

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Executive Member for Policy and Resources
Date:	27 October 2011
Title:	Review of County Council Policy for the Control of Unauthorised Encampments by Gypsies and Other Travellers
Decision Reference:	3158
Report From:	Director of Culture, Communities and Business Services

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1. Executive Summary

1.1. The purpose of this report is to review and update the current policy for the Control of Unauthorised Encampments by Gypsies and Other Travellers.

1.2. This report seeks to:

- Clarify the current legal requirements relating to Unauthorised Encampments.
- Consider the legal and financial implications when dealing with Unauthorised Encampments.
- Highlight the issues and the impact of Unauthorised Encampments on the County Council and County residents.
- Identify and agree the correct implementation of procedures in dealing with Unauthorised Encampments by the County Council.

2. Contextual information

2.1. Annually, the County Council's Gypsy and Traveller team deals with approximately 50 to 60 Unauthorised Encampments on County Council land, which can involve between 150 to 200 separate caravans. The County Council is fully aware of the cost and nuisance impact that Unauthorised Encampments can also have on private landowners and whilst the County Council is not empowered to act in these cases, officers do provide appropriate advice and guidance to assist where possible and appropriate.

2.2. Current County Council policy for the control of unauthorised encampments was last considered by the former Gypsy Sites Panel in 1996. Following the recent Gypsy and Traveller Service review of 2010, it is clear that the policy requires amendment. Therefore, it has been reviewed in light of experience

gained both in Hampshire, and elsewhere and also to reflect court judgements and procedures.

- 2.3. The repeal of the Caravan Sites Act (1968) and the introduction of the Criminal Justice and Public Order Act (1994) has resulted in the Communities and Local Government (CLG) publishing two best practice guides:
- a) Managing Unauthorised Camping: A Good Practice Guide (2004).
 - b) Guide to effective use of enforcement powers - Part 1: Unauthorised Encampments (2006).

These documents have influenced the approaches adopted by local authorities, police and others and are reflected in the proposed amended policy.

- 2.4. The appearance of an Unauthorised Encampment on land is usually contentious and unwelcome, presenting a range of issues and concerns for local residents and the occupier/owner of the land. The County Council is, however, required by current legislation to take proportionate action and ensure that the rights of all parties are considered before taking action to re-secure the land.
- 2.5. Currently the County Council policy is to consider individual circumstances with the intention to reduce nuisance and afford a high level of protection to local residents, whilst remaining humane and compassionate. It is important to highlight that taking this current approach, the County Council's Gypsy and Traveller team manages to secure the termination of up to 40% of all Unauthorised Encampments via direct negotiation. This is undertaken whilst both the required welfare checks are being undertaken and formal court evictions procedures are instigated. Of the remainder, once a formal County Court date has been established, which takes between one to three weeks, most Unauthorised Encampments cease before the date of the hearing.
- 2.6. Recent case law and the 'Good Practice Guide' highlights the need to make extensive enquiries and to give consideration to many factors before reaching a decision, particularly on eviction.

3. Finance and Performance

- 3.1. The table below provides the last three years legal and clear up costs incurred by Policy and Resources in dealing with Unauthorised Encampments:

Year	Site Clearance/Clean Up costs	Legal fees (including Court Fees)	Number of encampments / caravans	Total spent on Unauthorised Encampments
2008/09	£6,610.00	£17,239.04	66 / 205	£23,849.04
2009/10	£7,328.00	£25,319.26	52 / 150	£32,647.26
2010/(June)11	£3,617.50	£18,806.25	24 / 105	£22,435.75

- 3.2. Whilst the County Council is successful in dealing with and achieving the above, in doing so it currently makes use of the Civil County Court procedures to facilitate formal evictions. On reviewing the current legislation and the options it has open to it, the County Council needs to consider what other alternatives are available to it.

4. Outline of Legal Process and Powers

- 4.1. Local Authorities have a range of powers at their disposal for removing unauthorised encampments. These are:
- Seeking possession through part 55 of the Civil Procedure Rules via the Civil County Court. This is the process that the County Council currently uses.
 - Section 77-78 of the Criminal Justice and Public Order Act 1994 via the Magistrates Court. This is an alternative process that the County Council can consider.
- 4.2. The provisions of each of the above are different and their applicability depends upon individual circumstances. In addition, the Human Rights Act 1998 is also relevant and the County Council's actions must reflect the provisions within this Act. The Act came into force in October 2000 and incorporates the European Convention on Human Rights into British Law. The Act means that all eviction and enforcement decisions made by public authorities must be "proportionate". Potential challenge under the Act means that all decision making must be fully recorded and evidenced to withstand scrutiny.
- 4.3. As the County Council currently uses the Civil Court process the key alternative option is to consider this alongside the use of the Magistrates Court process.
- 4.4. Possession proceedings using Part 55 of the Civil Procedure Rules (Civil County Court).
- This is a civil remedy available only to the landowner (or the person entitled to occupy the land).
 - Proceedings can be issued against "persons unknown".
 - Proceedings must be served on the occupiers.
 - At the hearing the landowner must prove it is entitled to possession.
- 4.5. Sections 77-78 of the 1994 Act (Magistrates Court)
- Powers for use by Local Authorities.
 - It can be used on any land within the Local Authority area irrespective of ownership.
 - The onus in respect of welfare assessments is greater because these proceedings lead to criminalisation.
 - The procedure requires the Local Authority to draw up a Direction instructing the occupants to leave and remove vehicles and property on

a particular date and time. This Direction identifies either individuals or vehicles on the land.

- If the occupants do not provide their details any action can be against “Persons Unknown”. However if details are provided, the direction must be served to an individual occupant or affixed prominently to the individual vehicles concerned.
- It is a criminal offence for occupants not to comply with the Direction. (Although there is a defence if the failure to leave was due to an illness, mechanical breakdown or other immediate emergency).
- If the Direction is not complied with under Section 78, the Local Authority can apply for a Summons. This Summons must be served on the Occupants.
- Once an Order for Possession is granted it should be served (as above) as soon as possible.

4.6. The use of the Magistrates’ Court as apposed to the Civil Court can be summarised as follows:

Time:

- The Civil County Court - This procedure is tried and tested and the Court Bailiff can enforce any order. The Court will list for a hearing on the first available date. This may take up to 21 days.
- The Criminal Magistrates Court - Court paperwork is simpler and the Court will issue a hearing date by telephone prior to any paperwork being prepared. This is usually a quicker procedure and on average can take between 7 to 10 days. However, it must be noted that with recent Magistrate Court closures and increasing workloads of the remaining courts, getting a quicker hearing date is under pressure.

Court Procedure:

- The Civil County Court – is not willing to provide a hearing date until the paperwork and the Court fee is received. A Bailiff for enforcement is available as part of the process. The Order is effective against all occupants of the land. An Order for Possession of land ‘forthwith’ can be obtained, which enables the County Council to remove the occupants and vehicles immediately the Order has been served.
- The Criminal Magistrates Court – there is no Bailiff for enforcement and the County Council would have to make its own arrangements, with the associated costs. The Court papers have to be sent/taken to a Justice of the Peace to be signed before serving. The Court procedures vary from Court to Court i.e. Basingstoke will arrange everything over the telephone whereas Southampton require faxed details and Court fees immediately. There are set Court dates for hearing applications and at this moment in time the Magistrates Court procedure is untested by the County Council. The Order for Possession only applies to those named and vehicles listed, which is a problem if new occupants arrive on site after the Summons has been served. The County Council are unable to take any action to remove the occupants and vehicles from the site until 24 hours after service of the Order.

Costs:

- The Civil County Court charges a one-off issue fee of £175 and Bailiff charge of £110 making a total charge of £285. This charge applies if the Unauthorised Encampment involves one or many persons.
- The Magistrates Court charge is £75 per complaint and £75 per summons. If the County Council provides names of all the individual occupants on a site then a charge will be levied for every individual complaint / summons i.e. four named occupants and a person unknown will be 4 x £150). The total charge will depend upon the number of individual summons plus the cost of a Bailiff. The cost of a separate Bailiff depends upon the size of the Unauthorised Encampment and will normally be a minimum of £1,200.

5. Proposed Amended Policy

- 5.1. As already noted, the existing Policy and practice relies upon enforcement action using the powers of Part 55 of the Civil Procedure Rules and the Civil County Courts. In relation to its wider statutory duties, the County Council, unlike district and borough councils, does not require any form of regular bookings at Magistrates or County Courts for its daily business. As such, when a court date is required the County Council will always have to wait until the first one is available, thus adding to the time it takes to secure any eviction via any route. In addition, the use of the powers contained in Sections 77-78 of the 1994 Act via Magistrates' Court will be more expensive. However, this route could potentially enable for a quicker route to securing County Council land than the usual Civil Court route in the resolution of Unauthorised Encampments.
- 5.2. Therefore, it is proposed that future enforcement action should follow the following route:
 1. Informal negotiation and Welfare Inquiries by the Gypsy and Traveller team whilst at the same time pursuing.
 2. In the first instance, consideration of the use of Sections 77-78 of the 1994 Act and use of the Magistrates Court assessed against cost, complexity and time.
 3. In the above is not appropriate, use of Part 55 of the Civil Procedure Rules and the County Court process.
- 5.3. On the above basis, the Policy relating to unauthorised encampments has been reviewed and is attached in Appendix I and is recommended for approval by the Executive Member for Policy and Resources. The proposed policy would satisfy case law and encompass the requirements contained in the Good Practice Guide. It will direct officers in the process of investigating unauthorised encampments and in deciding when and in what circumstances possession proceedings should be instituted.
- 5.4. The proposed amended policy is intended to apply to all matters in which the County Council is investigating unauthorised and illegal encampments, either in respect of its own land or on behalf of other public bodies under Service Level Agreements.

6. Recommendations

- 6.1. That approval be given to the immediate implementation of the proposed amended County Council Policy for the Control of Unauthorised Encampments by Gypsies and other Travellers, as detailed in Appendix 1.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	Yes
Corporate Improvement Plan link number (if appropriate):	
Maximising well-being:	Yes
Corporate Improvement Plan link number (if appropriate):	
Enhancing our quality of place:	Yes
Corporate Improvement Plan link number (if appropriate):	

Other Significant Links

Links to previous Member decisions:		
<u>Title</u> Policy for the control of Unauthorised Encampments by Gypsies and other Travellers	<u>Reference</u>	<u>Date</u> 6.11.1996
Direct links to specific legislation or Government Directives		
<u>Title</u> Court Judgements / Stated Cases http://www.gypsy-traveller.org/pdfs/law_welfare_evictions.pdf Managing Unauthorised Camping: A Good Practice Guide - http://www.communities.gov.uk/documents/housing/pdf/157323.pdf Guide to effective use of enforcement powers - Part 1: Unauthorised encampments http://www.communities.gov.uk/documents/housing/pdf/143582.pdf Hampshire County Council 'Practice Note on Enforcement in Relation to Gypsy and Traveller Sites and Unauthorised Encampments' .		<u>Date</u> Various 1 February 2004 2 February 2006 March 2011

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

IMPACT ASSESSMENTS:

1. Equalities Impact Assessment:

- 1.1. An equalities impact assessment has been considered in the development of this report and no adverse impact has been identified, as the proposed amended policy is in line with legislation and good practice guidance.
- 1.2. The proposals in this report will develop a better understanding of the communities concerned, target resources efficiently and adhere to the transparency and accountability element of the Public Sector Equality Duty.

2. Impact on Crime and Disorder:

- 2.1. The County Council has a legal obligation under Section 17 of the Crime and Disorder Act 1998 to consider the impact of all the decisions it makes on the prevention of crime.
- 2.2. The proposals in this report will have a positive impact on crime reduction by promoting the practice of partnership working to prevent and reduce crime and disorder by early and effective intervention on the sites of Unauthorised Encampments.

3. Climate Change:

- 3.1. There will be no impact on our carbon footprint or energy consumption.

FEEDBACK FROM CONSULTEES:**OTHER EXECUTIVE MEMBERS:**

Executive Member & Portfolio	Reason for Consultation	Date Consulted	Response:
N/A	N/A	N/A	N/A

OTHER FORMAL CONSULTEES:

Organisation	Reason for Consultation	Date Consulted	Response:
Hampshire Constabulary	To gain a Police view on the proposed amended policy.	25.08.2011	Hampshire Constabulary have agreed with the draft of the proposed amended policy.

Statement of Policy in Relation to Unauthorised Encampments (October 2011)

Throughout this document 'Traveller' is all persons who have a nomadic lifestyle for all or part of the year.

- 1.1 This document is intended to provide a policy framework within which to consider how the Council should react to unauthorised encampments and, in particular, whether, and if so when, the Council should bring possession proceedings to recover the land on which such encampments are placed. It is not a substitute for individual consideration of each case and any special circumstances which may be present.

- 2.1 Subject to any unusual or special circumstances, formal repossession procedures through the courts will normally be instituted against unauthorised encampments occupying land owned or controlled by the County Council in the circumstances outlined below, that is to say, where the encampment:
 - a) Creates a hazard to road safety or otherwise creates a health or safety hazard; or
 - b) Creates an intolerable nuisance to the general public by reason of its size, location, nature or duration; or
 - c) Creates an intolerable impact on the enjoyment, use or habitation of adjoining or nearby property or interferes with the effective operation or management of that property; or
 - d) Causes, or is likely to cause, damage to the County Council's land or property or prejudice to its employees; or
 - e) Prejudices or is likely to prejudice the use of land for its intended purpose or by legitimate tenants or occupants; or
 - f) Is too large for its location or is causing unacceptable impact on its environment; or
 - g) Would for some other reason be detrimental to the interests of the public if allowed to remain for an extended period.

- 3.1 Every effort will be made to avoid moving Travellers unnecessarily from place-to-place particularly where this would create unwelcome disturbances to family life. In this connection particular regard will be paid to the schooling and welfare of children and the well being of the

aged and infirm. This will be balanced against impact upon local residents and property of the County Council.

- 3.2 Notice to vacate the land will normally be given prior to the institution of possession proceedings and will give the occupants a reasonable period within which to vacate the land; the length of time considered to be a reasonable period will depend on the individual circumstance of each case. The decision on the appropriate action will be made after due consideration of the available information.
- 4.1 In considering the matters set out in 2(a) to (g) above and any other relevant matters peculiar to an individual case, consideration shall be given to the various statutory duties owed by the Council, and powers exercisable by the Council, both in relation to land in its ownership or under its control. Any or all of the following matters may potentially arise and will be taken into account by the Council when determining whether and, if so, when to issue possession proceedings:
- a) The health, welfare, housing and education requirements of members of the encampment and the relevant duties that may be owed by the County Council to them.
 - b) The extent of accommodation provided by the Council;
 - c) Any duties owed by the Council to the public by virtue of statutory powers and duties e.g. under the Highways Act 1980, the Open Spaces Act 1906, and relevant duties and responsibilities generally under other legislation e.g. Wildlife & Countryside Act 1981, Town and Country Planning Act 1990.
 - d.) Impacts upon County Council property and local residents.
- 5.1 Whilst the County Council will continue to pursue the termination of Unauthorised Encampments via informal negotiated means, where formal process is deemed to be required the following shall be followed. In the appropriate circumstances given below, in the first instance, the Council will consider enforcing legislation contained in the Criminal Justice and Public Order Act (1994) and Magistrates Court where to do so is judged to be in the public interest where.
- a) Land or property ownership cannot be ascertained.
 - b) The encampment has become unmanageable and requires immediate enforcement action.
- 6.1 As an alternative and only if the above is deemed to be inappropriate due to encampment complexity, cost and availability of a hearing date, use will be made of Part 55 of the Civil Procedure Rules. And the County Courts.

