

Item: Consultation – Powers for Dealing with Unauthorised Development and Encampments

Appendix A – Proposed Response to Consultation Questions

Q.1 - What evidence is there of unauthorised development and encampments in your community, and what issues does this raise for the local community?

Table 1 below summarises the numbers of unauthorised encampments recorded by year in South Derbyshire over the past decade.

We believe that the numbers of unauthorised encampments recorded since 2011 have reduced because the Council invested significantly at this time in landscaping and fencing measures to protect our own land. However, over this timescale we have also noted a progressive increase in the number of public complaints per encampment. We have not explored the underlying reasons why encampments generate more complaints, but would suggest that this could be down to factors such as the limited availability of unprotected land (thus meaning that encampments are more visible) and reduced toleration by the public.

The main causes of complaint relate to anti-social behaviour, intimidation, theft, criminal damage, noise, dangerous dogs, waste and excrement on land.

Table 1 – Illegal Encampment Data, South Derbyshire 2008 – 2017

Year	Number of Illegal encampments	Number of mobile vehicles involved	Complaints	Complaints per encampment
2008	23	80	12	0.5
2009	31	143	42	1.4
2010	37	280	87	2.4
2011	30	74	54	1.8
2012	13	57	6	0.5
2013	11	45	27	2.5
2014	10	68	23	2.3
2015	19	112	40	2.1
2016	14	54	49	3.5
2017	14	55	38	2.7

Q.2 We would like to invite evidence of unauthorised encampments which have occurred in the last 2 years, as follows:

a. the number of instances where trespassers have occupied land without authorisation, including the location and scale of the encampment.

b. whether the land in a) required cleaning or repair once the encampment had left, and if so, what was the cost?

c. how was each unauthorised encampment encouraged to leave, how long did it take, and was the local authority able to move them on; or did the police become involved?

Over the last two years we have been made aware of 28 illegal encampments. 24 of these contained 5 vans or fewer. The other four encampments consisted of between 6 and 30 vans. 11 of the encampments were on parks and open spaces owned by the District Council, 13 were on land owned by the County Council and 4 were on private land.

We do not keep specific records of the cost of repair or clean-up following encampments. However our best estimates are as follows;

- The officer time spent investigating and managing the eviction process can vary substantially from just a couple of hours to many tens of hours. The estimated average officer time taken to process the eviction of encampments is 25 hrs which equates to a cost of £945.
- The estimated average cost of repairs and waste removal following evictions can again vary significantly from nil to thousands of pounds. On average we estimate that the average cost is £500.
- Two of the 11 cases relating to encampments on land owned by the District Council involved the suspicion of some form of criminal damage being caused to facilitate access onto the land.

The Council follows the following process to secure evictions of unauthorised encampments:

1. All vehicles and their occupiers are served with a Toleration Policy;
2. Health (and, where relevant, education) checks are requested from relevant agencies;
3. Where no health or education needs are established, a Direction Order is served;
4. After non-compliance with the Direction Order we apply to court for an Order for the Removal of Persons or Vehicles;
5. When we receive a court date to hear the application for the Order we issue a summons;
6. If the application to the court is successful we issue the final Direction Order;
7. Where the compliance date of the final Direction Order is breached we instruct bailiffs to remove.

Of the 11 cases handled by the District Council over the past two years;

- All 11 resulted in the service of a Toleration Policy;
- All 11 resulted in a request for a health and / or education check to the relevant third party agency;
- 5 resulted in the service of a Direction Order;
- 3 resulted in the application to court for an Order for the Removal of Persons or Vehicles;
- 2 resulted in summons being issued to the occupiers;
- 1 resulted in the service of a final Direction Order;

- 1 resulted in the instruction to bailiffs.

In total the 11 encampments occupied land for a total of 121 days. The duration of the encampments were in the range 2 to 21 days.

Q.3 Do you think that the existing powers made available to local authorities to remove unauthorised campers from land are effective?

Overall we consider the specific powers offered in law around removing unauthorised encampments do have the capability to be relatively effective, subject to the comments to the Q4.

Powers to deal with the various associated forms of anti-social behaviour we describe in our response to Q1 are, in our opinion, relatively ineffective whilst the encampments are in situ. There is no realistic likelihood of conviction if we try pursue the occupiers for potential criminal offences under these forms of anti-social behaviour once the occupiers have been evicted from the land in question. The occupiers are aware of this and the minority who behave in an intentionally anti-social manner therefore have no compulsion to moderate their behaviour until the eviction process is complete.

Q.4 Do you think local authorities could improve their use of existing powers?

We are aware of significant variations in the way that different Councils across the UK use the powers available. This appears to be down to differences in the way that the existing statute and statutory guidance is interpreted by different authorities. We are of the opinion that there are sections of the existing statutory guidance which are too widely open to interpretation. These differences in approach between different Councils no doubt create confusion amongst the travelling community, as well as causing frustrations within the settled communities affected by encampments and enforcement officers. Our opinion is that the detail within the statutory guidance should be made more explicit in order to remove the residual uncertainty and to ensure that there is a more consistent national approach.

For example; the ODPM Guidance "Guide to effective use of enforcement powers Part 1: Unauthorised encampments" dated 2006 provides the most detailed guidance to local authorities on their use of powers under sections 77 and 78 of the Criminal Justice and Public Order Act 1994. Paragraph 31 of the Guidance states: *"Before commencing any action to evict an unauthorised encampment, local authorities have an obligation to carry out welfare assessments of the unauthorised campers. This may necessitate the involvement of local NHS bodies, where health issues are apparent."*

The interpretation of the Guidance by this Council is that all unauthorised encampments must be the subject of a health welfare assessment by a qualified practitioner acting on behalf of the local Clinical Commissioning Group; and all unauthorised encampments with school age children must be the subject of an education assessment by a qualified professional acting on behalf of the local education authority.

It is our experience that on average the CCG and local education service require 7 days to undertake these assessments and this creates a significant delay in the issuing of Direction Orders under these Sections of the Criminal Justice and Public Order Act 1994. Based on our experience, relevant health

or educational needs are only identified in approximately 5% of encampments and therefore this step in the process adds significant delay for relatively minor benefit to the travellers.

We are aware of other local authorities who have taken a different interpretation of this guidance and who take the occupiers of the unauthorised encampment through a structured set of questions to establish health and educational needs when the Toleration Policy is issued. Any potential significant needs which are identified are then referred to the health and education agencies for further action. Where this screening process identifies no health or educational needs then these Councils are able to take a much more rapid route to the issuing of a Direction Order.

We would request that the Ministry issue clearer and more explicit guidance to support para 31 of the 2006 Guidance to state in more specific terms who can undertake health and educational checks and what form these checks should take.

Q.5 What other powers may help local authorities deal with unauthorised encampments?

We have recently started using Community Protection Notice (CPN) powers under sections 43 to 58 of the Anti-Social Behaviour, Crime and Policing Act 2014 to address specific forms of anti-social behaviour associated with individual encampments. We have adopted this approach due to the potential arrest powers associated with the breach of a CPN which offers some form of immediate punitive action and therefore offers an incentive to moderate behaviour. Initial experience suggests that this may be a relatively effective tool, although we do not have a sufficiently extensive portfolio of cases as yet to draw any firm conclusions.

Q.9 What barriers are there to the greater use of injunctions by local authorities, where appropriate, and how might they be overcome?

The main barrier to our use of Injunctions is the weight of evidence necessary to demonstrate to the court that the adverse impact of encampments is proportionate to the granting of an Injunction. We have never considered that either the individual or cumulative impact of encampments has been sufficiently serious to offer a realistic likelihood of successfully applying for an Injunction.

We would suggest that specific guidance on the weight of evidence and the relative impacts on communities of unauthorised encampments would help both local councils and the courts better understand the tests necessary to bring into play consideration of civil Injunctions.

Q.10 Do you have any suggestions or examples of how local authorities, the police, the courts and communities can work together more successfully to improve community relations and address issues raised by unauthorised encampments?

The establishment of a properly formed and constituted Traveller Liaison Group in Derbyshire has provided a valuable bridge between the traveller community and enforcement agencies to help shape interventions. Guidance produced by the Group has directly influenced the enforcement processes of all partner agencies.

Q.11 Are there ways in which court processes might be modified in a proportionate way to ensure unauthorised encampments can be addressed more quickly?

We are satisfied with the court processes as they currently operate.

Q.12 In your view, what would the advantages and disadvantages be of extending the Interim Possession Order (IPO) process to open land?

The advantage of extending the IPO process would be the criminalisation of the offence and therefore the provision of power of arrest. It would also enable proceedings to be issued immediately. The disadvantage is that it would still only offer an interim solution, would be more expensive than alternative options and is still ultimately dependant of the capacity of the Police to carry out the enforcement.

Overall we do not consider that extending the IPO process to open land is likely to offer us any significant new benefits.

Q.13 Are you aware of any specific barriers which prevent the effective use of current planning enforcement powers?

We are generally satisfied with the existing range of powers available to planning enforcement authorities.

However, the most significant barrier to the effective use of these powers are the protracted lengths of time which result from appeals against enforcement notices and which can take up to 12 months to conclude. We feel that these delays in appeal proceedings are unfair on all parties in that it enables the perception of a lack of action to ferment within local settled communities and creates uncertainty and an inability to plan and invest within the traveller community.

Q.14 If you are aware of any specific barriers to effective enforcement, are there any resourcing or administrative arrangements that can help overcome them?

PINs has recently implemented changes to their appeals administration to enable fast tracking of householder planning appeals. We would welcome a similar dedicated fast track resource for unauthorised encampment appeals.

Q.15 Are you aware of any specific barriers which prevent the effective use of temporary stop notices? If so, do you have a view on how these barriers can be overcome?

No.

Q.16 How do you think the existing enforcement notice appeals process can be improved or streamlined?

Please refer to our response to Q.14 in which we propose the provision of a streamlined appeals process similar to that currently used for householder planning appeals.

Q.17 How can Government make existing guidance more effective in informing and changing behaviour?

Please refer to our response to Q.4 above

Q.18 If future guidance was issued as statutory guidance, would this help in taking action against unauthorised development and encampments?

Yes

Q.19 Are there any specific barriers to the provision of more authorised permanent and transit sites? If so, is there any action that the Government could take to help overcome those barriers?

The calculation for every local authority five year requirement for the delivery of traveller sites is based on Gypsy Traveller Accommodation Assessment (GTAA). In our experience these assessments are based on a fairly rudimentary calculation which is entirely predicated on the assumption that demand for sites is directly correlated to historical traveller population counts. Therefore areas with historically high traveller counts are required to deliver high volumes of additional authorised encampments whilst areas with low or nil counts are required to support low or nil growth. This imposes the highest burdens on local authority areas with the highest recorded traveller populations. In these areas the most viable sites have already been developed. It also inherently limits the impetus to look for development opportunities for potential new sites in areas of existing low traveller population counts.

As a result, the current process for establishing targets for authorised developments from the GTAA limits the opportunity to develop the 'low hanging fruit' of sites which are suitable for use for authorised development but in local authority areas with low or nil GTAA development targets. This inherently limits the choices and opportunities available to the traveling community.

We would recommend a national standard calculation methodology for GTAA.