



Report of the Director of Environment and Neighbourhoods

Scrutiny Board (Environment and Neighbourhoods)

Date: 13 September 2010

Subject: Gypsy and Traveller site provision within Leeds

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

This report updates Scrutiny Board on the current situation within Leeds regarding unauthorised Gypsy and Traveller encampments as compared to the position when Scrutiny Board held an inquiry into this matter in 2004/5. The Council continues to provide a permanent site at Cottingley Springs accommodating 41 pitches. There continues to be a high number of unauthorised encampments within Leeds, particularly during the summer months. Some of these encampments cause considerable local difficulties both in terms of management and impact on local events, the environment and so forth. During this summer the Council has experienced the largest single unauthorised encampment of recent years when over 50 caravans were parked on sports fields at Fearnville leisure centre. Legally the position regarding possession action remains much the same as it was in 2005 although it is becoming more common for possession to be defended by the travellers.

1.0 Purpose Of This Report

- 1.1 Further to the request of Scrutiny Board in July, this report seeks to brief members of Scrutiny Board on the current position with regard to site provision for gypsies and travellers within the Leeds area.

2.0 Background Information

- 2.1 The Council currently provides 41 pitches for Gypsies and Travellers at Cottingley Springs in the south of the city. This is a long established site which has over the years seen a reduction in pitches (to improve the management of the site) and significant investment in facilities. The site is currently full and has a waiting list. Turnover at the site is low with most families making their long-term home at the site. There is no transit site in Leeds.
- 2.2 A Scrutiny Board inquiry was undertaken in 2005. A copy of the report is appended. The key recommendation of the report was that a housing needs assessment was undertaken in relation to the needs of Gypsies and Travellers. Following a decision by Executive Board in September 2006, Leeds joined the other West Yorkshire authorities in undertaking a sub-regional assessment. Such an assessment was required by all local authorities in England and Wales as set out in the Housing Act 2004 and the assessment was to inform the then required Regional Spatial Strategies. The government has recently abolished the requirement for Regional Spatial Strategies but at this stage has not issued further planning guidance in relation to Gypsy and Traveller Needs Assessments.
- 2.3 The West Yorkshire Gypsy and Traveller Accommodation Assessment was reported to the West Yorkshire Housing Partnership in May 2008. It concluded that there was an unmet housing need across the sub-region and calculated this across each local authority. The assessment concluded that within Leeds there was a need for 48 additional permanent pitches by 2015 and suggested that in addition there is a need across the sub-region for transit sites to accommodate the nomadic lifestyle of Gypsies and Travellers.
- 2.4 Unauthorised encampments can, and do, occur at any time during the year but there is always a concentration during the summer months – the ‘travelling season’. The encampments vary in size from one or two caravans and vehicles to large sites of up to 50 or more caravans. To date this year Leeds has experienced 40 encampments on public land along with 16 on privately owned land.
- 2.5 The Council is not able to simply eject travellers, their caravans and other vehicles from Council owned land. The Council, before any other considerations, is obliged to undertake welfare assessments to better understand the housing, medical, educational and other needs of the families involved. Following this assessment the Council must consider whether to immediately evict, whether to tolerate the encampment or part of it and for how long, and finally must consider whether an alternative site can be identified. In order to remove the travellers, the Council is required to apply for a court order.
- 2.6 In some circumstances the police are able to use their powers under section 61 CJPOA to remove unauthorised encampments. The Council and the Police have a joint protocol to ensure that where this power is used, there is a joint response and coordinated cleaning and securing of the site.

3.0 Current position

- 3.1 In 2009 there were a total of 45 unauthorised encampments on Council land and 45 on privately owned land. To date this year, there have been 40 encampments on Council land and a further 16 on private land. As referred to earlier these encampments have varied in size but this year has seen some significant large encampments, such as at Fearnville Leisure Centre where at one point over 50 caravans and further associated vehicles were camped. There is significant public discussion and reporting in the local media especially concerning the larger encampments which lead to areas of well-used open space being out of public use for periods of time.
- 3.2 At time of preparation of this report, there are five encampments in the city and a total of around 40 caravans sited on public land without permission or toleration. Court proceedings are underway in all these sites but as has been the pattern for many years, once evicted the travellers frequently move onto another unauthorised site and the process has to recommence.
- 3.3 Some of the Gypsies and Travellers currently encamped in Leeds are not known to the council and are moving through the area, often to attend horse fairs and other events. However there are a group of 3 or 4 extended families who are known to the council and who tend to remain in the Leeds area throughout the year. None of this group have a permanent pitch available in the Leeds area.

4.0 Legal Considerations

- 4.1 In its 2005 inquiry, the Scrutiny Board received a briefing note from the then Directorate of Legal and Democratic Services of the then Chief Executive's department (now the Legal, Licensing and Registration Service area of Corporate Governance) setting out the various legal powers applicable and available to the Council (and to the police) in relation to unlawful encampments.
- 4.2 Since that time the fundamental legal position remains the same as regards relevant legislation and the Council has continued generally (subject to questions of toleration and so on) to apply to the County Court for possession orders in relation to unlawful encampments on Council land. (Note: however there is a case to be heard in the Supreme Court shortly about the impact of Article 8 of the European Convention on Human Rights on possession proceedings generally which may change the legal position as found by the House of Lords in relation to Article 8 and possession proceedings in the case of Leeds City Council v Price and Others which arose out of an unauthorised encampment at Spinkwell Lane, Morley.)
- 4.3 It is understood, however, that the new Government is considering issuing further guidance/reviewing the legal position with a view to consideration of additional powers to local authorities and the police in relation to unauthorised encampments. Conversely, if current guidance remains the same or is re-issued 'in favour' of travellers this could affect the Council's legal position.
- 4.4 In the meantime, since 2005 Council officers in Environment and Neighbourhoods and Legal Services together with other directorates have continued to expend much time and resources in applying for possession orders in the County Court in relation to unauthorised encampments and dealing with the consequences of such encampments. Most of those applications are not defended but some, particularly those involving a core of several traveller families, are regularly defended with the assistance of specialised solicitors and Counsel and the support of GATE. Inevitably this causes delay in the legal process with consequent problems on the ground as well as the problems caused by unlawful occupation in the first place. Indeed this has resulted in significant concerns from local residents and ward

councillors across this summer where there have been a large number of unauthorised encampments which have, for example, “threatened” leisure events such as local galas and both the Party and the Opera in the Park. If these events had to be cancelled there would have been significant losses to local charities in respect to the galas and the Council regarding the Party in the Park. Application for possession orders are only made where the police have felt the circumstances are such that it is inappropriate for their own powers to be used and once the decision has been taken to instigate proceedings the police are unlikely to use their powers as circumventing the court process.

- 4.5 Consideration has been given in the past to the question of whether the legal and clean up and other costs involved in dealing with unauthorised encampments are value for money and a report was considered by the Executive Board in December 2009 following a deputation to Council from Morley residents in that regard. The general approach, however, continues to be to take possession proceedings in relation to unlawful encampments. A constant theme in defending possession proceedings has been that if the Council provided an alternative site or sites then the travellers would have no need to occupy any other Council land. (Note: in paragraph 3.17 of its 2005 Inquiry Report, the Scrutiny Board concluded that “it is unlikely that the provision of additional sites would eradicate unauthorised encampments” and “incidents of unauthorised encampments will still require robust and co-ordinated management.”)
- 4.6 So far the Court has not allowed the travellers’ argument to prevent possession orders being made but it increasingly takes up much Court time. In at least one case the Judge has expressed reservations about the lack of additional site provision and indeed criticized the Council. Whilst his remarks are not binding (and were challenged by the Council robustly as to some extent “misplaced” as the Council was acting within its legal powers), they are an indication of the possibility that successful applications for possession orders may be more difficult in the future.
- 4.7 This position arises from the fact that such public law challenges give the judge in such proceedings the ability to consider the Council’s actions notwithstanding that in principle the Council, having established ownership of the land is entitled to a possession order. If the travellers are successful in establishing a public law defence, the Court is likely to quash the decision to evict and dismiss the possession proceedings which would mean that the Council would then have to take a fresh decision and then issue fresh proceedings or appeal to the High Court, both steps with consequent delay. It should be stressed, however, that the Council does not accept that, for travellers who are occupying land unlawfully, attempts to claim a public law defence in possession proceedings are appropriate and will continue robustly to resist such challenges and to defend robustly its decisions to institute possession proceedings in this regard.
- 4.8 In a separate but relevant context the Council has recently been formally threatened with Judicial Review proceedings in the High Court by travellers. Although it is considered that this particular claim is without legal merit, it is a further indication of the legal challenges to which the Council may be subject in the future.

5.0 Resource Implications

- 5.1 When resolving unauthorised encampments by virtue of a possession order or otherwise, there are often significant resources involved in cleaning up and securing the site and in some instances this also involves making good damage to drainage,

re-seeding playing fields and so on. Annually the cost of such encampments to the Council is around £270,000 not including the costs arising from legal proceedings.

- 5.2 Equally there would be costs associated with establishing new sites including landscaping, providing sanitation and other facilities and so on. The government has recently withdrawn funding previously made available for development of new sites by local authorities and therefore the cost of such developments would have to be met by the Council. Any new site provision would require planning permission and would require public consultation. Potentially there would be divided opinion about any provision of additional sites in Leeds.

6.0 Conclusions

- 6.1 Unauthorised encampments continue to present significant problems within the Leeds area particularly through the summer months. This year has seen a high level of encampments. Action to remove unauthorised encampments, where appropriate and within correct procedures, is taken swiftly by the Council. However such action does not resolve the problems and use of resources caused by encampments as the travellers tend to move to new sites within the city.
- 6.2 There are some family groups who move through Leeds as part of their nomadic lifestyle and who often have pitches in other areas of the country. However there are some travellers who remain within the Leeds district for most of the year and who consider themselves to be residents of Leeds. This group do not appear to have any place to legally park their caravans within the district.
- 6.3 The legal position for the Council with regard to unauthorised encampments remains the same but there is a greater tendency for travellers to seek to defend possession proceedings which may become increasing problematic from a legal and management perspective.

7.0 Recommendations

- 7.1 It is recommended that Scrutiny Board note the contents of this report to assist in the Board's consideration of a further scrutiny inquiry in respect of relevant gypsy and traveller issues particularly in relation to unauthorised encampments including the question of the provision of alternative sites.