



Report of the Director of Environment and Neighbourhoods

Executive Board

Date: 27 July 2011

Subject: Gypsies and Travellers – Progress on Scrutiny Board Inquiry Recommendations

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In

(Details contained in the report)

EXECUTIVE SUMMARY

Responding to unauthorised encampments of Gypsies and Travellers on council and privately owned land is a key challenge for Leeds City Council. At the request of the Executive Member for the then Neighbourhoods and Housing portfolio, the Scrutiny Board (Environment and Neighbourhoods) carried out an inquiry into site provision for Gypsies and Travellers and the inquiry report set out 12 recommendations for action. The Scrutiny Board inquiry concluded that the current cycle of encampment and eviction was not meeting the needs of Gypsies and Travellers, was leading to increased community tension and did not represent value for money for the Council. This report sets out progress made in responding to the 12 recommendations. It is recognised that some of the recommendations, notably additional site provision, are contentious. A key criteria for any new site development is that it should serve to reduce, not exacerbate, the challenges faced by encampments of Gypsies and Travellers. Any site development proposal would be subject to standard Council planning assessments and site development proposals would be passed to the Executive Board for consideration and approval. The recommendations set out in the inquiry report represent a challenge to the Council and also the Gypsy and Traveller community, who should recognise that the negative behaviour displayed at some encampments has been unhelpful in shaping views on new site development. The Council will continue to respond swiftly and appropriately to minimise the impact of unauthorised encampments.

1. Purpose Of This Report

1.1. To provide Executive Board members with an update on the response to the Scrutiny Board (Environment and Neighbourhoods) Inquiry of site provision for Gypsies and Travellers in Leeds.

2. Background Information

2.1. The Scrutiny Board (Environment and Neighbourhoods) commenced its inquiry into site provision for Gypsies and Travellers in September 2010. The scope of the inquiry was to consider:

2.1.1. "The Council's approach to tackling unauthorised encampments and the provision of permanent sites for Gypsies and Travellers within Leeds.

2.1.2. Whether provision is required and its likely effect upon unauthorised encampments.

2.1.3. What criteria might be applied in the event that a need is identified for selecting a site or sites".

2.2. The Scrutiny Board was asked to carry out the appropriate inquiry by the Executive Member for the then Neighbourhoods and Housing portfolio because of the high number of unauthorised encampments, particularly in the summer months, of Gypsies and Travellers on council and private land.

2.3. The Scrutiny Board inquiry heard evidence from members, Council officers, West Yorkshire Police officers, Gypsies and Travellers living on unauthorised encampments, representatives from advocacy bodies for Gypsy and Travellers, representatives from resident's associations, residents who had been affected by unauthorised encampments and academics with expertise in the subject area.

2.4. The Scrutiny Board inquiry concluded that the current cycle of unauthorised encampment and eviction was not meeting the housing needs of Gypsies and Travellers, was leading to increased community tension between Gypsies and Travellers and members of the settled community, and was not delivering value for money in relation to use of the Council's resources.

2.5. The Scrutiny Board Inquiry reported 12 recommendations to address these challenges:

2.5.1. Develop a pilot scheme of short term negotiated stopping sites in the city

2.5.2. Consideration of the in principle development of an additional 25 permanent pitches for 25 caravans for 'Leeds based' Travellers

2.5.3. That recommendations 1 and 2 are pursued within the context of wider Leeds City Region work

2.5.4. Carry out a review of the existing Cottingley Springs site to identify whether additional pitches could be provided at the site

2.5.5. Amend the legal status of Cottingley Springs residents to reflect changes to the 1983 Mobile Homes Act

- 2.5.6. Develop a Good Neighbourhood Code, to be used in parallel with licence/tenancy agreements, which Travellers would have to sign up to as a condition of using sites managed by the Council
- 2.5.7. Develop a strong resident's group at Cottingley Springs as a precursor to further engagement with the local community
- 2.5.8. Support the development of private site provision in the city which is appropriate, in keeping with the area and meets the necessary planning requirements
- 2.5.9. Scrutiny Board (Children's Services) carry out a specific investigation on the national/local position of Traveller girls, aged 11 and above, school attendance and achievement
- 2.5.10. A report is submitted to the Scrutiny Board (Health) on the withdrawal of services for Travellers and the alternative arrangements put in place
- 2.5.11. West Yorkshire Police apply the joint council/police protocol across the city and that ward members are notified of unauthorised encampments and when police powers are to be exercised
- 2.5.12. Carry out a review of the information pack for residents and Members regarding unauthorised encampments on private land

3. Main Issues

3.1. The Environment and Neighbourhoods Directorate acknowledges the point made in the Scrutiny Board inquiry that the current cycle of unauthorised encampment and eviction is unsustainable in terms of better meeting the housing needs of Gypsies and Travellers, promoting good community relations and making best use of Council resources.

Site Development

3.2. Recommendations 1 to 4 are concerned with the development of additional site provision for Gypsies and Travellers in the city. It is recognised that these recommendations are challenging and is committed to the principle that any site development must serve to reduce, not exacerbate, the community tensions resulting from unauthorised encampments. Any site development will be subject to standard planning assessments including community consultation. A proposal to develop specific site provision will ultimately need to be ratified through the Executive Board.

3.3. In principle, additional site provision should significantly reduce, but not wholly resolve, the challenges associated with unauthorised encampments. The city will always experience some encampments from non Leeds based Gypsies and Travellers who are passing through the city as part of their nomadic lifestyle. There will also be no compulsion for Gypsies and Travellers to accept the offer of a permanent pitch on a site. New site development would need to be allied to an evolving application of the full range of the Council's powers to resolve unauthorised encampments as swiftly and effectively as possible.

3.4. Officers have serious reservations regarding the recommendation to develop transit or temporary sites in the city. Whilst this may resolve a short-term challenge, it will not address longer-term housing needs if there is no alternative provision to move

Gypsies and Travellers onto. Recent case law, *Pinnock v Manchester CC*, has highlighted the principle, that eviction from a 'home' could interfere with a person's rights to a private and family life under Article 8 of the European Convention of Human Rights. This case law could be used to successfully defend action to evict a household from a temporary site, where the term of authorised residence had expired, if it could be argued that they had fostered roots in the locality and therefore established a 'home' on the site. There is also concern that in the absence of a national strategy for stopping places, the development of provision in Leeds may serve to increase demand.

- 3.5. It is advised that the emphasis should be placed on 'Leeds based' Gypsies and Travellers rather than those who encamp in the city for short periods of time as part of their nomadic lifestyle. The Scrutiny Board inquiry identified 12 families, comprising 25 adults with 38 children and approximately 25 caravans, who are predominantly Leeds based. Whilst it is acknowledged that Gypsy and Travellers desire to live a nomadic lifestyle, it is believed that any site development should primarily cater for Leeds based people.
- 3.6. Officers are of the belief that an expansion of the existing Cottingley Springs site is not feasible. Historically the site was larger and was reduced due to the severe management problems it presented. Cottingley Springs comprises 41 permanent pitches on 2 sites. Government guidance states that sites should not normally exceed 20 pitches. West Yorkshire Police have expressed concerns regarding their capacity to effectively police Cottingley Springs were the site to be expanded. Recent legislative changes, set out in more detail in paragraphs 3.10, have resulted in the Cottingley Springs residents obtaining enhanced tenancy rights that are almost commensurate with those enjoyed by council tenants with secure tenancies. Any action to reduce the size of existing Cottingley Springs pitches would be problematic were they to legally challenge such proposals.
- 3.7. Given this, it is proposed that colleagues in this directorate, work with colleagues in the Development Directorate to identify site options. This work is at an initial stage and it is envisaged that specific proposed sites will be identified for consideration by a future Executive Board.
- 3.8. Site assessment work will be carried out with reference to governmental guidance relating to site development for Gypsies and Travellers. This is currently 'Planning for Gypsy and Traveller Caravan Sites (ODPM Circular 1/2006'). The government is currently consulting (the deadline for feedback is 3 August 2011) on new planning policy for Gypsy and Traveller sites that will replace Circular 1/2006. The government intends that the updated policy will promote local decision making, encourage local authorities to plan for site development over a five year period, deliver greater equity in the approach to housing development in respect of Gypsies and Travellers and the settled community, and foster improved relations between Gypsies and Travellers and the settled community.
- 3.9. Some key principles are proposed in relation to identifying potential sites for development. A focus should be placed on identifying sites in non-residential areas, given the importance of securing agreement for site development, whilst also considering access to facilities and services. The number of pitches per site is a key consideration with each pitch needing to be of sufficient size to park the caravans and vehicles of a specific household: some households have three-four caravans and vehicles. Current thinking is that the maximum size of site would be ten pitches and that significant regard would be given to smaller sites. Any identified sites that meet the above criteria will be subject to additional assessments for their suitability. These

assessments could include an environment impact assessment and cost evaluation including issues such as road access and amenity provision.

- 3.10. It is proposed that any site development should be carried out on an incremental basis to assess whether it better meets the needs of Gypsies and Travellers, to consider the impact on the wider community and because development will be dependent upon securing capital funding. The Homes and Communities Agency has indicated that the Council could secure funding of around £1m to develop 10 additional pitches in the current bid cycle. A funding bid will be submitted by the end of July 2011 (the bid will not be linked to specific sites) and there is a good prospect that this will be successful albeit on the condition that a site(s) is subsequently identified and planning permission secured.
- 3.11. Following evaluation, proposals to develop a specific site or sites will be submitted to approval to a future Executive Board. If approval is given to proceed, then each site would be subject to a planning/land ownership assessment and other due diligence and, if appropriate, a planning application would subsequently be made. A key element of the planning process will be community consultation as community agreement for site development will be essential. One of the objectives of site development will be to reduce the incidence/impact of unauthorised encampments and therefore it is important to consult with Gypsies and Travellers so that any site development reflects their needs.

Tenancy and Community Relations

- 3.12. The development of new sites should be complemented by a rigorous approach to resolving residual unauthorised encampments. The Environment and Neighbourhoods is working with Legal Services to review all the powers available to the Council. This could include applying for injunctions to prohibit encampment on a wider geographical area to supplement an eviction order from a specific location, looking at current enforcement action relating to fly tipping and pursuing summary convictions/fines where Gypsies and Travellers fail to respond to a direction to leave a site when action is taken under the Criminal Justice and Public Order Act 1994.
- 3.13. Initial discussions have taken place with Leeds City Region representatives regarding linking any new site development proposals into wider city regional strategic priorities. Within West Yorkshire, the Bradford district has 47 local authority managed pitches, Wakefield has 38 and Calderdale and Kirklees councils manage no pitches.
- 3.14. In moving forward on all these issues the Council will need to forge improved relationships with the Gypsy and Traveller community if the recommendations set out in the Scrutiny Board inquiry are to be successfully implemented. Recommendations 5 to 7 are closely linked to this aim.
- 3.15. The 1983 Mobile Homes Act explicitly excluded Gypsy and Traveller sites from the definition of 'protected sites' and therefore the residents of Cottingley Springs had more limited tenancy rights than people living in other mobile home sites. The residents of Cottingley Springs were granted licences that enabled the Council to give them 4 weeks notice to vacate the site. The 2004 Housing and Regeneration Act includes Gypsy and Traveller sites within the definition of 'protected sites' and this provision was implemented in April 2011. The residents of Cottingley Springs now have security of tenure that means they cannot be evicted without the Council securing a court order on the grounds of a specific breach of the tenancy agreement.

The residents of Cottingley Springs do not have the right of assignment or succession in relation to the pitch they occupy.

- 3.16. The Scrutiny Board Inquiry recommendations represent a challenge to the Council and also to Gypsies and Travellers who live in unauthorised encampments. The anti-social and criminal behaviour that has occurred at some encampments will have influenced views on whether the Council should develop additional site provision for Gypsies and Travellers. Gypsies and Travellers will also be obliged to sign and adhere to a tenancy agreement, including payment of pitch fees, as a condition of being offered a site pitch. The Gypsy and Traveller Team, which visits and assesses each unauthorised encampment, try to negotiate with the Gypsies and Travellers to try to influence their behaviour whilst the encampment is being resolved. A view has been expressed by Gypsies and Travellers that imminent eviction, with no longer term site options available, does not encourage good behaviour. Recommendation 6 relates to the development of a Good Neighbourhood Code that would operate in parallel to the tenancy agreement that a Gypsy or Traveller would sign as a condition of securing a site pitch. The Environment and Neighbourhoods Directorate are looking at best practice in relation to this recommendation but would stress that the tenancy agreement is the central legal document for influencing and managing actions of site residents.
- 3.17. A Cottingley Springs residents' group has been established and is being facilitated by Leeds Tenants Federation. A constituted group, chair and secretary have been selected. Attendance is an issue of concern and this relates to the necessity for the group to meet away from Cottingley Springs. Obtaining funding, to have a portacabin facility at Cottingley Springs, where meetings can be held, is being explored.

Service Recommendations

- 3.18. Recommendations 8 to 12 relate to the contribution other Directorates and public services can make to better meeting the needs of Gypsies and Travellers.
- 3.19. Recommendation 8 relates to the feasibility for the development of private Gypsy and Traveller sites in the city. Planning applications will be assessed in accordance with standard planning procedures and that no such planning applications have been received since the publication of the Scrutiny Board Inquiry.
- 3.20. The Children's Services Directorate are currently considering recommendation 9 relating to educational take up of Gypsy and Traveller girls at 11 years and above. Feedback from NHS Leeds and the Children's Services Directorate is that they are unaware which services had been withdrawn for Gypsies and Travellers. Clarification has been sought from Gypsy and Traveller advocacy group.
- 3.21. Section 61 of the Criminal Justice and Public Order Act 1994 permits the police to remove trespassers from land if they have caused damage to the land/on site property, or they have displayed threatening behaviour, or there are more than 6 vehicles on the site. The decision to apply the section 61 powers is an operational one for the police. The police need to consider whether there has been unacceptable behaviour/criminal activity that cannot be controlled by means other than eviction, significant disruption to the life of the surrounding community and/or serious breaches of the peace/disorder caused by the encampment. The Council must always secure a court order to evict Gypsies and Travellers from council land. The application of the section 61 powers removes the need for the Council to secure an eviction order through a court process. The Council and West Yorkshire Police have a joint working protocol setting out the parameters and principles of applying the

section 61 powers. Trespass is primarily a civil matter and therefore the police will ordinarily only intervene where there is evidence or a significant threat of criminal behaviour. The police also have concerns regarding where they would direct Travellers to once they have been removed from a specific site. Each encampment needs to be assessed on its specific characteristics and therefore it is not possible to adopt an absolutely standard approach.

- 3.22. The Environment and Neighbourhoods Directorate has placed an emphasis on building relationships with key police divisional officers so that dialogue/agreement can be made on the most appropriate action to take to end an unauthorised encampment. The police recently applied its Section 61 powers to remove an encampment on Wortley Recreation Ground. In specific instances, the Council may be able to speed up the standard process. The Council persuaded the County Court to abridge the notice period, for the hearing and eviction, to remove the May 2011 encampment on Burley Village Green because of its proximity to a polling station. The same opportunity was used in May 2011 at Killingbeck Fields because of its status as an area of Special Scientific Interest.
- 3.23. Government guidance on responding to unauthorised encampments sets out the roles and responsibilities of local authorities in relation to encampments on private land. The definition of a private landowner is not defined but registered charities generally fall into this category. The responsibility for removing trespassers rests with the private landowner. A failure to do so could result in the Council taking enforcement action for breach of planning consent. Unlike public bodies, private landowners do not necessarily need to secure a court order to evict trespassers from land; they can instruct a 'reputable' bailiff to remove them by using 'reasonable' force. The use of force over and above what could be considered 'reasonable' is a criminal offence. Private landowners are recommended to notify the police of their intention to pursue a bailiff eviction and to defer this action if requested by the police. Local authorities are not supposed to give legal advice to private landlords; rather they should give advice and assistance reflecting government guidance. The above points will be written up for guidance to members.

4. Implications For Council Policy And Governance

- 4.1. Any proposal to develop additional site provision will be subject to standard Council planning assessments. All specific proposals for site developments will be passed to the Executive Board for consideration and approval.

5. Legal And Resource Implications

- 5.1. There is no legal requirement for the Council to provide sites for Gypsies and Travellers although the Council does have a duty to consider and make reasonable provision for the accommodation needs of Gypsies and Travellers. The Council is obliged to secure a court order to remove Gypsies and Travellers from council owned land. The Council has changed the tenancy agreements of residents of Cottingley Springs to reflect the implementation of the provisions of the 2004 Housing and Regeneration Act whereby Gypsy and Traveller sites are defined as 'protected sites'.

- 5.2. Between 2003 and 2010, the Council incurred costs of £1.994m in responding to unauthorised encampments.

6. Recommendations

- 6.1. To note the content of the report and approve the instigation of a search for a new site or sites in accordance with the principles set out at paragraph 3.9 and 3.10.

7. Background Papers

- 7.1. 'Review of Gypsies and Travellers Site Provision within Leeds – Scrutiny Inquiry Report'