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Communication to the CERD Working Group on Early Warning and Urgent Action

Imminent Forced Eviction of the Romany and Irish Traveller Community of Dale Farm, United Kingdom

The Human Rights Clinic of the University of Essex (HR Clinic) and the Dale Farm Housing Association (DFHA) would like to draw the attention of the **CERD Working Group on Early Warning and Urgent Action** to the imminent forced eviction of the Dale Farm Gypsy and Traveller community, by Basildon Borough Council (BBC – former Basildon District Council).

This is a follow-up communication to the two previous letters sent to the CERD Working Group on Early Warning and Urgent Action, regarding Dale Farm, in February and July 2010. The CERD considered the first communication on the situation of Dale Farm in light of information submitted by COHRE and the Essex Human Rights Clinic in its 76th session.

1. Basildon Borough Council to carry out the forced eviction of the Dale Farm community

On Monday 14 March 2011 the local authority, Basildon Borough Council, voted

28 to 10 to forcibly evict 86 families from the largest Romani Gypsy and Irish Traveller site in the UK – Dale Farm. The 28-day eviction notices can be served now at any time. The eviction operation, estimated to cost £18 million, does not include the provision of alternative adequate accommodation to the affected families. The report of the Leader of the Council, Mr. Tony Ball, provides all the relevant information regarding the decision (report attached).

2. Background information on the eviction

The Dale Farm Gypsy and Traveller site, with about 1000 residents, extends onto land owned by the community, but half of it does not have planning permission. Part of this land was a licensed scrap yard located within what is classified as Green Belt land. Not all the community at Dale Farm is being threatened with eviction, but a significant number of residents – approximately 300 people – who were not granted the necessary planning permission, including many children and elder people, are. See attached the map of the community indicating the portion of the site that will be affected by the eviction.

The community has been occupying the site for more than eight years, during which Basildon Council and the Secretary of State for Communities and Local Government refused to grant planning permission for the unauthorised portion of the settlement on the basis of the harm that may be caused to the Green Belt.

The decision by the Council to take direct action pursuant to the Town and County Planning Act of 1990 was challenged resulting in the High Court quashing the respective order by Basildon Council on 5 May 2008. However, the judgement was subsequently overturned, with the decision to evict being upheld by the Court of Appeal on 22 January 2009. An application for permission to appeal to the House of Lords was refused on 14 May 2009. On 11 December 2009, BBC selected a private bailiff company, Constant and Co. (Bedford) Ltd, to undertake planning enforcement action and evict the residents.

It is widely acknowledged that since the duty on local authorities to provide Gypsy and Traveller sites was abolished in 1994, public site provision has ground to a halt and the number of pitches available has declined. The Gypsy and Traveller Accommodation Assessments (GTAAs) have demonstrated a significant shortage of site accommodation in most parts of England and suggested the need to add at least half, as many authorised pitches as currently exist, over a five-year period.

3. Human Rights Implications

3.1. Impacts of the Forced Eviction in the Community

According to the Council's report, the forced eviction operation itself is subject to very detailed and separate risk assessments as well as a joint risk assessment compiled with partner agencies. This includes detailed assessment of the risks

arising to the Council, its staff, its contractors and partners, the travellers affected by the action and the impact on the wider community of Crays Hill. However, the Dale Farm residents have neither participated in the elaboration nor had access to such assessments. The Essex Human Rights Clinic pursued a complaint against Basildon Council before the UK Information Commissioner's Office, based on the Freedom of Information Act 2000, seeking access to information regarding the eviction operation and the potential risks involved. Although the Commissioner considered that the Council should have disclosed some information regarding the eviction operation, it accepted the Council's arguments that the risk assessment, and some information regarding the method statement, should be exempted from disclosure as this would adversely affect public safety. A copy of the decision of the Information Commissioner's Office will be sent to you by mail, as we were not provided with an electronic version.

As described in the report of the Chair of Basildon Council, "operational service and community impact assessments have been drafted which help guide the operational planning to achieve the end objective [the forced eviction] with the least impact on the residents at Dale Farm and other residents affected by this action, as can reasonably be achieved. They also guide the mitigation measures that must be in place to further reduce the impact as far as reasonably practicable. In this regard, in the event that the recommendations to the Leader's report are approved, the 28 day notice of intent to commence the site clearance will be served" (p. 16 of the attached report). However, even the community impact assessment was drafted without the involvement of the Dale Farm residents.

Basildon Council asserts that consideration of individual personal circumstances and human rights issues was undertaken in reaching the decision to approve direct action. The Solicitor who represents the Dale Farm community, Dr. Keith Lomax, nonetheless states that the passage of time since the Council last assessed and considered the individual needs of the residents of Dale Farm (in 2007) requires that a new assessment be carried out. He argues that there are many families on the site, including individuals suffering from cancer, whose circumstances require an up-to-date assessment. Dr. Lomax also submits that to evict without conducting such an assessment would be unlawful (see the Solicitor's letter attached to the Council's Chair report, p. 53-59).

3.2. Lack of provision of alternative suitable accommodation

Since the Court of Appeal handed down its decision in the case, negotiations to discuss alternative accommodation for Dale Farm residents have taken place in 2009/2010 between BDC and other interested parties, including the Local Government Association, Homes & Communities Agency, Gypsy Council and representatives of the Dale Farm site. One Home & Communities Agency-owned site was identified, and two sites owned by Essex County Council were under investigation. In 2010, however, Basildon Council withdrew from the negotiations on the basis that there had been a breach of the agreement that the discussions be conducted in secret (see p. 22 of the Council Chair's report, attached). The reason given for abandoning negotiations, which had made

progress, is unreasonable and unjustified. Had these negotiations continued throughout 2010, suitable alternative land would have now been identified, temporary or even permanent planning permission sought and given, and some if not all residents could have by now already moved off the unauthorised land at Dale Farm and onto the suitable alternative land identified (further details of the work to find sites are detailed in Enclosure n. 1 of the attached report).

Currently, some negotiation meetings between the BBC, represented by its Chair Tony Ball, the MP for the region, Mr. John Baron, and members of the Dale Farm community have taken place in order to find alternative options to the eviction. However, the Travellers themselves are actually being required to identify their own sites and apply for planning permission. Basildon Council is only keen to accept the relocation of the families to new sites on a temporary basis, as it does not want them living within the District boundaries. In taking this approach Basildon Council is imposing discriminatory requirements for the development of the new sites for Gypsies and Travellers, such as limitations in the sizes of the pitches and the number of families.

For instance, one of such requirements is that no newly created site could exceed 15 pitches, preferably accommodating 8-12 pitches (see the Council's Chair report, p. 21). Such 'guiding principles' do not apply to the rest of the settled community of Basildon. Moreover, these guiding principles were adopted without the participation of the affected community who were deliberately excluded by the Council from participation in this discussion. The report of the Chair of Basildon Council clearly states that

“A sub-group of this group [a working group consisting of representatives from Basildon District Council, Government Office for the Eastern Region, Essex County Council, Equality & Human Rights Commission and the traveller community] was formed to take forward detailed deliberations and consisted of all of the above **except** EHRC and **G/T representatives** but included representatives of the Homes and Communities Agency (HCA)” (our highlights)

Such a decision clearly demonstrates the discriminatory approach adopted by Basildon Council, based on an 'inside/outside', or 'us and them' construction of the relationship between Gypsies and Travellers and the settled community, which the Council entrenches in planning directives.

Notwithstanding the Council's omission to assist the community in identifying suitable alternative land, the Dale Farm Housing Association, with the support of the Gypsy Council, has applied for planning permission for the use of Pound Lane site – located in Basildon district – for accommodation. However, this site accommodates only about 20 families, so others have still to be identified. Most of the Dale Farm residents are vulnerable and poor and they may be unable to afford to meet the costs of identifying sites and applying for planning permission, which are very expensive.

The Council has received such a planning application and Traveller representatives

have also indicated that a further three alternative locations are also being actively pursued in the Borough. In addition, work is being undertaken with Home and Communities Agency, Registered Social Landlords (RSL's) and Essex County Council (ECC) to identify potentially suitable sites outside of the Borough.

In summary, the resettlement of the affected families of Dale Farm to adequate alternative accommodation is not guaranteed.

3.3. Homeless Applications

Although the report of Leader of the Council states that “the Council is committed to and required by law to meet any homelessness duty that arises from this operation [and that] the Council has been very proactive in seeking applications from as many families as possible and has been processing those accordingly”, it is not committed to provide alternative adequate accommodation *prior* to the eviction. As pointed out by the Solicitor Dr. Lomax, many residents of Dale Farm still have outstanding homeless applications currently being dealt with by Basildon Council. The Council, in turn, asserts that “adequate plans must be in place to meet any duties that arise and these are already well advanced” (Council’s Chair report, p. 7). The affected residents of Dale Farm would like to receive information about such well advanced adequate plans’ to address homelessness.

Among the residents who have engaged in homelessness applications with the Council, some have already been dismissed on grounds of lack of proof of British citizenship (due to lack of birth certificates), necessary to pursue a homeless application, according to the Council; voluntary homelessness; and refusal to accept the Council’s offer of brick and mortar housing or apartments.

Moreover, Basildon Council has already engaged in forced evictions of Gypsy and Travellers when it displaced the families living in Hovefields Drive, even though it was still considering their homelessness applications. This was the case of the forced eviction of Mrs. Matilda Boswell, subjected to judicial review at the Court of Appeal. In September 2010, Basildon District Council attempted to evict Matilda from the plot she owns at Hovefields Drive. At that time, as her homeless application was pending before the Council, the Solicitor of Dale Farm managed to obtain an injunction with the County Court against the eviction on grounds that at the Court of Appeal (judgment of 9 May 2008),¹ the Council had committed to complying with its homeless duties *before* evicting the community. However, Basildon Council applied for a judicial review on the basis that it was abuse of process because the grounds of the County Court decision had already been litigated to the Court of Appeal in previous proceedings.

Sadly, on 24 September 2010 the High Court dismissed Mrs. Boswell’s application for permission for judicial review, and the Council evicted her and her son. The Solicitor attempted to appeal the decision but was refused legal aid to do so. This has thus wider application to Dale Farm as, in principle, although

¹ [2008] EWHC 987 (Adm).

the homeless application process remains an effective way of putting pressure on BDC to provide alternative accommodation, it can no longer be considered an effective measure in preventing eviction.

According to the High Court decision the existence of ongoing homelessness review or appeal will not be sufficient to halt or suspend the eviction. The Court understands that the homeless applications can be continued from the roadside post eviction.

This decision seems to be in breach of the human rights duty to provide adequate alternative accommodation prior to the implementation of any forced eviction, enshrined in General Comment n. 7 of the Committee on Economic, Social and Cultural Rights. Although the Court found no legal hindrance to the decision of Basildon Council to evict the Dale Farm community without having first complied with its homeless duties, its obligation to comply with the housing legislation was not discharged.²

The Council has accepted a duty to a number of Gypsy and Traveller families and, in many cases, offered accommodation consisting of bricks and mortar. The first of these offers was formally appealed by the Solicitor, Dr. Lomax, in the County Court in October 2010, and has subsequently been dismissed (Mrs. Barbara O'Brien's case). However, permission was granted by the Court of Appeal to appeal this decision. In essence the Solicitor is arguing that when it comes to the local authority's homeless duties and a review of the suitability of an offer of a house or flat, there is a line below which, for a gypsy or traveller in particular circumstances, bricks and mortar is unreasonable and therefore unlawful. He also argues that to decide that a house or flat is suitable in these circumstances would put the council in breach of its race relation duties. It is argued that Basildon Council has failed to consider all relevant matters, namely whether or not there were potential alternative pitches which could be used to accommodate Mrs. O'Brien and her family, over and above the ten named pieces of land expressly identified by her in her written submissions. The Council has dismissed all ten alternative sites (land) identified by her, on the basis that there was no immediate prospect of an alternative pitch being made available, which was made without consideration of all relevant materials.

In consonance with international human rights law, we argue that the provision of alternative accommodation has to take into consideration the cultural adequacy component. This refers to the way housing/accommodation is constructed or provided. Thus, when relocation is unavoidable, the physical, environmental, and socio-economic conditions of the new location cannot render evictees worse off than before the resettlement. The UK Homelessness Code of Guidance of July 2006 states that "some Gypsies and Travellers may have a cultural aversion to the prospect of 'bricks and mortar' accommodation. In such cases, the authorities should seek to provide an alternative solution and give consideration to the needs and lifestyle of Gypsies and Travellers when considering their application of homelessness" (para.16.38).

² Court of Appeal, para. 72 and 73.

3.4. Demolition of housing

The Dale Farm residents affected by the eviction fear that their mobile chalets and caravans may get destroyed/demolished during the operation. Basildon Council does acknowledge that during the operation “[...] demolition of buildings and caravans is only undertaken where the items cannot be dismantled or transported; there will be no burning of any items on site during the operation” (attached report, p. 6 and 7).

According to international human rights law, forced evictions and house demolition as a punitive measure is inconsistent with the provisions of the Covenant on ESC Rights (General Comment No. 7, para. 12). In this sense, the UK will be in breach of its human rights obligations if the Council destructs or demolishes the properties and the possessions of the residents of Dale Farm during the eviction.

4. The cost of homelessness

The financial implications of the forced eviction operation, estimated in £18 million, will have a devastating effect on the provision of services to the whole population of Basildon. Most importantly, such costs do not include the provision of adequate alternative accommodation to the families affected by the eviction. Around 86 families including 110 children will be thrown out on the road. £8 million will be spent in Council costs (bailiff services, ambulance, fire safety appliances, advice and liaison facilities, operational contingency, temporary accommodation, etc.), and £10 million on policing costs. The request for extra funds made by the Essex Police to the Home Office has not yet been decided. As for the Council costs, the taxpayer is thus being asked to pay in order to deliberately make people homeless.

Although BDC has not disclosed its figures, local media says that more than one hundred Basildon Council jobs are likely to be axed to help the local authority cope with budget cuts. Moreover, according to the report by the Leader of the Council, the allocation of £3.5m to meet the initial identified cost of the eviction will reduce the balance on the contingency reserve to half - from £7m to £3.5m by 31 March 2012.

5. Urgent Action Needed

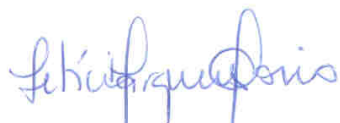
The Essex Human Rights Clinic is extremely concerned that Basildon Council will continue with its plan to forcibly evict the Dale Farm community, without the provision of adequate alternative accommodation and consideration of the needs of vulnerable residents.

The UK government and its institutions have disregarded the recommendation issued by CERD, stating that in case the government decides to proceed with the eviction it would be carried out in a humane manner, in accordance with international human rights law, and that a culturally adequate alternative site would be designated to the affected community.

In our opinion, these facts are sufficient to demonstrate the presence of a forced eviction and a violation of Art 5(e)(iii) ICERD on account of its racially discriminatory intent and effect. We are concerned that this disregard of international human rights law will be repeated against other Gypsy and Traveller families residing in the region. Our concerns are further deepened by the approval of the report of the Leader of Basildon Council authorising the forced eviction operation against Dale Farm community at a cost of £18 million, and without provision of alternative adequate accommodation.

The Essex Human Rights Clinic in assistance with the Dale Farm Housing Association kindly requires CERD to take into consideration this information when in communication with the UK Government with regards it complying with General Comment n. 27 of the Committee as to “to act firmly against any discriminatory practices affecting Roma, mainly by local authorities and private owners, with regard to taking up residence and access to housing; to act firmly against local measures denying residence to [Roma]” (para. 31).

In the same vein “to take the necessary measures, as appropriate, for offering Roma nomadic groups or Travellers camping places for their caravans, with all necessary facilities” (para. 32).



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