

26 April 2010

To:
Mr. Chambers
Chair of the Essex Police Authority
Chelmsford

Mr. Robin Paddock
Chief Executive Essex Police Authority
Chelmsford
Robin.Paddock@essex.pnn.police.uk

Ref.: Meeting concerning the role of police vis-à-vis the direct action operation to evict the Gypsy and Traveller Community at Dale Farm planned by Basildon District Council.

Dear Mr. Chambers and Mr. Paddock,

The **Dale Farm Housing Association (DFHA)** and the **Gypsy and Traveller community of Dale Farm**, assisted by the **Human Rights Clinic of the University of Essex**, hereby present their concerns regarding the imminent eviction of this community and the police role therein. The human rights violations that would result from the carrying through of such an eviction are time-sensitive as they can involve damage of a very grave nature to Dale Farm residents, in particular the many children.

Please accept this letter as an expression of the concerns of the community and they desire to cooperate with the Essex Police Authority (EPA). We wish here to address the circumstances under which the eviction of the Travellers and Gypsies of Dale Farm, as well as nearby Hovefields, Wickford, will be carried out, with a view to ensuring that the residents' human rights are respected and protected and relevant health and safety regulations properly adhered to – the two matters being in our judgment closely inter-related.

The Dale Farm Housing Association, the Centre on Housing Rights and Evictions (COHRE), and the Advisory Group on Forced Evictions (AGFE) of the United Nations specialized agency UN Habitat with the assistance of the Essex Human Rights Clinic, have urged that a fuller dialogue take place between the Basildon District Council (BDC), the implementing authority of the eviction, and the affected residents with a view to developing negotiated alternatives to the eviction, and ensuring full implementation of national and international human rights law, as well as UK domestic policy regarding provision for Gypsies and Travellers, to resolve the conflict.

The Dale Farm Housing Association is a community organisation linked to the Gypsy Council and the European Roma and Travellers Forum, Strasbourg, and having a partnership agreement with the Advocacy Project located in Washington, DC. Since 2005 it has worked towards the legalization of the Traveller-owned properties and provision, where necessary, of alternative locations for residents' mobile-homes, chalets and trailer caravans.

COHRE is an international human rights non-governmental organisation based in Geneva, Switzerland, with offices in other parts of the world. COHRE has consultative status with the United Nations and works to promote and protect the right to adequate housing, including preventing or remedying forced evictions (see www.cohre.org).

AGFE is an international expert group which provides advice to the Executive Director of UN-HABITAT in addressing forced evictions and to promote alternative policies. It promotes mechanisms for linking systems of eviction monitoring to networks of institutions/individuals with experience in promoting negotiated alternatives. AGFE works on cities from where cases of forced evictions are being reported and/or where up-scaling of evictions poses a serious risk to the achievement of the UN's Millennium Development Goals and the Habitat Agenda (see <http://www.unhabitat.org/content.asp?typeid=19&catid=282&cid=3480>).

The Essex Human Rights Clinic is a programme of the Law School and the Human Rights Centre of the University of Essex which provides practical legal experience to human rights students and assistance to communities through their or related organisations in pursuing and realising their human rights. The Clinic emphasises the practise of human rights as a way to address complex human rights issues and the needs and interests of real people (see www.essex.ac.uk/human_rights_centre)

I. Background Information

Dale Farm is the largest Gypsy and Traveller community in the UK, comprising some 1,000 residents occupying about one hundred separate properties. Approximately half of the properties, despite protracted planning procedures over the past ten years, lack local authority consent. However, the authority levies council tax on each plot and utility companies are providing electricity and water. Sanitation is by cess-tank to approved standards. More than 100 children are registered at local schools, and there are close ties to Our Lady of Good Counsel Catholic Church, a small chapel and community centre being maintained on the estate.

A large part of the estate was previously used as a scrapyard and included a storage area utilized by Basildon District Council (BDC) for abandoned motor vehicles. Both portions contain extensive concrete hardstanding, the subject of Enforcement Notices subsequently nullified by the Secretary of State. A Certificate of Lawfulness has been issued for the Dale Farm property itself. In consequence it may be argued that much of the existing hardstanding and its use for the storage of vehicles, including caravans, is legitimate.

Nevertheless, BDC opposes the continuation of this portion of the settlement due to alleged harm that may be caused to the Green Belt by the presence of mobile-homes. It has therefore served a number of Enforcement Notices ordering the removal of caravans. These affect some 90 families, comprising up to 400 people, including many children, elderly and infirm. Unable to find alternative sites because of the well-documented shortage across England and Wales, residents have found themselves under threat of eviction for non-compliance and without reasonable alternatives.

The decision by the BDC to take direct action and evict Dale Farm has been challenged by the residents. On 5 May 2008, the High Court quashed the respective order. However, the judgment was

overturned by the Court of Appeal on 22 January 2009 which did not find the decisions of the Council with a view to eviction to be unlawful. The Council made a number of undertakings to the Court, including a promise to investigate and carry out its duties to those rendered homeless. An application for permission to appeal to the House of Lords was refused on 14 May 2009.

On 10 December 2009, the Council's Cabinet selected the private bailiff company Constant and Co. (Bedford) Ltd to undertake enforcement action. This company is the UK's most notorious anti-Gypsy security firm responsible, among many others, for the reportedly brutal Meadowlands eviction at Cranham Road, Little Waltham, in January 2004, carried out on the orders of Chelmsford Borough Council and assisted by Essex police. Children were said to have been terrorized by riot police and bailiffs, and a mobile-home and several caravans, along with quantities of personal property, burned. Allegations of arson and theft of Crown Derby china was subsequently investigated and numerous complaints and concerns documented in a dossier later sent to the Ministry of Justice. Copies of *Complaint Against Constant & Co.* and video film is being made available to the EPA.

These actions, including an eviction the same month at Twin Oaks, near Borehamwood, by Hertsmere Council, drew criticism from the High Court and the Council of Europe, which condemned the employment of Constant and Co. as inappropriate and called for a review of the employment of such companies in this field of work. A report prepared by the Council of Europe in 2006 concerning Roma and Travellers states that "evictions have become worse since the coming into prominence of the private bailiff company, Constant & Co. Mr Constant's firm has earned millions of euro moving families on and carrying out large scale evictions from land owned by Gypsies. One example was the eviction by Constant for Chelmsford Borough Council of 20 families from their own Meadowlands Caravan Park, in January 2004. In the course of this, conducted with the help of riot police, Kathy Buckland's mobile-home was burned, another caravan burned, much property needlessly destroyed"¹.

Basildon District Council's decision to evict the part of the Dale Farm community is disproportionate and discriminates against Gypsies and Travellers. It prioritises eviction measures over alternative and mutually acceptable solutions despite the seriously damaging effects of such action. Contrary to stated policy, the Government has failed to provide adequate alternative caravan sites for the community. As a result and after research into the needs of Travellers and Gypsies, on 20 July 2009 the Department for Communities and Local Government required BDC to designate sufficient land for 62 pitches by 2011 and an additional 52 pitches by 2021. By adopting such a measure, which could include legalising the Dale Farm properties at no cost to the tax payer, the Council might yet fulfil this duty. The Council's Cabinet nonetheless decided on 10 December 2009 to engage Constant and Co. to evict the residents of Dale Farm.

Besides this, many residents who have applied to the Council as homeless have run into difficulties. Some have been rejected on the grounds that at a previous time they were considered to have rendered themselves homeless. Other applications have been processed and offers of accommodation have been made which have been entirely bricks and mortar type accommodation. This has been offered as being considered by the Council to be 'suitable accommodation'. The 'suitability' of such offers of accommodation is coming under challenge by appeal to the County

¹ Document prepared by Mr. Henry Scicluna, Council of Europe Coordinator for Activities concerning Roma and Travellers, Strasbourg, 11 October 2006, p. 17 (HDIM.IO/477/06).

Court on grounds that it is not 'suitable' where there is a likelihood of serious harm to residents if they were to live in such accommodation, and also where there has been no, or no proper, consideration of alternative provision of land onto which the residents could lawfully move. The community thus continues to face an eviction, which is likely to be carried out in a brutal and inhumane manner with serious risks to persons (including children, elderly and the infirm) and property.

Access to adequate housing is a precondition for the enjoyment of a wide range of other human rights, such as the rights to work, health, social security, vote, privacy and education. Accommodation is the key to overcoming the inequalities and barriers to service access experienced by Travellers. Should the planned eviction be carried out, it will further impair the ability of the residents of Dale Farm to earn a living and lacking residency may prevent them from enjoying social services or receiving proper health care. Their position with regard to health and education will certainly deteriorate. The children will be critically vulnerable; their right to education seriously undermined. The trauma experienced during a forced eviction may well negatively impact on their capacity to learn. It is expected that an entire school, Crays Hill Primary, where all the children but one are from Dale Farm, would close.

If the eviction is carried out those at Dale Farm forced to leave their land will have to resort to camping on the roadside, on public car parks or private land, thus again finding themselves in an unauthorized and unlawful situation likely to provoke further harassment. It will entail futile public (including police) expenditure, moving them from place to place. It can be argued that in these circumstances the families are being in effect compelled a) to break the law, and b) to face even worse breaches of their basic human rights, including in the present atmosphere of intolerance and racial hatred, attacks in the media and even physical assault by anti-Gypsy vigilantes.

II. The role of Essex Authority Police

The UK ratified the International Covenant on Economic Social and Cultural Rights (ICESCR) on 20 May 1976; thus the State Party is bound to Article 11(1) which guarantees the right of everyone to an adequate standard of living including adequate housing, and to the continuous improvement of living conditions. It follows that should BDC proceed with the eviction operation it must be carried out in a manner consistent with human rights principles and provisions enshrined in national and international legislation. If the manner or the circumstances under which the eviction is implemented do not comply with such requirements, the operation will amount to an illegal *forced eviction*, in respect of which the victims could seek redress and compensation.

Under international human rights legislation a forced eviction is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, or access to, appropriate forms of legal or other protection². Furthermore, forced evictions are, in principle, incompatible with the requirements of the ICESCR, and they can only be justified "in the most exceptional circumstances, and in accordance with the relevant principles of international law"³.

² HRI/GEN/1/Rev.7. Committee on Economic, Social and Cultural Rights, General Comment 7, para. 3.

³ Committee on Economic, Social and Cultural Rights, General Comment 4, par.18.

We welcome the Joint Protocol established by the Essex County Council, the Tendring District Council and the Essex Police for managing unauthorised Gypsy and Travellers encampments. This protocol explains the agreed policy for managing unauthorised encampments throughout the county. Especially relevant is ‘The Code for Gypsy/Travellers in Essex’, signed by all districts including Basildon. Although it does not provide a comprehensive guidance for co-ordination between the police, the local authority, the bailiffs and other agencies involved in an eviction operation, it does give a clear indication as to the role of the public authority in managing unauthorised Traveller encampments. The Joint Protocol states that “the police action will comply with the law, taking into account the European Convention of Human Rights” (para. 2.3c) and that “any decision made should take into account legislation, guidance, health, education and welfare needs” (para. 2a). No one, we believe, would argue that this should not include safety regulations, being of paramount importance in the practical carrying out of such operations, where heavy machinery and small children can be brought into dangerously close proximity. Let it be noted that the Children's Commissioner has raised this very concern in a letter to Basildon District Council requesting an explanation as to what steps are being taken to ensure the safety of children at Dale farm during the proposed eviction.

We would like here to provide further clarification as to the implications of evictions practices in light of the obligations contained in law, including human rights law. It is incumbent upon the relevant authorities to ensure that evictions are carried out in a manner warranted by a law which is compatible with human rights law and that all the legal recourses and remedies are available to those affected⁴. The role of the police during such an operation must be two-fold: a) to maintain the law, order and peace, and b) to protect the affected persons and their property from unlawful actions, including acts of undue force and violence, needless destruction of property, and racial abuse.

a) Maintenance of law, order and peace

Evictions should not result in individuals being rendered homeless or vulnerable to the violation of their human rights. Thus the police should not force, nor assist in the forcing of, Dale Farm families to leave their land if this means they have to resort to camping on the roadside, on public car parks or private land, because they would then find themselves in a worse, unauthorized and unlawful situation, likely to expose them to further harassment, danger and abuse, not to mention deprivation.

Considering that women, children, young and old persons, ethnic and other minorities, vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction, special measures should be taken by the police in order to guarantee the safety, welfare and integrity of such persons. In this sense, the police should act to prevent and prohibit any abuse of conduct or power by the owners, management and employees or agents of Constant & Co. as agents of the Council, and by Council officials and employees, during the eviction operation. In this respect let it be noted that house/home demolitions and damage to possessions are inconsistent with human rights law⁵.

The police should ensure that the conduct of the bailiff company hired by Basildon District Council is in compliance with domestic law, especially the Health and Safety at Work Act from 1974 (HSWA), which aims to protect individuals in respect of their safety and health during work activities. Both BDC and Constant & Co. as contracted agents must comply with Art. 37(1) of

⁴ Committee on Economic, Social and Cultural Rights, General Comment 7, para. 11.

⁵ Committee on Economic, Social and Cultural Rights, General Comment 7, para. 11.

HSWA which refers to offences by corporate bodies: “where an offence under any of the relevant statutory provisions committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly”.

Constant & Co. has, under the same Act, a duty to conduct its undertaking in such a way as to ensure that persons not in its employment who may be affected thereby are not exposed to risks to their health or safety. Accordingly, the Council and/or the Company, as agents, shall give to these persons the prescribed information about such aspects of the way in which they will conduct their undertaking as might affect any person’s health or safety. No such information has yet been provided to Dale Farm residents.

Article 3(1) of the HSWA establishes general duties of employers other than their employees: “it shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety”. The BDC therefore has the duty to conduct a comprehensive Risk Assessment in order to identify the risks to health and safety to which the Dale Farm residents will be exposed during the conduct of the eviction, and to establish the measures necessary to eliminate, control, and manage such risks. The right of Dale Farm residents and their organisations to scrutinise the Risk Assessment should be assured. Be it noted that the Dale Farm Housing Association has discovered through a Freedom of Information request that no Risk Assessment was carried out in respect of previous eviction operations undertaken for the BDC by Constant & Co at Hovfields, Wickford, in 2005.

The police must secure that there are no breaches of Health and Safety regulations during the eviction operation; if there are any then the police shall inform the relevant authorities, such as the Health and Safety Executive, of any hazard or reckless conduct that might put at risk the health and safety of residents. It will also be their duty to ensure that bailiffs are fully certified to handle children. Judging from previous evictions conducted by Constant & Co., major safety concerns could arise from a) lack of Risk Assessment reports and/or their timely availability to potentially affected persons, b) failure to erect safety fencing around what will be, in the case of Dale Farm, a demolition site, c) attempt to bring heavy machinery onto the estate while children are present. In respect of the last concern, it must be noted that three churches in Wickford (Catholic, Anglican and evangelical) have approached Basildon District Council with an offer to provide shelter in church halls for the use of mothers and small children, and other vulnerable persons who may wish to escape the trauma of the first day of the eviction operation.

The Construction (Design and Management) Regulations 2007 should also be respected, as the contract with Constant & Co. foresees the undertaking of demolition of many existing structures at Dale Farm. BDC and Constant & Co. should prepare in advance a plan detailing how demolition work will be carried. Regulations apply to all demolition work regardless of size, duration of the task, or whether the job is notifiable. Demolition is defined as pulling down, destruction or taking apart of a structure, or a substantial part of a structure. Dismantling of chalets will therefore be considered as the taking down or taking apart of all, or a substantial part of, a structure⁶.

⁶ Information can be assessed at <http://www.hse.gov.uk/construction/cdm/generalfaq.htm> .

b) Protection of the Dale Farm community from arbitrary and violent eviction

Obligations stemming from international human rights law, which should be given effect by British domestic law, bind the UK by virtue of its adhesion to relevant international instruments and, as concerns the European Convention on Human Rights, the 1998 Human Rights Act. Being linked to government, the police are directly bound by the same legislation. And because Constant & Co. is employed by Basildon District Council to enforce an order issued by a public authority, it has equally to comply with race relations responsibilities and human rights duties. This entails respecting the basic rights of the evicted persons, including, *inter alia*, their property and possessions, their right to protection from arbitrary or unlawful interference with their homes, and their right to enjoy private life. Past conduct of Constant & Co. casts serious doubts as to whether their bailiffs will conduct the eviction in a lawful and respectful manner.

In light of the provisions of General Comment n. 7 to the ICESCR, authorities should ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force⁷. Moreover, appropriate procedural protection and due process are essential human rights aspects that should be observed during the implementation of an eviction. They include:

- a) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- b) where groups of people are involved, the presence of [local] government officials or their representatives. Social work and support staff should also attend;
- c) all persons carrying out the eviction have to be properly identified;
- d) evictions shall not take place in particularly bad weather or during the hours of darkness;
- e) provision of legal aid to persons who are in need of it to seek redress from the courts;
- f) carry out genuine consultation with those affected, a stipulation that applies to both the local authority and police⁸.

Where those affected are unable to provide for themselves, the public authority must take all appropriate measures to ensure that adequate alternative accommodation, resettlement or access to productive land, as the case may be, is available⁹.

Furthermore, the members of the community have the right not to be subject to ill or degrading treatment, a right which is unrestricted. An eviction involving disproportionate violence is similarly categorized. Note that the United Nations Human Rights Committee has found that the burning and destruction of Roma settlements – in a context of a forced eviction – amount to acts of cruel or degrading treatment or punishment¹⁰. The status of ethnic minority groups, such as Gypsies and Travellers, will be taken into account in assessing the level of ill-treatment to which they are subjected to. It is noteworthy that the European Committee of Social Rights, in the case *European Roma Rights Centre vs. Italy*, has unanimously concluded that “the insufficiency and inadequacy of camping sites constitute a violation of Article 31§1 of the European Social Charter taken together with Article E; that forced eviction and other sanctions constitute a violation of Article 31§2 of the

⁷ UN Committee on Economic, Social and Cultural Rights, General Comment 7, para. 13.

⁸ Committee on Economic, Social and Cultural Rights, General Comment 7, para. 15.

⁹ *Ibid.*, para. 16.

¹⁰ *Džemajl vs. Yugoslavia*, Communication No. 61/2000(CAT/C/29/D/161/2000) [2002] UNCAT 12 (2 December 2002).

European Social Charter taken together with Article E; and that the lack of permanent dwellings constitutes a violation of Articles 31§1 and 31§3 of the European Social Charter.”.

III. Recommendations

We have formulated three points of advice that would help to ensure the adoption of good practice in the case of the direct action operation at Dale Farm:

1. The police are advised to **involve** the Dale Farm community and their representatives in all stages of the planning process and policing of the eviction operation itself. In this respect, we welcome the decision of the Essex Police Authority to meet with the Dale Farm Housing Association. The DFHA and the community should also be consulted over the Risk Assessment report referred to above under section II.b). Residents, including those with planning approved properties, should also be informed about all stages of the intended policing of the operation. Further, it is obviously of the utmost importance that adequate and reasonable notice is given about the scheduled date of eviction.
2. The police, when participating in the **Risk Assessment** process undertaken by Basildon District Council and Constant & Co., should ensure that measures taken regarding the health and safety of the community arising out of the planned eviction fully adhere to the requirements of the 1974 Health and Safety Act. For example, should Constant & Co bring bulldozers and other heavy machinery and vehicles onto Dale Farm while children are still present, the company and the Council would be in serious breach of safety laws. Similarly, bailiffs must be required to remove property, as described in legal documents, and not to burn items. Finally, risk assessment should include attention to dangers of psychological and physical injury and trauma likely to be caused to children, the vulnerable elderly and sick persons, as pointed out by the Basildon, Billericay and Wickford Primary Care Trust report.
3. Police officers are expected to take on a **pro-active role**, which will ensure that their presence in the preparation and implementation of the eviction will make a clear and positive difference with regards compliance with relevant human rights laws.

We believe the participation of the Essex police, under the authority of the EPA, is of fundamental importance in helping to ensure all reasonable alternatives are explored in consultation with the affected persons. You are also in a position to assist in the avoidance of serious trouble which could arise from the use of undue force and violence, as well as helping to protect against risks to health and safety.

To this end, we recommend that the police brief the Basildon District Council and Constant & Co with regard to their duties under Health and Safety regulations, and other relevant law. Moreover, the police must ensure that the relevant rules and guidelines, as outlined above, are indeed obeyed during the operation itself.

In summation, we believe that if the Dale Farm community is meaningfully consulted and involved and if a comprehensive Risk Assessment is carried and, most importantly, the police play a pro-active role in respect to the conduct of the bailiffs, a forced and violent eviction can be avoided.

We are happy to provide you with further assistance at any time and look forward to hearing from you in connection with this urgent matter.

Sincerely,

Grattan Puxon
Dale Farm Housing Association
dale.farm@btinternet.com