

‘Hidden agenda in the last decade Localism and Housing Acts in the UK. Where is the good practice in East and West Midlands case studies?’

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Abstract

Localism acts such as Act 2011 have always accompanied and reinforced Planning Acts. For example, in Planning Act 2008, National Policy Statements describe clearly a single commissioner’s role and tasks to handle application; they also define the cases in which the Secretary of State is a final decision-maker. Planning acts describe the meaning of ‘owner’, allocation of housing accommodation and acquisition of land. On the other hand, with the help of Localism Acts enforcing rules, regulations and continuous amendments, some local communities have successfully challenged Gypsy planning applications as in our case studies in East and West Midlands.

Since several years and looking back in time, policy-makers and extremely conservative locals have always challenged planning applications of Gypsy individuals and communities by successfully repealing provisions of local authorities through petitions and other abusive behaviour at times. Although Housing Act promises to make provisions about housing, secure tenancy and also about mobile homes and the accommodation needs of Gypsies and Travellers, it may also contain contradictory content in ‘schedules’, ‘service notices’ and ‘appeals to prohibition notices’, ‘management orders’, which may encourage locals to oppose local authorities decisions about Gypsy protected sites. However the most sinister decisions and campaigns against Gypsy sites and planning permissions have been triggered mainly by the Localism acts and by notions of who has the right to be a ‘local person’ having the right to make an application and/or acquire land to be used as a protected site.

Key words: Protected site, Nomadism, Power for Communities, Gender issues and Gypsy Culture.

Introduction

During the first year and a half of our involvement in the international project Wor(1)ds which Exclude¹, we have come across very controversial law cases which have been continuously proving our argument that a ‘hidden’ political agenda does not allow transparency in the way that decisions are made on planning applications by Gypsy and Traveller communities in the UK. In some case studies we find out that the terms ‘Gypsy’, ‘nomadism’ and ‘Traveller’ become challenging ‘deterrents’ against planning applications. A Gypsy person getting a local fixed job is no more considered as a ‘Gypsy’ or a ‘Traveller’, because they have no chance to become ‘locals’ in order to acquire more rights. On the opposite side, any person who comes from somewhere else is not considered a local; they have no equal rights with everybody else living in the same area. If they declare themselves as Gypsy/Traveller, they are opposed by the locals as such. For example, locals often use themes of bad waste management and lack of cleanness; they are based on housing acts to avert decisions of the local authorities in favour of Gypsies who have not only lost the right to appeal, but also the right to get legal aid recently.

The term ‘Gypsy’ is often played down to what the rest of the inhabitants want to achieve. Most of the times middle aged Gypsy women become victims of a male war of law and regulations; there are occasions in which a woman loses the right to be a ‘Gypsy’ simply because she needs a job close at hand and for a long period of time, especially if she is a carer to her elderly parents, for example. We have challenged ‘good practices’ of application of housing and planning policies related to Gypsy and Traveller accommodation according to their social and cultural needs by investigating on specific case studies; we went through hidden agenda and tried to decipher metaphors used in acts and decisions associated with them and outcomes of law cases. It is important to talk about the background of Gypsy people in England briefly here.

English Romany Gypsy community is a separate cultural ethnic group in the UK; the migration of Romany groups through Europe to Great Britain happened approximately 600 years ago and the first documentation of Gypsy people was in Scotland in the 15th century 1492 (Dawson 2005). We may have also to highlight the fact that the English, Scottish and Welsh do not refer to themselves as “Roma”.

¹ The International Project Wor(1)ds which Exclude is now available at: <http://weproject.unice.fr>

In a recent national UK report for the research project with the title WE – Wor(l)ds which Exclude, the authors had the opportunity to discuss the historical background within English Law of the differing definitions of Gypsy in relation to the Town and Country Planning Act 194, the Race Relations Act 1976 (now amalgamated into the Equalities Act 2010) and the relatively recent amendment to s225 to Housing Act 2004. The reason was mainly that, planning laws which emerged after 2012 have not been very far-off from policies which preceded them.

The Romany Gypsy people first appeared in Scotland in the middle of the 15th Century; the first recorded reference to ‘Egyptians’ appears in 1492. The families then started to migrate through England and into Wales. The word Gypsy came from the mistaken belief that Gypsies came from little Egypt or the Middle East. In early transcripts families were referred to as Egyptians (Lucas 1982) and the community often referred to themselves as Egyptians hence the word Gypsy.

Books state that the origin of Gypsy people was first traced through language and that the Gypsy people actually originated in India, the Romany language being derived from Sanskrit. It was established as early as 1760 that the Roma Gypsy communities had their origin in India. In the following quote we see that:

In 1760 a student from Western Hungary at Leiden University in the Netherlands overheard students from India converse about the Sanskrit language. Certain Sanskrit words reminded him of a language used by Roma workers on his father’s estate. (Hancock. 2002, p. 10)

Gypsy communities were not well seen by kings and ordinary people often. King Henry VIII proclaimed the first law in England enacted against Gypsy people in 1530, an Act Concerning Egyptians. This was overtly a law targeting Gypsy people as a race of people, by stating that:

Diverse and outlandish people calling themselves Egyptians have gone from place to place and used great and subtle means to deceive the people, bearing them in hand that they by palmistry could tell men’s and women’s fortunes. (An Act Concerning Egyptians 22 Henry V111, c. 10)

There is a long history, which has been largely ignored, due to a pre-occupation of nomadic accommodation and ‘lifestyle’ issues. The lack of knowledge about the Gypsy people helps to support myth, stereotype and misunderstanding and fuels resentment. Covert racism developed over time; for example, words carried forward

from the poor laws and Egyptians Acts, to the Vagrancy Act 1824, targeted the Gypsy community without naming them. Just referring to a Gypsy as an unknown 'Person':

...every Person committing any of the Offences herein-before mentioned, after having been convicted as an idle and disorderly Person; every Person pretending or professing to tell Fortunes, or using any subtle Craft, Means, or Device, by Palmistry or otherwise, to deceive and impose on any of His Majesty's Subjects; every Person wandering abroad and lodging in any Barn or Outhouse, or in any deserted or unoccupied Building, or in the open Air, or under a Tent, or in any Cart or Wagon...

(Vagrancy Act s1V p699)

Legislation and frameworks related to Gypsy definition

As we looked carefully to find out how the definition of Gypsy and Traveller has developed and changed through the years we encountered controversy and misunderstandings. In planning law there is a definition brought forward from the now defunct 1968 Caravan sites Act. For example, case law informed the definition the Mills v Cooper case 1967 whereby, subsequent case law now requires that Gypsies are actively seeking work as a requisite to prove their 'gypsy status'. We have also noted that in planning law, Gypsy is spelt with a lowercase 'g' and this causes confusion, as Romany Gypsies are now recognised as an ethnic group. (Tracada, Spencer & Neary, 2014a)

The authors should like to emphasise that in planning law, being a "gypsy" is determined at the time of a planning application and is not based on ethnic lines, but in how you are living your life at the time of the planning application. Consequently, there have been various anomalies, for example, a mother might be found by planning law not to be a 'gypsy' and instead one of her children is "found" to be a "gypsy"! Subsequently, case law has brought about some very unsatisfactory cases, although the definition within the Planning Circular 2006 has tried to rectify past judgments. Irish Travellers also have to prove "gypsy" status but they are not Gypsies as they have a completely separate origin, Ireland not India. How the media use the words Gypsy adds to the confusion; that means that by not using capital G, the policies exclude an entire ethnic group rather than citizens with travelling habits (Tracada, Spencer & Neary, 2014a)

In planning law, “Gypsies and Travellers” means:

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 dependents' educational or health needs or old age have ceased to travel temporarily or permanently, but excludes members of an organised group of travelling show people or circus people travelling together as such. (Circular 1/06, Planning for Gypsy and Traveller 2006 - this circular has now been withdrawn).

Instead the Housing Assessment of Accommodation Needs (Meaning of Gypsies and Travellers) (England) Regulations 2006 (Statutory Instrument: 2006 No. 3190) (Department for Communities and Local Government - November 2006) describes Gypsies and Travellers (including Travelling Show people) as:

Gypsies and Travellers” means:

(a) persons with a cultural tradition of nomadism or of living in a caravan;
and (b) all other persons of a nomadic habit of life, whatever their race or origin, including

(i) such persons who, on grounds only of their own or their family's or dependent'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).

(Statutory Instrument: 2006 No. 3190)

The Statutory Housing Act 2004 (Chapter 34) appeared with some clarity in intentions and it is generally considered as a very comprehensive act. Indeed it was deliberated:

... to make provision about housing conditions; to regulate houses in multiple occupation and certain other residential accommodation; to make provision for home information packs in connection with the sale of residential properties; to make provision about secure tenants and the right to buy; to make provision about mobile homes and the accommodation needs of gypsies and travellers; to make other provision about housing; and for connected purposes. [18th November 2004] (Housing Act 2004, p.1)

Although Housing Act 2004 intends to regulate Social Housing and Private Initiative, still separates “Accommodation needs of gypsies and travellers” from the needs of the rest of the residents of either existing or new urban sprawl areas by enforcing “duties

of local housing authorities” in section s225. This is to satisfy “accommodation needs of gypsies and travellers” and to offer “Guidance in relation to section 225”. Of course the words ‘gypsies’ and ‘travellers’ show with lowercase ‘g’ and ‘t’ to emphasise the fact that again Gypsies and Travellers should not be considered as ethnic groups, thus, in strong contradiction with all Equality Acts and recent Planning Frameworks. (Tracada, Spencer, Neary, 2014a & 2014c)

In Part 6 of Statutory Housing Act 2004 (Chapter 34) we see other provisions about housing, although we can find s225 and s226 in Chapter 5 and as Miscellaneous. In s225 it is accentuated that local housing authorities have got now “duties” to carry out “assessment of the accommodation needs of gypsies and travellers residing in or resorting to their district”. (Housing Act 2004 (c. 34), p.179). Thus, gypsies are not considered as an ethnic group in s225, but as people “residing”; that means they are for some reason “located in” and perhaps can be a member of the community of the place where they need accommodation. On the other hand they may be “resorting” (=frequently visiting) and being on the move for a job, etc. It is important that the Housing Act 2004 talks about “duties”, of the local authorities; they must carry out an assessment of the accommodation needs, but again this may happen “when undertaking a review of housing needs in their district under section 8 of the Housing Act 1985 (c. 68)” (Tracada, Spencer, Neary, 2014a, p. 24)

Further legislation developed, such as Planning Act 2008 and latest planning frameworks. Planning Act 2008 was presented as:

An Act to establish the Infrastructure Planning Commission and make provision about its functions; to make provision about, and about matters ancillary to, the authorisation of projects for the development of nationally significant infrastructure; to make provision about town and country planning; to make provision about the imposition of a Community Infrastructure Levy; and for connected purposes. [26th November 2008] (Planning Act 2008 (c. 29), p.1)

Planning Act 2008 deals with specific instructions as:

The policy set out in a national policy statement may in particular—

- (a) set out, in relation to a specified description of development, the amount, type or size of development of that description which is appropriate nationally or for a specified area;

- (b) set out criteria to be applied in deciding whether a location is suitable (or potentially suitable) for a specified description of development;
- (c) set out the relative weight to be given to specified criteria;
- (d) identify one or more locations as suitable (or potentially suitable) or unsuitable for a specified description of development;
- (e) identify one or more statutory undertakers as appropriate persons to carry out a specified description of development;
- (f) set out circumstances in which it is appropriate for a specified type of action to be taken to mitigate the impact of a specified description of development.

(Planning Act 2008, Part 2 – National policy statements, p. 3)

Planning Act 2008 and latest Planning Frameworks determine the important role of the Secretary of State who must respect:

- (a) any local impact report (within the meaning given by section 60(3)) submitted to the Commission before the deadline specified in a notice under section 60(2),
- (b) any matters prescribed in relation to development of the description to which the application relates, and
- (c) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.

(Planning Act 2008 (c. 29), Part 6 — Deciding applications for orders granting development consent, Chapter 5 — Decisions on applications, s105, p. 56)

Thus, the role of the Secretary of State is very central to the processes of revoking decisions of local authorities and inspectors, although the decisions are not for the final benefit of the planning applications and the applicants themselves. The appeals to the decisions of the Secretary of State are lengthy and money consuming processes as a whole. It is very rare to get a positive outcome, as in many cases the claimants who appeal to Secretary of State decision may be excluded from European Human Rights legislation, as well.

Since 2012 National Planning Policy Framework (NPPF) has repeated some previous definitions and professed that:

The purpose of planning is to help achieve sustainable development. Sustainable means ensuring that better lives for ourselves don't mean worse lives for future generations.

Development means growth. We must accommodate the new ways by which we will earn our living in a competitive world. We must house a rising population, which is living longer and wants to make new choices. We must respond to the changes that new technologies offer us. Our lives, and the places in which we live them, can be better, but they will certainly be worse if things stagnate. (National Planning Policy Framework, Ministerial foreword. March 2012, Department for Communities and Local Government, p. i)

Hence, the government talks about housing needs in general and asks the local authorities to provide their Local Plans, mainly supported by locals; that means people on the move as Gypsy and Traveller communities are currently facing a lot of undesirable hardship when they attempt to apply for permanent sites instead of temporary. Evictions from temporary sites have occurred since the so-called "local" or "local community" were given power to obstruct planning application processes.

National Planning Policy Framework (NPPF) should be read "in conjunction with the Government's planning policy for traveller sites. Local planning authorities preparing plans for and taking decisions on travellers sites should also have regard to the policies in this Framework so far as relevant". (NPPF, Introduction, s4, p.1)

But the most obnoxious piece of legislation, according to the authors and the communities who suffer from everlasting discrimination in planning in the last decade is Localism Act 2011 with the uprising and boosting of Localism Tenet.

Localism Act 2011 prescribes that:

- (1) A local authority has power to do anything that individuals generally may do.
- (2) Subsection (1) applies to things that an individual may do even though they are in nature, extent or otherwise:
 - (a) unlike anything the authority may do apart from subsection (1),
or
 - (b) unlike anything that other public bodies may do.

In this section "individual" means an individual with full capacity.

(Localism Act 2011 (c.20), Part 1 – Local Government, Chapter 1 – General powers of authorities, s1, pp. 1-2)

According to the Local Government Association, the key measures of the act can be grouped under four main headings:

- new freedoms and flexibilities for local government
- new rights and powers for communities and individuals
- reform to make the planning system more democratic and more effective
- reforms to ensure decisions about housing are taken locally.

However this kind of new reform and freedom of the locals does not allow justice to be made during planning application processes. Reform and freedom does not apply for all unfortunately.

Localism Act 2011 in combination with an amended and comprehensive National Planning Policy Framework (NPPF) could have been a ground-breaking piece of legislation, and especially because of its clear support to neighbourhood planning and the community right to build. The act has been introduced to encourage communities to get involved in planning for their areas by creating their own plans and policies to guide new development. In some cases local communities managed to grant planning permission for certain types of development, such as, for example, projects to create new Green Belt surrounding buildings and infrastructure. But then again, by challenging groups of their own community, people made ruthless use of all legal apparatuses available for their wrong reasons to “challenge”. (Tracada, Spencer & Neary, 2014a, pp. 43-44)

Case Study A

The following Case Study A shows that with the abolition of the Regional Spatial Strategy 2010, Localism Act 2011 growth was inevitable. During their investigation related to Wor(l)ds which exclude, the authors had the opportunity to analyse a large number of cases. Here they wish to focus on the ferocity of Localism Act 2011 and related actions of some local ill-advised groups.

The case study deals with actions and reaction of so-called locals in two different areas. The locals’ movements are: the LE4 Action Group in Leicester in the East Midlands, and Meriden RAID (Residents against Inappropriate Development) in the West Midlands.

There are many of these action groups across the country; they are well organised and many appear to have access to planning consultants and

funding. These action groups are seen as ‘localism’ at its best, (or worst) depending on which side you view it from. There is something unsavoury in that ‘local’ people are deciding who should be resident and who should not. What criteria define a local person? It has been noticeable to me (the author of this case study) in over twenty years of assisting families through the planning system, how the local ‘committed committee goers’, may have only been residents for a short time. (Spencer, 2014)

The LE4 Action Group was formed in Leicester. Their website at <http://le4.moonfruit.com> states that (The LE4 Action Group):

Residents have strongly objected to proposed traveller sites in the area. We now need to focus our energy to structured actions otherwise we simply use up valuable time in frustrating conversations about issues that we are already aware of.

We are committed to fighting the 2 proposed Gypsy/Traveller Sites that are being proposed by Leicester City Council on the County border.

Whilst Meriden RAID (Residents Against Inappropriate Development) Solihull West Midlands campaigners set up a three year protest camp outside an unauthorised site; the eight caravan pitch site was set up in 2010. Within weeks, about 200 residents formed the campaign group; they also set up a camp opposite the Gypsy site which they occupied 24 hours a day until the Gypsies had to leave.

Their website advertises a series of aims, such as, for example:

- To raise awareness of – and press for change in - flawed laws and regulations and promote change to ensure that local residents have equal rights.
- We want to be a model of how residents can lawfully protect themselves from forced developments which threaten to (a) ruin the local environment (b) destroy the balance of the community and (c) undermine the well-being of local people.

In April 2013 the families at Meriden moved off after a dismissal at the High Court. Before the protest Dave McGrath, one of the organisers of RAID, knew just six other people in the village; he said: "I moved into the village in 2009". That is just one year before the Gypsy people arrived. This poses the question just exactly who is ‘local’ under ‘localism’? And this is what the authors mean as ongoing struggle against dishonest reactions of locals who constantly oppose the right to Gypsy and Traveller

people to have permanent accommodation according to their long cultural traditions and life. To end with the authors strive for justice and support for all people: the right to have not only a house, but to feel at home at all times.

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ILLUSTRATIONS:

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Ill. 1: Traditional site



III. 2: New and modern site.