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19 November 2010

FAO Franck David

Scottish Parliament
Public Petitions Committee

Dear Sir

Consideration of Petition PE1364

I refer to your letter dated 28 October 2010 regarding Petition PE1364: Petition by Phyllis McBain calling on the Scottish Parliament to urge the Scottish Government to review all guidelines relating to trespass and encampments for Gypsies/Travellers to ensure their intent is clear and that they are being applied.

In response to your request for comments Aberdeenshire Council responds as follows:

Written Questions

- **Are you satisfied that guidelines used by the police and local authorities to manage unauthorised Traveller camps such as “occupational Travellers” on private land are clear, unambiguous and properly applied? If not, what are the issues that need to be addressed and by whom.**

Response: Aberdeenshire Council is currently undertaking a review of its policy on Management of Unauthorised Encampments of Gypsy/Travellers. The policy is based on the Scottish Executive/Scottish Government guidance: Guidelines for Managing Unauthorised Camping by Gypsies/Travellers in Scotland. The Council is of the view that these guidelines need to be reviewed, the review to encompass powers available to both local authorities and police forces. The term “Occupational Travellers” as noted in the aforementioned guidance is open to misinterpretation. It is this Council’s understanding – confirmed by the Housing and Equalities Divisions of the Scottish Government - that the term “Occupational Traveller” relates to circus/show people rather than

Gypsy/Travellers who move around the country looking for work. The Scottish Executive/Scottish Government guidance would suggest that the term "Occupational Traveller" would apply to any Gypsy/Traveller seeking work. Any review of the Guidelines should clarify the terminology used. The policy does not apply to circus/show people, in accordance with the Guidelines.

It is difficult for Council Officers to confirm if someone is a Gypsy/Traveller and there may well be occasions where a person may wrongly claim to be a Gypsy/Traveller; the Council would have no way of disproving the claim.

There are two particular issues affecting the ability of local authorities to effectively manage unauthorised encampments:

- a) The Lord Advocate's instruction to Procurators Fiscal of a presumption against prosecution for trespass, and
- b) The limitation on the support that the local authority can provide to private landowners should encampments occur on their land.

The presumption against prosecution for trespass limits the involvement of the police and restricts the effectiveness of action that the local authority may wish to undertake, e.g. under the Roads (Scotland) Act 1984.

Mrs McBain's land was seriously damaged by a large encampment during the summer. Aberdeenshire Council could not take eviction action as it was not the owner of the land and was also unable to obtain evidence to identify those individuals responsible for fly-tipping. Mrs McBain was faced with the costs of legal action and clean-up costs. Aberdeenshire Council believe that any review of the Guidelines should include reconsideration of the presumption against prosecution for trespass under certain circumstances, e.g. where land or property has been damaged or where the Council has served Notice under the Roads (Scotland) Act 1984, review of the level of evidence required to be obtained to take a prosecution under the Environmental Protection Act 1990 for fly-tipping and give consideration to powers available to local authorities to deal with encampments on private land.

More detailed guidance appears to be available to English local authorities and Aberdeenshire Council would recommend that this guidance be used as a basis for providing more comprehensive guidance for Scotland. The Council has written to the Minister for Housing and Communities seeking a review of the Scottish Government guidance and of the presumption against prosecution for trespass.

Aberdeenshire Council also recommends that the guidance used by Scotland's police forces be reviewed to enable the police to take a more active role in dealing with encampments that give rise to problems, particularly those on private land. The Council has written to ACPOS seeking a review of their guidance.

- **The concerns and experience of the petitioner and others in their situation is that local authorities and police forces do not step in for fear they could be accused of breaching a policy of non-harassment of ethnic groups. Is this not an indication that the legal definitions and guidelines relating to the different groups of Travellers could be clearer?**

Response: The Council does not have a ‘non-harassment’ policy. The policy clearly allows for action to be taken against those encampments that occupy unacceptable/unsuitable locations that are Council-owned and where the encampment breaches its policy, including the Good Neighbour Code. The Council has undertaken civil eviction action on several occasions in recent years but can only take this action if the encampment is on Council-owned land. As indicated above, Aberdeenshire Council is currently undertaking a review of its policy on Managing Unauthorised Encampments of Gypsy/Travellers. The public, including Gypsy/Travellers, will have the opportunity over the next few months to comment on the draft revised policy. It is anticipated that the finalised policy will clarify procedures. The issue mentioned earlier in this letter regarding the term “Occupational Traveller” requires clarification.

- **Do “Occupational Travellers” benefit from the same protection afforded to Gypsy/Travellers?**

Response: The Guidelines on Managing Unauthorised Encampments do not relate to Occupational Travellers i.e. circus/show people. The Caravan Sites and Control of Development Act 1960 applies.

Issues Raised During Discussion on the Petition

As Mr Rumbles MSP rightly points out, a crucial issue in trying to resolve the current situation is to ensure that adequate accommodation is provided for Gypsy/Travellers in Aberdeenshire and the north east as a whole. Aberdeenshire Council recognises the need to provide additional pitches; a recent study commissioned by Aberdeenshire, Aberdeen City and Moray Councils concluded that an additional 12 pitches require to be provided in Aberdeenshire (one pitch would accommodate one touring caravan and one vehicle). Four locations for transit sites have been identified in Aberdeenshire Council’s proposed Local Development Plan and steps are being taken to identify other potential transit site locations, particularly in the vicinity of Stonehaven. Each transit site would accommodate 6 to 8 caravans, plus associated vehicles.

There is no specific duty placed on local authorities to provide sites for Gypsy/Travellers, although there is a general duty under the Local Housing Strategy and other legislation. The identification and establishment of sites requires the support of the local community and the Petitions Committee may wish to consider whether a specific duty placed on local authorities to provide an adequate number of pitches would help.

Mr Johnstone, MSP, indicates that "...I believe that some unfortunate people within the structure are afraid to implement it (*guidelines*) effectively at present". I would point out that the Council's policy is based on Scottish Government guidance, recognising the need for a balanced approach and also accepting that unauthorised encampments are inevitable until adequate accommodation is provided. The action that the Council can take is limited where encampments occur on private land and is influenced by the Lord Advocate's instruction to Procurators Fiscal of a presumption against prosecution for trespass. Aberdeenshire Council has taken a number of eviction actions in recent years where it has the power to do so and does not give this matter a "wide berth" as Mr Johnstone suggests.

Mr Don MSP suggests one reason why this year has seen a rise in the number of large encampments is that many sites previously used by Gypsy/Travellers have been blocked off, usually as a result of an encampment giving rise to problems such as fly-tipping. The behaviour of some Gypsy/Travellers needs to be addressed at national as well as the local level.

Should you wish clarification of any matter please contact this office.

Yours faithfully

Christine Gore
Director of Planning and Environmental Services