just about any public online discussion over site provision.

Effectively addressing ‘gypsy status’ would be a major step towards securing equality for Gypsies and Travellers in the planning system and in wider society.

The current definition of ‘gypsy status’ is impractical and anachronistic because it requires ethnic Romany Gypsies and Irish Travellers to prove that they travel if they want to settle on Traveller sites and because it demands adherence to a traditional way of life for ethnic Gypsies and Travellers that in many cases is no longer viable because of society-wide regulatory and economic changes.

This paper seeks to inform stakeholders and policy makers as to the inequalities resulting from ‘gypsy status’, both in its current form and with the proposed changes, and to open up the discussion on how to improve the definition. It explains the definition’s origins and development, and why it is perceived by many to be constrained and outmoded. It analyses the comments and answers given by stakeholders and policy makers in the 2011 Coalition Government consultation on ‘Planning for traveller sites’, to the question on ‘gypsy status’ ; and considers the options for its replacement with a more contemporary definition which reflects the ethnicity and culture of Gypsies and Travellers in modern day Britain. It also considers the possible legal challenges that may result if the Government is successful in further restricting the current nomadic definition of ‘gypsy status’.

3. Background and context

The critical shortage of culturally appropriate accommodation is a major barrier to equality for Gypsies and Travellers in the UK.

Despite a succession of central government policies urging local authorities to make provision, these policies have consistently been ignored or watered down in their

implementation at local level; a tendency that has been exacerbated by the Coalition Government's 'Localism' agenda.⁴

There was evidence that circular 01/2006, guidance for the planning and provision of Traveller sites was slowly turning things around, with a slight but steady increase in private Traveller site developments by Gypsies and Travellers themselves. However, the proposed changes in the 2014 consultation threaten to strangle those fragile green shoots, bringing Traveller site provision to a grinding halt.

The failure to address the shortage of sites impacts on other social inequalities experienced by Gypsies and Travellers, since without a fixed home it is harder to attend school, access health and maternity care, register for a bank account etc.⁵

The TM believes that a planning and land use definition for Gypsies and Travellers, or some form of status, is required to ensure adequate provision of culturally appropriate accommodation. Such a definition should include all ethnic Gypsies and Travellers as well as New Travellers.

The implications of significantly changing 'gypsy status' so it only applies to those 'living a nomadic lifestyle' would effectively mean no specific planning policy for Traveller sites. This would not 'level the playing field', as some critics of the guidance have claimed. Instead it would negatively impact on the already insufficient provision of Gypsy and Traveller accommodation, most likely resulting in an increase of unauthorised sites and the inequalities Gypsies and Travellers experience. It would also pose further problems as to who would then be eligible to live on already existing local authority and private sites. Although many Gypsies and Travellers now live in conventional 'bricks and mortar' accommodation, many were forced into doing so against their will, and the narrowing of existing planning guidance for Travellers would lead to further forced assimilation.

4. Where did the definition come from?

The Highways Act 1959 created an offence that could only be committed by 'gypsies', that of living on or hawking goods on the roadside. The courts, convinced that Parliament could not have intended explicitly to discriminate against ethnic Gypsies, decided that the term 'gypsy' must be concerned with one's lifestyle rather than ethnicity (see *Mills v Cooper*). Similarly, the definition contained in the Caravan Sites and Control of Development Act (CSCDA) 1960 was that 'gypsies' were 'persons of nomadic habit of life, whatever their race or origin' (section 24(8)).

This statutory definition was incorporated in a slightly revised form in the Caravan Sites Act 1968. The Act required local authorities to provide sites for Gypsies and Travellers who were defined as:

⁴ EHRC, 2009, *Assessing local authorities' progress in meeting the accommodation needs of Gypsy and Traveller communities in England and Wales: 2010 update*
http://www.equalityhumanrights.com/sites/default/files/documents/research/gt_research_report_68_exec_summary_english.pdf

⁵ EHRC, 2009, *Inequalities experienced by Gypsy and Traveller communities*

'Persons of nomadic habit of life whatever their race or origin, excluding members of an organised group of travelling showpeople or persons engaged in travelling circuses, travelling together as such.'

Since its adoption, the planning and land use definition of the word 'gypsy' or 'gypsy status' has been interpreted by the courts on a number of occasions. The most important cases include:

- Greenwich LBC v Powell⁶ which confirmed that someone could be a Gypsy if they had a permanent residence, and travelled only seasonally;
- R v Shropshire CC ex parte Bungay⁷ which recognised that someone could remain a Gypsy if they did not travel, provided the travelling was only in abeyance, not abandoned; and
- R v S Hams DC ex parte Gibbs⁸ in which the Court of Appeal required an economic purpose to the nomadism. As one of the judges put it:

*'...the definition of 'Gypsies' imports the requirement that there should be some recognisable connection between the wandering or travelling and the means whereby the persons concerned make or seek their livelihood. Persons or individuals who move from place to place merely as the fancy may take them and without any connection between the movement and their means of livelihood fall outside these statutory definitions.'*⁹

While the formal definition does not make explicit this economic dimension, the economic purpose behind nomadism is recognised as a key consideration in Councils and Inspectors' assessment of planning proposals.

Then, in Wrexham CBC v The National Assembly of Wales and Berry¹⁰, Mr Berry, a Romani Gypsy, had retired from work due to ill health, the Court of Appeal concluded that this meant that Mr Berry no longer had 'gypsy status'. Auld LJ stated:

'Whether applicants for planning permission are of a 'nomadic way of life' as a matter of planning law and policy is a functional test to be applied to their normal way of life at the time of the determination. Are they at that time following such a habit of life in the sense of a pattern and/or a rhythm of full time or seasonal or other periodic travelling? The fact that they may have a permanent base from which they set out on, and to which they return from, their periodic travelling may not deprive them of nomadic status. And the fact that they are temporarily confined to their permanent base for personal reasons such as sickness and/or possibly the interests of their children, may not do so either, depending on the reasons and the length of time, past and projected, of the abeyance of their travelling life. But if they have retired permanently from travelling for whatever reason, ill health, age or simply because they no longer wish to follow that way of life, they no longer have a 'nomadic way of life'.

⁶ [1989] 1 All ER 65, HL.

⁷ (1991) 23 HLR 195.

⁸ [1994] 4 All ER 1012, CA.

⁹ Ibid at 1021.

¹⁰ [2003] EWCA Civ 835

Mr Berry was refused leave to appeal to the House of Lords. The Court of Appeal's decision did not reflect the fact that the state owed a positive duty under article 8 of the European Convention on Human Rights (ECHR or 'the Convention') to facilitate the Gypsy way of life and Mr Berry took his case to the European Court of Human Rights (ECtHR). However, before the ECtHR could consider Mr Berry's case, his re-determined planning and enforcement appeals were allowed, meaning he was no longer a 'victim' for ECHR purposes. As a consequence, the court found his case to be inadmissible.

The Court of Appeal's judgment in Berry had paid no regard to the fact that Gypsies and Travellers were entitled to respect of their traditional way of life and the impact of the decision was tackled when the Government published Circular 1/06 and, in doing so, changed the policy definition of the term 'Gypsies and Travellers'. Paragraph 15 of Circular 1/06 stated that:

'For the purposes of this Circular 'gypsies and travellers' means

*Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such.'*¹¹

The picture was made more complex as a consequence of Romany Gypsies and Irish Travellers being recognised as ethnic groups under race relations legislation, and by New Travellers being able to claim 'gypsy status' in some situations.

In response to these uncertainties John Prescott's review of planning policy, which resulted in Circular 1/06, Planning for Gypsy and Traveller Caravan Sites, introduced a revised definition of 'gypsy status' for planning, which differed from that in the 1968 Caravans Act by adding in:

'persons who on grounds only of their own or their family's or dependant's educational or health needs or old age have ceased to travel temporarily or permanently'.

While the revised 'gypsy status' definition in Circular 1/06 included people unable to travel because of educational or health needs or old age, it did not address the issue of ethnic Gypsies and Travellers being excluded. This is striking given that s.225 of the Housing Act 2004, introduced by the same Labour Government, required local authorities to assess accommodation needs to include Gypsies and Travellers who were defined as:

'Persons with a cultural tradition of nomadism or living in a caravan; and all other persons of nomadic habit of life, whatever their race or origin, including such persons who, on grounds only of their own or their family's or dependant's educational or health needs or old age have ceased to travel temporarily or

¹¹ It is this definition which has been retained in the Coalition Government's 'Planning policy for traveller sites', 2012.

permanently; and members of an organised group of travelling showpeople or circus people (whether or not travelling together as such).¹²

So, the Housing Act 2004 definition includes travelling showpeople and circus people, allows for people unable to travel because of educational or health needs or old age, but also recognises the needs of people with a cultural tradition of nomadism or living in a caravan and specifically includes ethnic Gypsies and Travellers in housing who may need caravan site accommodation. It does not expressly include ethnic Gypsies and Travellers but neatly gets round the difficult issue of who is or isn't an ethnic Gypsy or Traveller by using the shorthand of '*cultural tradition*'.

The difference between the two definitions results in the contradictory situation where for the purposes of gathering evidence of accommodation needs, Gypsies and Travellers are included as persons with such a '*cultural tradition*', but, if planning permission is to be granted for a residential site, they have to prove a nomadic habit of life.

Government statements at the time the definitions were adopted suggested the distinction was because of the need for the planning definition to relate to land use.¹³ The Coalition Government used the same argument in the consultation on 'Planning policy for traveller sites'.¹⁴ But what does relationship to land use mean? We believe it is a short hand for anxieties about how the planning system would cope with the tensions over the additional accommodation required. Effectively Ministers were saying it's hard enough for local authorities to accommodate existing needs but if the definition was wider and included persons with a '*cultural tradition of nomadism*' (including Gypsies and Travellers in housing) it would be impossible to meet the accommodation needs identified.

5. Key issues/problems arising from 'gypsy status'

There are a number of key issues/problems which arise from the current definition and that will most likely be exacerbated if the Government's latest proposals come into force. These centre round its antiquated nature, its failure to recognise ethnicity and its inconsistent and possibly discriminatory application by local authorities. The section below outlines these issues/problems in greater detail.

Travelling to stay still and limiting employment opportunities

The definition is anachronistic for two reasons. The first is that applicants for planning permission to stay in one place have to show they are nomadic for economic purposes, but they need somewhere permanent to live precisely because

¹² Housing (Assessment of Accommodation Needs) (Meaning of Gypsies and Travellers) (England) Regulations 2006.

¹³ Definition of the term 'gypsies and travellers' for the purposes of the Housing Act 2004 Summary of responses, DCLG January 2007, paragraphs 20 –22.

¹⁴ Planning policy for traveller sites Summary of consultation responses, DCLG March 2012 paragraph 13.

it is increasingly impossible to live an economically viable nomadic life. As planning expert Marc Willers QC has commented, this is a catch-22 situation.¹⁵

The second reason is that 'gypsy status' can confine Gypsies and Travellers to traditional and often insecure occupations. In *Clark Gowan v. Secretary of State and North Wiltshire*¹⁶ a Gypsy who worked away from home on pre-arranged brick-laying was held to have lost 'gypsy status'. The increasing sophistication of economic activity, administrative controls such as the Scrap Metal Dealers Act 2013 and universal mobile phones mean few Travellers obtain employment principally by knocking on doors. The more economically successful Gypsies and Travellers who manage to embed their businesses within a locality through word of mouth are particularly vulnerable to losing 'gypsy status' (see Pheobe Buckley and Cambridgeshire case studies below).

No recognition of ethnicity

There are other problems with the current nomadic definition of 'gypsy status'. Unlike the current Housing Act 2004 definition, 'gypsy status' carries no ethnic or cultural dimension. This has led to frustration by some Romany Gypsies and Irish Travellers, who complain that some New Travellers are able to prove 'gypsy status', while some Romany Gypsies and Irish Travellers cannot. It can also lead to a situation on some Traveller sites where some members of the same family are defined as 'gypsies and travellers' for planning purposes and some are not (see Pheobe Buckley case study below).

Excludes housed Travellers

'gypsy status' excludes housed Gypsies and Travellers. Yet many living in conventional housing are isolated, show high levels of stress and poor health; and a significant number have a very strong aversion to living in houses, or would simply prefer to return to a more culturally appropriate way of life.

Discriminates against women

'gypsy status' also discriminates against women. Women may be more likely not to have worked since they have been involved in childcare etc. Apart from market trading, the types of employment likely to qualify for 'gypsy status'; like tree cutting, ground work, roofing, and tarmac, tend to be male dominated. Also, cultural preferences can sometimes restrict women to home-making and caring for children and older relatives, and leave them vulnerable to losing 'gypsy status' if a relationship breaks down. It is also limiting for young people. In a recent planning appeal,¹⁷ a 17 year old Gypsy girl, whose family's 'gypsy status' had been recognised because of the children's educational needs and who had spent much of her life on the family's site, was found to have lost that status because she worked in a local supermarket (see Cambridgeshire case study below).

¹⁵<http://www.travellerstimes.org.uk/list.aspx?c=F1B1C82C-0F3C-4EDF-98CD-502EA80ED8FA&n=6BB7F634-7AF5-44B1-BA0E-2D3C6C2DDB1B>

¹⁶ [2004] EWHC 1284 (Admin).

¹⁷ Planning Inspectorate reference 2185676 paragraph 56

Thus, it will be appreciated that the application of the current definition of 'gypsy status' may well lead to planning decisions that are contrary to Article 8 of the Human Rights Act and European Convention on Human Rights (right to private and family life and home), and may also disproportionately impact on certain ethnic groups and women, contrary to Article 14 (discrimination).

Prone to legal challenges

Another potential result of 'gypsy status' (especially in the context of the Government's proposals) is that it leads to planning decisions that are contrary to Human Rights legislation as outlined above (section on discrimination against women).

The local government Planning Officer's Society have also warned that the proposed changes to further restrict 'gypsy status' will "place an unnecessary burden on local authorities and has potential for legal challenge". Catriona Riddell, the Planning Officers Society's Strategic Planning Specialist, also said: "The proposed changes to the definition of 'travellers' which distinguishes between travellers that travel and those that have ceased to travel, will be very difficult to apply in practice."¹⁸

Case Studies

Case study: Pheobe Buckley

A planning inspector making a decision on an appeal against the refusal by a council to grant permanent permission for a Traveller site, found that the Buckley's, a Romany Gypsy couple, did meet the definition for 'gypsy status'. However, the inspector also decided that their daughter, Phoebe Buckley, an Olympic equestrian, did not. After agreeing that "*Mr and Mrs Buckley are gypsies for the purposes of planning policy,*" the Inspector then said in his report:

"Their daughter, however, has a different lifestyle. She is an established and successful equestrienne, training horses and riding them in events and races for their owners. She also earns income from giving lessons. Whilst Phoebe travels extensively in connection with her work, the events she attends are pre-arranged, and she does not travel to look for work. I do not consider that she follows a nomadic habit of life, and consequently she fails to comply with the definition (...) and she does not have gypsy status for the purposes of planning policy." (consequence of *Clark Gowan v. Secretary of State and North Wiltshire*¹⁹)

Case Study: Cambridgeshire

A single mother and her family, who previously had travelled extensively in the Cambridgeshire and Bedfordshire area, applied for planning permission for a small site in Cambridgeshire. The application was refused by the local authority and she appealed. The appellant explained that providing an education for her children was

¹⁸http://localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=20040%3AChange-to-travellers-definition-qhas-potential-for-legal-challengeq-planning-officers&catid=63&Itemid=31

¹⁹ [2004] EWHC 1284 (Admin).

the reason for settling on the appeal site and achieved 'gypsy status' for her and her school-age children on that basis.

Another daughter is 17 and has a full-time job in a store and another is 18 and does not have a job, but helps with the children. The inspector decided that those two daughters did not qualify for 'gypsy status', stating in his report that:

“Given the age of (both the daughters and the employment status of the one working), I have considered the question of gypsy status separately in their cases. For most of their lives, (the daughters) have been settled on the appeal site, and whilst their education needs were part of the reason for the family ceasing to travel, these circumstances no longer apply. I am satisfied that the occupants of the appeal site, with the exception of (the daughters), are gypsies for the purposes of planning policy. Insofar as (the daughters) are concerned, the information about them is insufficient to support a finding that they are gypsies for the purpose of planning policy.”

6. Analysis of 'gypsy status' responses in the consultation on Planning Policy for Traveller Sites

In the context of the Coalition Government's recent decision to conduct a consultation on the planning definition of Travellers, TM decided to conduct a brief analysis of the Government's previous consultation on this issue in 2011 which posed the question:

Question 1: 'Do you agree that the current definitions of "gypsies and travellers" and "travelling showpeople" should be retained in the new policy?'²⁰

As illustrated in the table below, a majority of respondents agreed that the current definition should be retained. However, what the DCLG analysis and the graph below failed to capture were the detailed comments made by 436 (69%) out of 636 respondents who answered the question.

Type of respondent	Yes	No	Neither yes or no or view not expressed
Representatives of travellers	16(44%)	15 (42%)	5 (14%)
District, county and borough councils	169 (72%)	27 (11%)	40 (17%)
Parish and town councils	114 (65%)	32 (18%)	30 (17%)
Residents' associations	11 (55%)	3 (15%)	6 (30%)
Individuals	44 (33%)	33 (25%)	57 (43%)
Others	23 (52%)	11 (25%)	10 (23%)
Total	377 (58%)	121 (19%)	148 (23%)

To understand the detailed, nuanced and often conflicting comments of many respondents TM approached DCLG to get a more detailed breakdown of the responses. The Department agreed to release the responses under the Environmental Information Regulations with personal information redacted.

²⁰ <https://www.gov.uk/government/consultations/planning-for-traveller-sites>

Key findings/issues

From TM's analysis of the comments it is clear that there was a significant body of support for a broader definition recognising culture and ethnicity. However, our analysis also found that the questions caused a significant amount of confusion and that the results do not give a clear and definitive answer on 'gypsy status'.

Below are the key finding and issues resulting from our analysis.

Support for broader definition

It is clear from our own analysis that of the 436 respondents who commented, 107 respondents or 25% (including two-thirds of Gypsy and Traveller groups and a significant minority of LAs) want the current definition of 'gypsy status' amended to give more protection to Gypsies and Travellers and in their responses give a clear indication of what a new/revised definition should look like. Those responses can be divided into 19 who want an amended definition of 'gypsy status' to resemble the current Housing Act 2004 definition; 63 who wish for a new planning status to be based on ethnic recognition and 25 who believe it should include both.

Below are two examples of these responses:

'If a definition is required at all, we favour the adoption of the definition of "gypsies and travellers" as set out in Sec 225 of the Housing Act 2004. This definition is more pragmatic, wider and enables local planning authorities to understand the possible future accommodation needs of this group and plan strategically to meet those needs. The housing definition recognises that people may be culturally Gypsies and Travellers, but have ceased to travel for a wider range of reasons than in the Circular 01/2006 definition. The pressures against a nomadic life make it increasingly difficult to meet the strictly mobility based planning definition (and the criteria the Planning Inspectorate have developed to test whether people meet that definition.)'

Response from Leicestershire County Council who disagreed with retaining the current definition

'Whilst we agree with the retention of the current definitions, we would support calls for those definitions to be replaced by the definition in the Housing (Assessment of Accommodation Needs) (Meaning of Gypsies and Travellers) (England) Regulations 2006. That is because while we take on board, that the purpose of the planning definition is to identify those who have specific land use requirements for a site, or sites, it is too limited for that purpose. The definition should include those ethnic Gypsies and Travellers who may be in housing only or mainly because there are no sites available but who otherwise would wish to live in caravans. In our view, the failure to include such people within the definition fails to respect their traditional way of life and could well be held by the European Court of Human Rights to breach Article 8 of the European Convention on Human Rights.'

Response from Garden Court Chambers who agreed with retaining the current definition

Based on nomadic lifestyle

On the other hand, 52 respondents (mostly LAs and Parish Councils) specifically state that 'gypsy status' should be based on a current and in some cases past nomadic lifestyle.

Remove the definition: Everyone should be treated the same

27 respondents (mainly anonymous and Parish Councils) believe that the whole of the planning guidance for Gypsies and Travellers should be removed and that everyone should be treated the same.

Inappropriate responses

Eight respondents (mainly anonymous and Parish Councils) provided comments that were inappropriate and in some cases abusive and discriminatory. An example of this is R425 (Parish Council):

'The definition appears to give Gypsies and Travellers a status not enjoyed by the settled community who invariably are the ones who pay their Rates and Taxes and are entitled to not having their residences devalued by Traveller Sites. This is especially the case for unauthorized sites.'

This is offensive because it implies that Gypsies and Travellers do not pay 'Rates and Taxes', which is both prejudiced and inaccurate.

Do not directly address definition

The rest of the respondents commented on 'gypsy status' or related issues, such as the inclusion of Show People and Bargees, or local issues concerning applications for Traveller sites, but did not directly address the definition.

Conflicting responses and lack of understanding

The conflicting responses and lack of understanding is mainly for two reasons: The first is that organisations wishing to retain some form of 'gypsy status' as a protection in planning, but also wishing to radically reform it, appear to be divided between the (Yes) and (No) answers.

An example of this would be comparing respondent 54 (anonymous) and 137 Derbyshire Gypsy Liaison Group (DGLG) who both elected to not retain the current definition of 'gypsy status' (answer 2). Yet from the comments of both it is clear that DGLG (R137) wishes to retain a revised status for Gypsies and Travellers (based on a cultural definition rather than a nomadic one) but R54 wants to scrap it altogether. DGLG (R137) justifies their 'no' answer by arguing that 'gypsy status' should be scrapped but replaced with a clearer definition based on cultural/ethnic status. However, R54 commented that there should be no definition at all because of a perceived unfairness to the "settled community". R54 and R137 clearly have diametrically opposed views on planning policy and Gypsies and Travellers, yet the DCLG PPTS consultation question on 'gypsy status' (*Do you agree that the current definitions of 'gypsies and travellers' and 'travelling showpeople' should be retained*

in the new policy?) placed them in the same group that do not support the current 'nomadic' definition.

The second reason the TM believes that the consultation is unreliable is because our analysis of the comments also reveal that many of the respondents have failed to understand the question because of either a lack of knowledge about 'gypsy status' and how it is applied in the planning system or confusion with the wording of the consultation paper.

An example of a lack of planning knowledge is R583 from Deutsche Telecom who agreed with retaining the current definition and answered *'although current definitions have flaws, for example they make many people travellers who are currently living in houses, I am struggling to create a better definition.'* Another example is R75 (anonymous) who did not agree with retaining the current definition of 'gypsy status' and commented that; *'in the interests of equality it should not be necessary to describe a particular ethnic group,'* and has clearly not understood the implications of what the current definition of 'gypsy status' is.

An example of the confusion arising from the consultation is R306 (Nuneaton and Bedworth Borough Council): whose comments are self-explanatory: *"A clear definition (or definitions) is needed that is supported by the gypsy and traveller and travelling showpeople communities. However, it is unclear what is being proposed. Paragraph 3.7 (of the consultation paper) appears to suggest a single definition of traveller whilst Q1 asks whether it is agreed that the current definitions of 'gypsies and traveller' and 'travelling showpeople' are retained."*

It is apparent to the TM that the consultation does not give any clear indication on what policy-makers and stakeholders want from 'gypsy status', which is an unfortunate omission because it is an integral plank of the current policy for Traveller sites. Rather than giving a definitive answer that guides a clear policy outcome, Question 1 (*Do you agree that the current definitions of 'gypsies and travellers' and 'travelling showpeople' should be retained in the new policy?*) became a de-facto sounding board for those who wanted the whole of the planning policy for Gypsies and Travellers to be removed, those who supported its current definition based on nomadism, and those who wished to amend and widen 'gypsy status' because they believe that it does not deliver enough protection within the planning system for all Gypsies and Travellers.

What is evident from our detailed analysis is that there is a significant body of detailed and informed support (from LAs, Gypsy and Traveller organisations, legal firms etc) who emphasise the importance of a broader definition in line with section 225 Housing Act 2004 and/or which includes ethnic recognition.

7. Moving forward: Possible options for the future

As recognised in the Chapman case,²¹ living in caravans is an integral part of the Gypsy way of life, which the Government and councils have a duty to facilitate. Yet living in a caravan does not represent the totality of contemporary Gypsy and Traveller ethnicity and neither does nomadism. Many Gypsies and Travellers live in

²¹ Chapman v UK [2001] 33 European Human Rights Reports 16

houses for some or all of their lifespan and it is now extremely difficult to live a nomadic life without a safe home base.

In their responses to the 2011 consultation on 'Planning policy for traveller sites', two thirds of Gypsy and Traveller organisations and representative groups, favoured adding an ethnic or quasi-ethnic dimension to the existing definition.

Two closely related ways of achieving that aim were suggested. The first is by replacing 'gypsy status' with the Housing Act 2004 definition. This is a similar approach to that taken by the Welsh Government in its new Housing (Wales) Bill which should be in operation by early 2015.

The Welsh Government draft definition of Gypsies and Travellers currently reads:

*(a) persons of a nomadic habit of life, whatever their race or origin, including—
(i) persons who, on grounds only of their own or their family's or dependant's educational or health needs or old age, have ceased to travel temporarily or permanently, and
(ii) members of an organised group of travelling show people or circus people (whether or not travelling together as such), and
(b) all other persons with a cultural tradition of nomadism or of living in a mobile home²²*

A second way, and one that became clear through our consultations with the TM Traveller Advisory group, TM members and activists and at the 2013 TM conference, would be to add the phrase used in the Housing Act definition; "*persons with a cultural tradition of nomadism or living in a caravan*", to the current 'gypsy status' definition, and include specific reference to Romany Gypsies and Irish Travellers as the key ethnic groups covered under the definition.

This would result in a definition that would look like this:

'Gypsies and Traditional Travellers meaning persons with a cultural tradition of nomadism or of living in a caravan, including Romany Gypsies and Irish Travellers whether they live in a house or a caravan; members of an organised group of Travelling Showpeople or circus people (whether or not travelling together as such),²³ and other persons of a nomadic habit of life, whatever their race or origin, including such persons who, on grounds only of their own or their family's or dependant's educational or health needs or old age, have ceased to travel temporarily or permanently'

Reference to a cultural tradition gets round the difficulties of a purely ethnic definition, which would raise sensitive issues of who was and was not a Romany Gypsy or Irish Traveller while specifically including those groups.

There is a strong case to reduce the number of definitions, and for those included in needs assessments to be also entitled to apply for planning permission, but that

²²<http://www.senedd.assemblywales.org/documents/s29418/Housing%20Wales%20Bill%20as%20amended%20at%20Stage%203.pdf>

²³ We have included the existing travelling show people and circus people definition, but would defer to views of those communities in regard to that strand of the definition.

need not mean using the Housing Act definition. If a change is to be made, a revised definition could be applied to both needs assessment and planning.

In their responses to the consultation a number favoured a purely ethnic definition. Many Romany Gypsies and traditional Travellers disagree with the way that non-ethnic Travellers can claim 'gypsy status', based on their nomadic habit of life and means of earning a living, while Romany Gypsies and traditional Travellers going back many generations have lost it.

This is a sensitive issue. We recognise both the particular traditional cultural requirement for Gypsies and traditional Travellers to live in caravans in a semi-nomadic way, but also that the New Traveller way of life is one which deserves respect. We also recognise that the boundaries between different Traveller communities, Travelling Showpeople, circus people, bargees, and the rest of society are not as hard and fast as is assumed.

The above revised definition has the merit of specifically recognising the ethnicity and culture of people of a traditional Gypsy and Traveller background, whilst retaining a broader definition for non-ethnic Traveller groups who wish to live on Traveller sites.

Another alternative which has been cited by Derbyshire Gypsy Liaison Group draws on the example of the recognition of the Métis people in Canada as a distinctive cultural group. This suggests that Gypsies and traditional Travellers in the UK should be defined in statute on the basis of culture, rather than ethnicity using such criteria as self-identification, ancestral connection, and community acceptance.²⁴

Such an approach is strikingly close to the conclusions of the ODPM Select Committee at paragraph 63 of their 2004 Report on Gypsy and Traveller Sites:

'Many Gypsies and Travellers now live increasingly sedentary lifestyles. The current definitions imply that those within the community who do not adopt a nomadic lifestyle are not actually Gypsies and Travellers. Any new definition should comprise both the alternatives of ethnic origin or similar, and nomadic lifestyle. However, we advise the Government to exercise caution in considering applying different definitions for different policies. There is already a lot of confusion surrounding definitions of Gypsies and Travellers and we would not want to see a situation where multiple definitions add to the confusion. In addition we are concerned that the issue of defining Gypsies and Travellers may be over-emphasised. The Equality of Opportunity Committee at the National Assembly for Wales recently argued that Gypsies and Travellers should have the right to self-identify. We agree with this approach, but believe that self-identification must be supported by evidence. This may enable all parties to move forward and address the problems associated with accommodation provision.'

What is evident from the various examples/proposals discussed in this section is that there is a strong body of support for a definition which recognises the culture and

²⁴ Lessons from Canada and the USA To be a Gypsy and not a 'gypsy' that is the question, Siobhan Spencer, February 2012

heritage of traditional Gypsies and Travellers whilst maintaining a broader dimension to the definition, possibly in line with section 225 of the Housing Act 2004.

8. How do we get there?

It may be that the requirement to change will be forced by a domestic court or European court judgment. This may well be the case if 'gypsy status' is further restricted as per the current Coalition Government proposals.

Based on our analysis of the Government's first consultation on 'gypsy status' in 2011/2012, there was a significant body of support from Gypsies and Travellers, Local Authorities, legal firms etc for a broader definition recognising culture and ethnicity. With this in mind we believe there is a strong case for Government to engage in a meaningful discussion with key stakeholders on this issue focused on creating a workable definition in line with the modern lives of Gypsies and Travellers. In making the case for such a change it will be very important to bring out the equalities dimension.

The consultation announced by the Coalition Government is a good opportunity to lobby and campaign on this issue. Change could potentially be introduced through Government policy via an amendment to 'Planning policy for traveller sites' and the statutory instrument that introduced the Housing Act 2004 definition, potentially backed up by the recognition of Romany Gypsies and Traditional Travellers in statute as proposed by Derbyshire Gypsy Liaison Group.

The Government need to ensure they engage in a meaningful and robust consultation process with all parties involved (in line with Government guidance on Consultation Principles)²⁵ and that those groups who will be directly affected by a revised definition are given every opportunity to represent their knowledge and expertise on this hugely important issue including by means of regional consultation meetings.

9. Conclusion

The Traveller Movement believes the Government's decision to consult on the issue of 'gypsy status' represents an important opportunity to bring forward a more workable definition which reflects the modern day culture and traditions of Gypsies and Travellers whilst being more closely aligned with existing legislation (namely the Housing Act 2004). As evidenced in the 2011 Census and yet to be published research by the Department of Health, the vast majority of Gypsies and Travellers are local people living and working in local communities who aspire to build better futures for their children. A key aspect of securing these families' futures is the implementation of effective planning and accommodation policy that fully recognises Gypsies and Travellers distinct accommodation needs in line with their heritage and culture. It is hoped that the Government's consultation on 'gypsy status' will respect and protect this culture and ensure all Gypsy and Traveller families have a place to call home.

²⁵ <https://www.gov.uk/government/publications/consultation-principles-guidance>