

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 8 November 2012	<b>Decision Taker:</b> Deputy Leader and Cabinet Member for Housing Management
<b>Report title:</b>		A new written statement (agreement) for Council Gypsy and Traveller sites	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Gerri Scott, Strategic Director of Housing Services	

## RECOMMENDATION

1. The Deputy Leader and Cabinet Member for Housing Management is asked to approve the new Southwark Council traveller site pitch agreement.

## BACKGROUND INFORMATION

2. Southwark owns and manages four permanent gypsy & traveller sites, Spring Tide, Burnhill, Ilderton and Brideale which currently comprises 36 single pitches and three double pitches. Historically, the occupants were given licenses for the pitches. Since October 2011 Southwark has employed a traveller officer within the area management structure to manage the sites.
3. On the 30 April 2011 Section 318 of the *Housing and Regeneration Act 2008* came into force and applied amended provisions of the *Mobile Homes Act 1983* ("the Act") to local authority permanent gypsy and travellers sites. The purpose of removing the exclusion of local authority Gypsy and Traveller sites from the Mobile Homes Act 1983 is to bring rights and responsibilities on these sites into line with others living on residential caravan sites. This was in response to judgment in the case of *Connors v United Kingdom* in 2004 that the lack of procedural safeguards to eviction on local authority Gypsy and Traveller sites breached article 8 of the Convention (right to respect for private, family and home life).
4. The transitional provisions for the application of the Act required local authorities to issue existing occupiers with a written statement of their pitch agreement by 28 May 2011 to ensure they were made aware of their new rights and responsibilities. The provisions provided a prescribed form for the written statement setting out prescribed information and terms implied by the Act, with the option to include express terms, . The Council included the terms of it's existing licenses as express terms in the prescribed model statement to maintain their enforceability.
5. Regulations under the Act prescribe a model form of agreement to be used for new lettings from 30 April 2011. The prescribed model agreement sets out prescribed information and terms implied by the Act and provides for the insertion of express terms under part three. The Council has drafted express terms for inclusion in the prescribed model using:

- a national model agreement developed by a network of local authority and county council specialists
  - Southwark's tenancy agreement to give some parity between residents in Southwark
  - the previous license agreement, and
  - advice from legal Counsel on the terms.
6. Once the agreement is entered into the parties are unable to change the express terms except by mutual agreement or on application to residential property tribunal service, subject to certain restrictions and limitations.

## **KEY ISSUES FOR CONSIDERATION**

### **POLICY IMPLICATIONS**

7. The Act gives occupiers of local authority permanent gypsy and traveller sites more protection and security.
8. The implied terms under the Act includes rights and obligations in respect of the following key examples:
- the right to challenge express terms within six months of the date on which the agreement starts
  - the right to quiet enjoyment of the mobile home whilst maintaining the owner's right of entry to the pitch
  - a new process for agreeing the pitch fee, with a presumption the fee will normally increase or decrease by a percentage which is no more than any percentage increase or decrease in the retail prices
  - giving the occupier to at least 28 clear days' notice in writing of the proposed improvements
  - the right of succession on the pitches that is not limited to one succession
  - the obligation for residents to move their caravan to a pitch on another site, as well as another pitch on the same site to provide the flexibility necessary to undertake extensive refurbishment works when requested by the council
  - the right to form a qualifying residents' association with which the council must consult.
9. The express terms, that the council has inserted into the agreement, also include rights and obligations under the agreement including the following key examples:
- the right to access information on the housing file in line with tenants rights
  - the right to exchange pitches in line the allocations policy
  - that the occupier should apply in writing to the council if they are to be away more than six weeks and shall not be absent more than a total of ten weeks in any twelve month period
  - the right to quiet enjoyment of the mobile home whilst maintaining the owner's right of entry to the pitch
  - that written consent (that will not be unreasonably withheld) in advance of keeping an animal
  - that where a written agreement to keep a dog is given, it will be on the condition that the dog is micro chipped and relevant owner details recorded and kept up to date
  - not to park any vehicle on the site which is without the required tax, MOT

and insurance.

10. The implied terms set out in the prescribed written statement and served on existing occupiers are the same as those prescribed under the model agreement for new lettings so there will be parity for all occupiers of council gypsy and traveller sites. However, the express terms contained in the written statements served on existing occupiers in May 2011 differ from those proposed under the new agreement for future occupiers.
11. Given that the Act provides that express terms of agreements can only be varied by mutual agreement (or on application to residential property tribunal service in certain circumstances) parity of the express terms between existing and new occupiers will be difficult to achieve.
12. The council can only end an agreement on application to court, where the court is satisfied that the occupier has breached a term of the agreement, is not occupying the mobile home as their main residence or the mobile home is having a detrimental effect on the site and considers it reasonable for the agreement to be terminated.

### **Community impact statement**

13. The council is also under a duty through the Human Rights Act 1998 to 'facilitate the gypsy way of life' in relation to ethnic gypsies. By providing security in the agreement the council helps facilitate this way of life.
14. Whilst the council has a responsibility to 'facilitate the gypsy way of life' it must also ensure that the pitches are well utilised. An express term imposes terms and limitations on prolonged or extended absences from the pitch and requires occupiers to tell the council if they are to be away more than 6 weeks and provides they shall not be absent more than a total of ten weeks in any twelve month period. The Department for Communities and Local Government Gypsy and Traveller Site Management Good Practice Guide (July 2009) recommends that periods of short-term absence from a pitch e.g. for seasonal work or holidays, should be permitted within the agreement. The maximum period is at the landlord's discretion but they recommend a period of less than eight weeks is likely to be unduly restrictive.
15. The agreement will benefit gypsies and travellers regardless of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation by providing security and protection from unfair eviction and therefore help facilitate this way of life. The agreement has been adjusted so that it is clear that the council will not tolerate *discrimination, intimidation, harassment or abuse relating to* any of the protected characteristics under the Equalities Act 2010.
16. The express terms, added by the council, have many similar terms to the Southwark tenancy agreement, including rights of access to information but also obligations such as to have dogs micro chipped so that there is some parity across the borough.

## **Resource implications**

17. The council will be able to let vacant pitches using the new agreement that has been developed. The new agreement will allow for the collection of the pitch fee and other site related charges.
18. There are no other resource implications in the introduction of the new agreement.

## **Consultation**

19. Consultation on the draft new Southwark Council traveller residential site mobile homes act pitch agreement was carried out between 25 January 2012 and 22 February 2012.
20. Copies of the draft agreement and an explanatory letter inviting feedback were sent to:
  - all Southwark's current occupiers of gypsies and travellers on the four sites
  - Southwark travellers action group, and
  - people on the current waiting lists where they could be located.
21. In addition the traveller officer attended each of four sites on pre-arranged visits between 7 and 9 February 2012 and met with residents face to face to explain and the new agreement.
22. During the visits the traveller officer spoke to many residents, though few opted to give comments he noted there was no real opposition to the new pitch agreements. No formal responses were received. Southwark travellers action group declined to comment but were available to residents to take up any concerns with the council.

## **Consideration of responses to the consultation**

23. As there was no opposition to the new agreement, no changes have been made as a result of the consultation save that the discrimination clause has been expanded to better reflect the protected characteristics under the Equalities Act 2010 and an additional clause has been included to enable the Council to collect water charges billed to the Council by Thames Water.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Legal Services**

24. The amendment of the Mobile Homes Act 1983 by virtue of Section 318 of the Housing and Regeneration Act 2008 prescribes a model agreement for all new agreements for the letting of local authority gypsy and traveller sites from 30 April 2011. The prescribed agreement enables the Council to include it's own express terms at Part 3 subject to the provisions of the Act and the prescribed implied terms.
25. The body of the report sets out the basis on which the express terms in Part 3 have been drafted and that the Council has undertaken consultation on the new

agreement with the Council's current gypsy and traveller residents, gypsy & travellers currently on the waiting list and the Southwark Travellers Action Group and the responses received and consideration given. .

26. The principles of consultation, so as to achieve procedural fairness to reach a reasonable decision are as follows:-
  - be undertaken when the proposals are still at a formative stage,
  - include sufficient reasons for the proposals to allow any interested party the opportunity to consider the proposal and formulate a response;
  - the Council must allow adequate time for interested parties to consider the proposal and formulate their response; and
  - take all the results from interested parties must be conscientiously taken into account when the ultimate decision is taken.
27. The agreements behavioral requirements have been modified to more fully reflect the protected characteristics under the Equalities Act 2010 and the community impact statement has regard to the issues relating to the gypsy & traveller community
28. The Equality Act 2010 introduced a single public sector equality duty (PSED). This duty requires us to have due regard in our decision making processes to the need to :
  - Eliminate discrimination, harassment, victimisation or other prohibited conduct;
  - Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not
  - Foster good relations between those who share a relevant characteristic and those that do not share it.
29. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The PSED also applies to marriage and civil partnership, but only in relation to (a) above.
30. There has been compliance with the Council's Equalities and Human Rights Scheme 2008-2011 as well as the public sector equality duty as contained within section 149 of the Equality Act 2010. The relevant equality strands have been duly considered and assessed, this is evidenced at paragraphs 12 -13 above and in the attached Equalities and Human Rights Impact Assessment (EqIA). The proposed policy falls under s158 of the Equality Act 2010 as a positive action measure to alleviate disadvantage experienced by people who share a protected characteristic.

### **Strategic Director of Finance and Corporate Services**

31. This report sets out the principles and conditions pertaining to the introduction of the new travellers site pitch agreement. It is imperative that the council adopts this new agreement in order that it may resume letting pitches in accordance with the legislative requirements and maximise the income stream moving forward.

## BACKGROUND PAPERS

<b>Title:</b>	<b>Held at</b>	<b>Contact</b>
MWP	160 Tooley Street, SE1 2QH	Abigail Wallington Tel: 0207 525 4362

## APPENDICES

<b>No.</b>	<b>Title:</b>
1	New agreement
2	Equalities and human rights impact assessment

## AUDIT TRAIL

<b>Lead Officer</b>	Gerri Scott, Strategic Director of Housing and Community Services	
<b>Report Author</b>	Richard George, Service Development Officer	
<b>Version</b>	Final	
<b>Dated</b>	7 November 2012	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>	7 November 2012	