

Report of Head of Housing Support

Report to Scrutiny Board (Housing and Regeneration)

Date: 8 August 2013

Subject: Enforcement Process – Unauthorised Encampment by Gypsies and Travellers

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

Leeds City Council, in common with all other local authorities, must adhere to set legal obligations when responding to an unauthorised encampment of Gypsies and Travellers on Council owned land.

A Local Authority can only evict trespassers from land it owns by securing a possession order through a court process. A failure to do so could render a local authority liable to legal challenge by way of judicial review action.

The Council has significantly reduced the number, size and cost of unauthorised encampments in the last two years.

This has been achieved by maintaining long standing practice and complementing this with new opportunities such as applying for injunctions and tolerating encampments on specific sites.

Recommendations

To note the contents of the report.

1. Purpose of this report

- 1.1. To provide Scrutiny Board members with a summary of the legal powers available to and the legal obligations placed on the Council when responding to unauthorised encampment of Gypsies and Travellers on Council owned land.
- 1.2. To provide detail of the Council's legal powers and obligations in respect of unauthorised encampment by Gypsies and Travellers on non-Council owned land.

2. Background information

- 2.1. The 2011 Scrutiny Inquiry (Environment and Neighbourhoods) Report into site provision in Leeds for Gypsies and Travellers identified that there were 12 Leeds based 'roadside' families who invariably encamp on public or private land in the city. Significant work has been carried out since the Scrutiny Inquiry with the proposal to expand Cottingley Springs by 12 pitches (a pitch is a parcel of land that can accommodate the vehicles and caravans of one household) being focused, although not exclusively, on these 12 families. There are other Gypsies and Travellers, many of whom are passing through the city as part of their nomadic lifestyle, also encamping on public and private land in the city.

2.2. Eviction Action – Leeds City Council

- 2.2.1. Leeds City Council, in common with all other local authorities, must adhere to set legal obligations when responding to an unauthorised encampment of Gypsies and Travellers on Council owned land.
- 2.2.2. A Local Authority can only evict trespassers from land it owns by securing a possession order through a court process. A failure to do so could render a local authority liable to legal challenge by way of judicial review action.
- 2.2.3. Leeds City Council ordinarily obtains a possession order through the local County Court under Civil Procedure Rules Part 55 to remove trespassers from property and/or land (owned or controlled by the Council). A writ of possession would then be obtained and enforced by an instructed bailiff. The possession order is enforceable against the defendants for a three month period (without leave) on the specific parcel of land that the trespassers were encamped on.
- 2.2.4. If an encampment is located on a highway, then a local authority can, under section 77 of the Criminal Justice and Public Order Act 1994, direct the trespassers to remove themselves and vehicles from the land. If the trespassers fail to leave as soon as reasonably practicable then a local authority can seek an order authorising the Local Authority to take steps to remove the trespassers through the Magistrates Court. An instructed bailiff can then evict. The direction applies for a three month period on the specific parcel of land that the trespassers were encamped on. It is a criminal offence to contravene the direction to leave land under s77 but Leeds City Council has to date limited itself to securing an order to authorised the eviction.

- 2.2.5. The then ODPM has published 'Guidance on Managing Unauthorised Camping' which local authorities must have regard for in responding to unauthorised encampments of Gypsies and Travellers.
- 2.2.6. The guidance sets out an obligation for local authorities to make 'welfare enquiries' into the circumstances of the people trespassing on council land. The local authority may have legal obligations towards the unauthorised campers, child welfare, access to education, homelessness being examples) and a welfare assessment should identify these issues. The identification of welfare needs is a 'material consideration' for the local authority to determine what action to take in respect of the encampment.
- 2.2.7. The three options available to a local authority are to 'tolerate' the encampment, for a period of time; to direct the trespassers to alternative council land, or to recover possession of the land through a court process. (Where trespassers are tolerated for a period of time they are required to agree to behavioural conditions.)
- 2.2.8. The unauthorised campers can raise a public law defence in respect of a local authority's decision to evict them. This could relate to perceived flaws in the process followed to reach the decision to try to recover possession or the reasonableness/proportionality of the decision. The latter challenge could relate to the absence of alternative site provision within the locality with the argument being that the Gypsies and Travellers have consequently no choice but to trespass.
- 2.2.9. The possession proceedings must be served on the trespassers, giving notice of the hearing. Notice can be shortened where an encampment is located on land that is particularly 'unacceptable' such as Sites of Special Scientific Interest (SSSI). The Council has been successful in accelerating the court process relating to encampments on Burley Village Green, Killingbeck Meadow and Wortley Rec.

2.3. Eviction Action – Police

- 2.3.1. Section 61 of the Criminal Justice and Public Order gives powers to the police to direct trespassers to leave land, and to remove vehicles, if there are more than six vehicles on land or the trespassers are causing disruption/alarm for the landowner.
- 2.3.2. Section 62(A) of the Criminal Justice and Public Order Act 1994 gives powers to the police to direct trespassers to alternative land where there is available accommodation for caravans on a relevant caravan site.
- 2.3.3. The Council and West Yorkshire Police have a joint working protocol in respect of using S61 powers. A Council officer, if the encampment is on Council owned land, must ask a senior police officer to use the s61 powers and the ultimate decision rests with the police. The police must have the ultimate decision making power, as the legal framework vests the power with the police, to ensure that operational decisions can be made such as available resources

and the implications of arresting people who refuse to leave. Asking the police to regularly use s61 powers would also be circumventing the legal obligation on a local authority to recover possession of land through a court process.

2.4. Eviction Action – Private Land

2.4.1. Private landowners may obtain a possession order to remove trespassers from land using Civil Procedures Rules Part 55 through the County Court. There is no obligation on the part of private landlords to carry out welfare enquiries relating to the trespassers.

2.4.2. A private landowner can avoid going through a court process by exercising common law rights to remove trespassers from land using 'reasonable force'. This means appointing a 'reputable' bailiff to carry out the eviction. It is expected that a private landowner or appointed bailiff would ask the police to attend the eviction to ensure that there is no breach of the peace. It is also expected that the eviction would be deferred if the police believe that it is an inappropriate time to carry out an eviction.

2.5. Environmental Enforcement

2.5.1. Section 33 of the Environmental Protection Act 1990 (EPA) gives local authorities the power to prosecute perpetrators of the illegal disposal of controlled waste on land without the required permit. This is an indictable offence and can result in fines of up to £50k.

2.5.2. Section 34(1) of the EPA gives local authorities powers to investigate compliance with duty of care regarding waste and vehicles, not allowing that waste to escape and other legal requirements. This is an indictable offence and can result in an unlimited fine.

2.5.3. The Control of Pollution (Amendment) Act 1989 created offences of failing to be registered or provide proof of registration in relation to business waste. Section 6 of the Act enables local authorities to apply for a warrant to seize and dispose of vehicles used in illegal waste disposal where the local authority cannot identify the person in control of the vehicle when the illegal waste disposal took place. Failure to register can result in a fine of up to £5k or a fixed penalty of £300.00. Failure to provide proof of lawful waste transfer (lawful disposal of waste) pursuant to Section 34(5) of the Act may result in a fine of up to £5k or £300.00 fixed penalty.

2.6. Planning Enforcement

2.6.1. **Temporary Stop Notices:** The main planning enforcement power that has been used by the Council to control encampments on third party land where planning permission has not been obtained is the temporary stop notice. Where the local planning authority consider that there has been a breach of planning control and it is necessary in order to safeguard the amenity of the area that the activity that amounts to the breach should stop immediately, it can issue a temporary stop notice. This differs from the normal stop notice

powers because the temporary stop notice does not have to wait for an enforcement notice to be issued. In addition the effect of a temporary stop notice will be immediate, it will not be necessary to wait three days before the temporary stop notice takes effect or give reasons why the temporary stop notice will take effect immediately. They remain in effect for up to 28 days. Until this year there have been restrictions on the use of temporary stop notices to control certain categories of development including the use of a building as a dwelling house or a caravan where that caravan is the main place of residence of the occupier of the caravan. Compensation may arise from the service of a temporary stop notice in limited circumstances – notably if it is subsequently established that planning permission was not required to authorise the occupation.

2.6.2. Following the enactment of Statutory Instrument 2013/830 in May 2013, Councils are now able to use temporary stop notices where caravans are main residences. This enables authorities to act quickly against new unauthorised sites and save on enforcement costs; however the Gypsy or Traveller household(s) must be directed elsewhere.

2.6.3. **Stop Notices:** A stop notice is used to prohibit any breach of planning control specified in an enforcement notice. A stop notice is served with or in the period up to the time the enforcement notice takes effect. It can be served on any person who appears to have an interest in the land or engaged in any activity prohibited by the notice.

2.6.4. There is no right of appeal against a stop notice although it can be challenged on the grounds that it was not properly authorised or was unreasonable. A stop notice remains in force until the end of the compliance period specified by the associated enforcement notice, or until that notice has been withdrawn or quashed on appeal. Under the Town and Country Planning Act, 1990, a planning authority can prosecute non-compliance with temporary or stop notices.

2.6.5. Planning authorities must consider whether a stop notice is proportionate to the activity. There is also the possibility of compensation if it subsequently emerges that the occupation was not in breach of planning control.

2.7. Legal Duties – Accommodation Provision

2.7.1. Since the repeal of the 1968 Caravans Act in 1994 there has been no duty on local authorities to provide pitch based accommodation provision for Gypsies and Travellers.

2.7.2. The 2004 Housing Act places a duty on local authorities to carry out an assessment of the accommodation needs of Gypsies and Travellers and to make reasonable provision for these groups through the planning process. This duty is commensurate with the obligation on local authorities to make reasonable provision of housing for the settled population.

2.8. Assessment of Need

- 2.8.1. An accommodation needs assessment, in relation to current and future pitch provision, was carried out in 2008 for the West Yorkshire sub-region by Sheffield Hallam University: Gypsy and Traveller Accommodation Assessment (GTAA). The research concluded that Leeds would have an unmet pitch need of 48 by 2015.
- 2.8.2. Leeds City Council has never fully accepted the findings of the GTAA and the view of officers is that the research was predicated on flawed methodology. Specifically, that the assessment of pitch need was based upon whether a Gypsy or Traveller had a 'cultural preference' for pitch based living. This includes Gypsies and Travellers who are living in conventional housing.
- 2.8.3. The alternative approach recommended by officers is that the Council should firstly assess whether a Gypsy and Traveller is homeless. For example because:
 - 2.8.4. They have no place to legally station their mobile home
 - 2.8.5. They are living care of family and friends on pitch based provision but have no legal interest in this land
 - 2.8.6. They are living in conventional housing but feel this accommodation is not reasonable for their occupation because they have a 'cultural aversion' to conventional housing.
 - 2.8.7. In the first two examples, the Council may decide that a Gypsy or Traveller is homeless but decide that a suitable offer of accommodation (if such a duty applies) is conventional housing. The Council would need to be able to demonstrate that an offer of conventional housing is suitable because the Gypsy or Traveller does not have a 'cultural aversion' to conventional housing'.
 - 2.8.8. In the third example, the Gypsy or Traveller occupying conventional housing would only be homeless if it was established that they had a 'cultural aversion' to conventional housing and therefore their accommodation was not reasonable for occupation.
 - 2.8.9. The Council could not adopt a blanket policy in relation to assessing whether Gypsies and Travellers have a cultural aversion' to conventional housing and would need to assess each application on its individual merits. For example, it would not be lawful to determine that every Gypsy or Traveller occupying conventional housing does not have a 'cultural aversion' to such housing simply on the basis of their occupation of such housing.
 - 2.8.10. The assessment of future pitch provision, up to 2028, and a five year programme of sites to meet this pitch need, is required for the Leeds Core Strategy. Assessed future pitch need is likely to be lower than that determined by the GTAA, if the assessment was predicated on the 'cultural aversion' principle.

3. Main issues

3.1. There has been a significant reduction in the number and size of unauthorised encampments of Gypsies and Travellers since the beginning of April 2011.

Year	Public	Private	Total	Number of Caravans
2012/13	35	11	46	293
2011/12	51	25	76	913
2010/11	53	34	87	1002
2009/10	39	33	72	614
2008/09	69	57	126	1164

3.2. The total number of encampments in 2012/13 was 47% lower than the comparable figure for 2010/11 and 63% lower than the number in 2008/09.

3.3. There has been a 31% reduction in encampments on public land between 2012/13 and 2010/11.

3.4. The number of caravans encamped in 2012/13 was 71% lower than in 2010/11 and 75% lower than in 2008/09.

3.5. The reduction in the number and size of unauthorised encampments has consequently reduced the cost incurred by the Council in relation to legal costs, site cleaning and other associated costs:

- 2010-11: £324,405.00
- 2011-12: £302,988.00
- 2012-13: £211,153.00

3.6. The reduction in cost over the last three years equates to over £113k or 35%. This is funding that the Council has been able to use for other priorities.

3.7. The reduction in the number and size of unauthorised encampments has been achieved by maintaining long standing practice in recovering possession, looking at further opportunities (such as injunctions) within the legal framework and complementing enforcement action with a strategy of toleration.

3.8. Since April 2011, Gypsies and Travellers trespassing on public land have defended possession action taken by Leeds City Council on one occasion. This related to a parcel of land at Cross Green Approach which has been leased to the Council by Wade's Trust Land. This encampment occurred in late 2011. The Council was successful in securing a possession order.

3.9. Prior to April 2011, the absence of alternative sites was periodically put forward by Gypsies and Travellers in an attempt to delay or stop an eviction from Council land. The proposal to expand Cottingley Springs by 12 pitches may well be serving to reduce the capacity of Gypsies and Travellers to defend possession action.

- 3.10. The Council has agreed to tolerate the Leeds based 'roadside' families on two occasions in 2012 and 2013. The group were tolerated at Bath Road in Holbeck between August and November 2012. The Council subsequently directed the Travellers, and tolerated their encampment thereafter, to the old Primrose High School site in Lincoln Green. The Travellers lived at the Primrose site between November 2012 and April 2013.
- 3.11. The toleration of the Leeds based 'roadside' Travellers for an 8 month period helped to reduce the number of encampments in 2012/13 and the impact on local communities of unauthorised encampments.
- 3.12. None of the 12 Leeds based 'roadside' Traveller families are currently trespassing on Council owned land in the city. Some of the group have been rehoused at Cottingley Springs, some are living care of family or friends at Cottingley Springs ('doubling up') and others are travelling elsewhere.
- 3.13. There is still Gypsy and Traveller encampments in the city relating to other, generally non-Leeds based groups. At the time of writing (12 July) there are two groups of Travellers encamped on private land in the city. This is not surprising given that it is the height of the 'travelling season' with many nomadic groups moving around the country and often travelling to fairs. One encampment, at Burley Sports Bar, has proved to be problematic as the leaseholder (and hence person entitled to possession of the land) has not taken steps to evict the trespassers.
- 3.14. The Council has been successful in securing two injunctions, covering parcels of land in Burley, Armley and Wortley, against named Travellers within the Leeds 'roadside' Traveller group. Injunctions are not the ultimate panacea for addressing unauthorised encampment but are a useful option especially in relation to repeated trespass on parcels of land in close proximity to each other.
- 3.15. Since April 2012, the police have used their S61 powers to remove Travellers from land on 7 occasions. The most recent application was the removal of Travellers from Kirkstall Abbey car park.
- 3.16. The legal enforcement, in respect of fines and meaningful prosecution outcomes, of littering and tipping of uncontained waste on unauthorised Gypsy and Traveller encampments has to date been challenging.
- 3.17. It has been difficult to prove/identify who has actually committed the offence. Also, as the occupiers are not actually formal tenants or the landowners (they are simply people on a piece of land) we cannot prosecute them under environmental legislation designed to ensure the control of waste on a property or litter clearance notices known as "waste in gardens".
- 3.18. There is also the likelihood that even if a notice could be served on an individual (for example for straight forward littering or fly tipping), the chances of either a Fixed Penalty Notice being paid or a prosecution through courts being successful is too small to justify the amount of time and resource that would be

required. The use of the officer resources should be on enforcement efforts that stand the best chance of making a difference in our neighbourhoods.

- 3.19. This is not to say that environmental enforcement action will not and is not taken where possible on and around such sites. But this provides a realistic assessment of the balance of likely success versus the use of resources that would otherwise have greater success when used to tackle other local priorities/problems.

4. Corporate Considerations

4.1. Consultation and Engagement

- 4.1.1. No specific consultation has been carried out in respect of this report but the Council's approach to responding to unauthorised encampments has been shaped by on-going dialogue with local communities, members, Gypsies and Travellers and legal advocates.

4.2. Equality and Diversity / Cohesion and Integration

- 4.2.1. An equality, diversity, cohesion and integration screening exercise will be carried out.

4.3. Council policies and City Priorities

- 4.3.1. Action to address the housing needs of Gypsies and Travellers in the city specifically reflect two of the aims of the Vision for Leeds: 'Leeds will be fair, open and welcoming' and 'All Leeds' communities will be successful'. This work will especially contribute to the 'Safer and Stronger' Communities Plan priority around 'Increasing a sense of belonging that builds cohesive and harmonious communities' and those relating to reducing crime and anti-social behaviour.

4.4. Resources and value for money

- 4.4.1. The Council's approach to responding to unauthorised encampments of Gypsies and Travellers has led to a reduction in annual costs of £113k – equating to 35% - in the last two years.

4.5. Legal Implications, Access to Information and Call In

- 4.5.1. 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 this group.
- 4.5.2. The Council is aware that, as a public body, it must ordinarily secure a possession order through a court order to have Gypsies and Travellers evicted from Council owned land.
- 4.5.3. The report contains no exempt information.

4.6. Risk Management

4.6.1. A failure on the part of the Council to adhere to legal obligations could lead to legal challenge and further costs being incurred.

5. Conclusions

5.1. The Council has developed its approach to responding to unauthorised encampments of Gypsies and Travellers in accordance with the legal framework and with regard to national guidance. There has been a significant reduction in the number, size and cost of unauthorised encampments over the last two years and this can be attributed to the Council maintaining its long standing practice whilst looking for other response opportunities such as toleration and injunction.

6. Recommendations

Scrutiny Board members to note the content of this report.

7. Background documents¹

None.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.