

Submission on Waterford City & County Council's

Draft Control-of-Horses By-Law

10th. July 2018

Waterford Traveller Community Development Project wishes to submit the following regarding the published draft by-law:

We acknowledge the need to update the old by-law, adopted by the then Waterford Corporation in the late 90s, but contend, that the published draft by-law is not fit for purpose.

Total Ban on Horse Racing with a Horse-Drawn Vehicle

There is a total ban on any such racing, which combined with an all-encompassing definition of a `public place` (including horse race tracks as a place the public has access to) would make it impossible to have any such race anywhere in Waterford. The public discourse on horse racing with a horse-drawn vehicle normally refers to sulkies and mostly Traveller horse owners.

Traveller ethnicity was formally recognised by the Irish Stat in March 2017, with support across the political spectrum, fully supported by all members of Dail Eireann. Horse ownership is an historical and cultural feature of the Traveller Community, in common with many other Nomadic peoples across the world, and as such, many Travellers in Waterford own horses, an expression and function of their ethnicity.

Shortly after recognising the Ethnic status of the Traveller Community, the Government launched its National Traveller & Roma Inclusion Strategy (NTRIS) <http://www.paveepoint.ie/wp-content/uploads/2015/04/National-Traveller-and-Roma-Inclusion-Strategy-2017-2021.pdf>. It includes two named actions on horses (Actions 6 & 8), regarding which, there was a recent article in the Irish Times about a programme being rolled out to move sulky racing from the streets to the track; (<https://www.irishtimes.com/news/politics/government-to-adopt-carrot-and-stick-approach-to-sulky-racing-1.3477980>).

As government policy is intent on moving sulky-racing off road, rather than seeking to ban it outright, the proposed By-Law on sulky racing would clearly contradict and undermine government policy & the NTRIS.

Additionally, the definition of a `race' is legally and practically undefined. It is unclear under which guidelines and definitions an official would be authorised to make such a decision, and what form such an assessment would take.

Is there a Need for a By-Law against Sulky Racing?

Furthermore there is no need to introduce such a by-law for reasons of horse welfare as Section 37, Subsections (b)(c),(d) & (e) of the actual Control of Horses Act, 1996 already provides wide-ranging powers in this regard

(<http://www.irishstatutebook.ie/eli/1996/act/37/section/37/enacted/en/html#sec37>).

The area of horse welfare is sufficiently covered by primary, national legislation, and by their nature, by-laws are only permitted when a delegated legislation does not exceed or subvert the principles and polices set out in the relevant authorising statute. In short, this by-law would contradict extant statute law and would be therefore legally dubious and open to costly challenges.

Permit for Horse-Drawn Vehicle

The use of the national road network is governed by national, primary legislation. This includes motorised vehicles, push-bikes, pedestrians, horse-drawn sulkies, etc. It is the prerogative of the national legislator to determine the use of the national public road network and licensing requirement (including any attached fees) of any vehicles using this network.

If the proposed by-law was to be adopted, a bizarre situation would be created, where a road user using a horse and sulky legally in an adjoining local authority travels into Co. Waterford (possibly inadvertently and unknowingly), and would suddenly be in contravention of this by-law, where s/he has been using the road network entirely legally in the other local authority.

The licensing requirements proposed (annual fee, insurance cover, etc.) by their design, are virtually and practically impossible to comply with, as the majority of people will most likely find it impossible to acquire a license from WCCC for a horse-drawn vehicle. It would certainly not pass a poverty impact assessment.

It is essential that any law is sensible and fair, so that citizens can both understand and obey the law. The proposed by-law fails on this score. Any proposed licensing of vehicles for road-use should be governed by national, primary legislation, not contradictory and confusing by-law.

Parts of the proposed bye-laws would be unlawful if passed by Waterford City and Council

We consider that, if they were to adopt the proposed by-laws in their current form, Waterford City and County Council would be acting *ultra vires*, that is, outside of the powers lawfully granted to them by the Oireachtas. We are particularly concerned that the adoption of proposed By-laws 6 and 8, which extinguish grazing rights and propose the establishment of a permit scheme for horse-drawn vehicles respectively, will be unlawful. Our reasons for this are set out in Sections 2 and 3 below. We consider this to be an extremely serious matter that could precipitate legal challenges in the High Court, involving unnecessary expense for Waterford City and County Council and diverting much-needed funding from vitally important areas such as housing.

The Control of Horses Act 1996 makes no provision for the establishment of permit schemes for vehicles, be they horse-drawn or otherwise

Bye-law 8 proposes the establishment of a permit scheme for horse drawn vehicles, including *inter alia* buggies, traps, sulkies, carriages, cabs and coaches. However, Section 46 of the Act only allows a local authority to ‘make by-laws for the control and welfare of *horses* [our italics] in the whole or part of its functional area’, while Section 47 of the Act refers only to the making of bye-laws ‘to *prohibit* [our italics] a person from having, keeping, riding or driving a horse in that place or area at any time or at such times as may be specified in the bye-laws.’

Neither of these sections, or indeed any other section of the Act, makes provision for the establishment of a scheme to grant permits for vehicles of any kind, horse drawn or otherwise. The reason for this is, of course, that the use of our public roads by all vehicles, including horse-drawn vehicles, is regulated by the Road Traffic Acts. Therefore, Waterford City and County Council have no powers under the Control of Horses Act 1996 to adopt such a permit scheme. It is therefore our contention that Waterford City and County Council would be acting unlawfully if they were to adopt Bye-law 8.

Bye-law 6 impinges on common law grazing rights

Bye-law 6 states that ‘A person shall not at any time, place, turn out to graze, feed or allow to remain or stray a horse in a public place.’ We consider that this bye-law impinges on the common law rights of all citizens to graze their horses in areas of commonage including, in particular, grassy areas of the roadside. These rights have been enjoyed for centuries and are still enjoyed today. The Control of Horses Act, 1996 (as amended) makes no provision for the extinguishing of any common law rights to graze. Therefore, it is our contention that it is not in the gift of Waterford City and County Council to extinguish them by means of bye-laws made under the Act.

Possible Impact of Proposed Bye-Law

Waterford Traveller Community Development Project wishes to raise very serious concerns about the possible impact of such bye-laws on the mental health and well being of Traveller men and youths.

The All-Ireland Traveller Health Study 2010 established the rate of death by suicide for Traveller men as 7 times greater than the general population. When asked by WTCDP, Traveller men have expressed the importance to them of their horses,

'I get down sometimes. Having the horses to look after keeps me going, if I didn't have them I don't know where I'd be to be honest'

'Looking after the horses is all we have, the horses is a way of life for us, keeps us busy and it would be a huge sense of loss if we can no longer keep them because of bye-laws and cost of insurance'.

Equine assisted activity is studied in Power (2012) *'Irish Youth, Urban Horses and Equine Assisted Activities'* and concludes that ***'this kind of activity may well be an asset and a resource in assisting adolescents to develop resilience, social inclusion and participation'***

Accompanying this submission is a document outlining research demonstrating links between equine activities and positive mental health in humans.

Positive `Public Sector Duty`

Local authorities are obliged to monitor all of their actions and procedures under the `Public Sector duty` under Irish human rights and equality legislation. This imposes a positive duty to assess the impact of any policies on minority groups. This includes the proposed by-law in our view, as it is clearly aimed at Travellers as the most prominent users of horses and horse-drawn vehicles on public roads in Co. Waterford. As outlined above, the proposed by-law is not fit for purpose and will easily be challenged.

This by-law under the Control of Horses Act should be sent back to the drawing board. In any considerations of drafting a new by-law, the services of the Irish Human Rights & Equality Commission should be called upon, and an independent, external human rights & equality impact assessment should be undertaken under the auspices of IHREC.

Public Notification

The Participatory Democracy (Putting People First, 2012) process in this instance has shown serious flaws. We became aware of the public consultation process by chance, by seeing it on WCCC News Webpage (<https://waterfordcouncilnews.com/2018/06/08/draft-control-of-horses-by-laws-2018/>). The public consultation for this proposed by-law was not included on the WCCC Public Consultations Page (<http://www.waterfordcouncil.ie/projects/public-consultations/index.htm>).

We wish to note our concern, that the public consultation on this by-law was not included on the WCCC webpage for public consultation.

Ongoing consultation with Traveller Horse Owners in Waterford

Waterford Traveller Community Development Project wishes to strongly recommend the opening up of a structured and on-going dialogue and consultation process with Traveller horse owners in the Waterford area. This, we believe, will be in the best interest of animal welfare, the health and safety of all involved and the protection of Traveller cultural practices. Some of the issues that this process could address include:

- Development of a long-term horse/sulky use strategy in partnership with Traveller horse owners, WTCDP, the Gardai, Waterford Council and other relevant bodies
- Better communication between horse owners and the Council

WTCDP will be happy to help facilitate such a process.