

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Executive Member for Policy and Resources
Date:	8 December 2011
Title:	Review of County Council Policy for the Control of Unauthorised Encampments by Gypsies and Other Travellers
Decision Reference:	3422
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 on County Council property.

1.2. This report seeks to:

- Clarify the current arrangements and 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 and other landowners.
- 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. This can have a key impact upon the County Council's operations and its neighbours. In addition, the County Council is also fully aware of the cost and nuisance impact that Unauthorised Encampments on private land can have on private landowners. 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 available procedures.

2.3. In addition, 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 should now be reflected in local authority policies.

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, required by current legislation to take proportionate action and ensure that the rights of all parties, including other landowners and neighbours are considered before taking action to re-secure the land. Currently the County Council policy is to consider the individual circumstances and context of unauthorised encampments on its land with the intention to reduce nuisance and afford a high level of protection to local residents, whilst following the relevant government guidance. 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 the securing of a possession order.

2.5. It is important to highlight that following this approach, the County Council's Gypsy and Traveller team manages to secure the termination of up to 40% of all Unauthorised Encampments on County Council land via direct and informal negotiation. However, these negotiations are only undertaken in parallel with formally instigated court possession procedures and the undertaking of any legally required procedures. Of the remainder, once a formal Civil County Court date has been established, which using the current County Court route takes between one to three weeks, most Unauthorised Encampments cease once the possession order has been secured.

3. Finance and Performance

3.1. The table below provides the last three years legal process and site 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. 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 possession 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 any future scrutiny.

4.3. In addition to the powers available to local authorities, Police Authorities have powers available under S.61 Criminal Justice and Public Order Act, 1994 (S61 Powers) under which they can intervene directly in cases of trespass.

4.4. S.61 Powers are not available to Local Authorities; use of these powers by Police Authorities is discretionary and, in Hampshire, delegated down to Inspectors at local level; and their use must again be proportionate and appropriate in the circumstances.

4.5. Guidance issued by the Association of Chief Police Officers indicates that S.61 Powers should not normally be used as a first response, this being considered to be the responsibility of landowners and Local Authorities; and

the mere existence of an unauthorised encampment should not create any expectation that the Police will use their eviction powers.

- 4.6. Guidance also confirms that, for the use of S.61 Powers to be seriously considered, it is necessary for Police Officers to identify that the trespass is causing:
- Local communities to be deprived of local amenities;
 - Significant adverse impact on the local environment;
 - Disruption to the local economy, local community and/or local environment;
 - Danger to life;
 - or there is a need for the Police to take preventative action, i.e where damage is anticipated or has already been caused to the affected property and/or threatening or abusive behaviour has been used.
- 4.7. Against a total number of 47 unauthorised occupations across Hampshire during the first six months of 2011, Hampshire Police Authority is understood to have used S.61 Powers on five occasions including the eviction of a large encampment from Forestry Commission land at Stoney Cross in the New Forest during the Summer of 2011.

5. The Options

- 5.1 As the County Council currently uses the Civil County Court process, the key alternative option is to consider this route alongside the use of the alternative Magistrates Court process. This can be summarised as follows:

5.2 Process:

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 they are entitled to possession.

Possession proceedings using 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.

5.3 **Time:**

- The Civil County Court - This procedure is well established and the Court will list for a hearing on the first available date once all paperwork to be submitted. However, this can take up to 21 days.
- The Criminal Magistrates Court - Court paperwork is simpler and the Court can 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 now under pressure.

5.4 **Court Procedure:**

- The Civil County Court – A hearing date is not identified 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 –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 is unable to take any action to remove the occupants and vehicles from the site until 24 hours after service of the Order. There is no Bailiff for enforcement and the County Council would have to make its own arrangements, with the associated costs.

5.5 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 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.

6. Proposed Amended Policy

- 6.1 As already noted, the existing County Council Policy and practice relies upon good use of informal negotiation to resolve a high proportion of Unauthorised Encampments. It is proposed to continue with this aspect of the policy. However, in addition, the Magistrates Court route does offer a potentially quicker route to securing County Council land than the usual Civil Court route in the resolution of Unauthorised Encampments.
- 6.2 Therefore, it is proposed that future enforcement action should follow the approach outlined below:
- a.) Informal negotiation by the Gypsy and Traveller team whilst at the same time pursuing the required Welfare Inquiries and instigation of parallel formal legal procedures as per b.) and c.) below.
 - b.) In the first instance, consideration of the use of Sections 77-78 of the 1994 Act and use of the Magistrates Court.
 - c.) If appropriate, and only as a secondary consideration, use of Part 55 of the Civil Procedure Rules and the County Court process.
- 6.3 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.
- 6.4 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.

7 Recommendation

7.1 That the Executive Member for Policy and Resources:

- a) Approves 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:

- 7.1 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.
- 7.2 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.

8 Impact on Crime and Disorder:

- 8.1 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.
- 8.2 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.

9 Climate Change:

- 9.1 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.
 - h.) Prejudices the duties and responsibilities owed by the County Council to local residents to ensure a high level of protection and fairness in the unauthorised occupation of land and to prevent the breach, by the County Council, of planning regulations and laws.

- 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.

Civil Procedure for Possession Proceedings where land is unlawfully occupied

This procedure relates to possession proceedings where land is unlawfully occupied.

All initial reports of encampments should be referred to the Gypsy Liaison Officer (GLO), Rural Services Group, CCBS. The GLO will issue instructions to Hampshire Legal Services (HLS).

HLS will receive instructions from the GLO or Assistant GLO or other relevant Instructing Officer detailing: where trespass is; who is in occupation of the land; what steps have been taken to date to remove the trespassers; the urgency of taking legal actions, i.e. influenced by Press interest, local residents pressing for action, Councillor involvement etc.

- 2 HLS with the GLO will establish who owns the land. If it is not Hampshire County Council owned or if it is but is privately leased then the onus for any action will be on the owner/tenant of the site.
- 3 The GLO will carry out welfare checks on those encamped and prepare a report. The decision whether to tolerate or not will be decided on the basis of this report, which should set out all the human rights issues. It has been agreed that the Head of Hampshire Legal Services, or one of his delegates, will make the decision to tolerate or not. If Court action is required they will indicate this on the report and sign the report, where indicated.
- 4 The GLO will arrange for Head of Hampshire Legal Service to make the decision after initial consultation with the Team Leader - Highway Litigation (when consideration will be given as to the appropriate forum for the court action i.e. Civil or Magistrates' Court, and the timescale required). It is important to ensure that this decision is also made in consideration of the County Council's Policy regarding the Management of Unauthorised Encampments.
- 5 HLS will conduct a Highways Status search/Rights of Way search/obtain Deeds and ensure there is adequate evidence of title before proceeding. In the event that there is no documentary evidence of title, a Witness Statement will be prepared for an officer who is able to confirm that the land in question has been maintained as public highway for a period of years.
- 6 HLS will agree with the GLO the area of land for which possession is being claimed, with reference to a plan (that plan to be later attached to the Particulars of Claim).

HLS will ensure that the GLO has authorisation from the Head of Legal Services to take Possession Proceedings. A Witness Statement will then be prepared from the report, dealing with the Policy and authorisation to take proceedings.

- 8 HLS will arrange for GLO to serve Notice to Quit. That Notice is to expire seven days from service of the same; unless there is a need for expediency, in which case a Notice to Quit may not be necessary. It should be noted that there is no legal requirement to serve a Notice to Quit, and there may be circumstances where it is not appropriate to serve a Notice to Quit. Similarly, the GLO may advise that a longer period is required in the Notice to Quit as a result of circumstances at the encampment.
- 9 HLS will prepare the Claim Form and Particulars of Claim.
http://www.hmcourts-service.gov.uk/courtfinder/forms/n5_0805.pdf
http://www.hmcourts-service.gov.uk/courtfinder/forms/n119_0805.pdf. The Claim Form is to make reference to the land being claimed, as shown “as edged red (etc) on the plan attached to the Particulars of Claim”. The Claim Form should include the Court Fee (currently £175), and solicitors’ costs claimed on issue of the claim. CPR 45.1(2)(c) allows for commencement costs in Possession Claims (currently £77). In the Particulars of Claim, a pleading for costs should be made.
- 10 HLS will draft the Witness Statement for the GLO. To include exhibits as necessary, eg, exhibiting the Notice to Quit, and a plan of the area of which possession is being claimed. The GLO producing the Witness Statement must attend Court to give evidence.
- 11 The Court paperwork should be check by a Legal Officer in the Highways Litigation Team before it is sent to the court for issue.
- 12 Upon the file being returned by the Legal Officer, Highways Litigation Team, obtain dates to avoid for the listing of the hearing from the GLO, and members of the Highways Litigation Team.
- 13 Issue the Possession Claim in the Court nearest to the land of which possession is being claimed. Those documents that need to be issued are: Claim Form; Particulars of Claim; Witness Statement of GLO, together with exhibits; Witness Statement of Head of Legal Services or his delegate, together with exhibits. Provide the Court with dates to avoid for the listing of the claim. If an urgent hearing is required, then a telephone call should be made to the Listing Officer prior to sending the papers and/or the day after sending.
- 14 HLS will provide sufficient copies of the Court papers to allow for service upon all the identified occupants of the site and ‘persons unknown’.

On receipt of the Notice of Hearing, HLS, will contact the GLO in order to ascertain whether they are willing and able to serve the proceedings themselves. If the GLO is able to serve the proceedings, they should visit the occupied land and personally serve the Court papers upon as many of the Defendants identified on the Court Claim Form as is possible. This service will be carried out in accordance with the requirements for service under Part 55 of the CPR.

http://www.dca.gov.uk/civil/procrules_fin/contents/parts/part55.htm#rule55_6

The GLO will leave and position further copies of the papers at the occupied site so as to fulfil the requirements for service upon 'persons unknown' under the provisions of Part 55 of the CPR. Those papers are to be addressed to "The Occupiers".

Having effected service of the Court papers, the GLO will complete a Certificate of Service provided by HLS in the format required by the Court to confirm the details of how the papers have been served. The Certificate of Service will then be returned to HLS prior to the hearing.

In the event that the GLO is unable to carry out service of the proceedings, HLS will contact an appropriate Process Server (TPS) with a request that the Court papers be served upon the occupants of the affected land. HLS will specify the date and time by which the papers will need to be served to comply with the requirements for service under Part 55 of the Civil Procedure Rules (CPR).

(Should the TPS be unable to be able to carry out the service of the papers by the date and time specified, they must advise HLS immediately so that alternative arrangements can be made.)

A representative of TPS will attend at the offices of the HCC Legal Practice at The Castle, Winchester and will collect the papers for service.

A representative of TPS will visit the occupied land and will personally serve the Court papers upon as many of the Defendants identified on the Court Claim Form as is possible. This service will be carried out in accordance with the requirements for service under Part 55 of the CPR.

Further, or in the alternative, TPS will leave and position further copies of the papers at the occupied site so as to fulfil the requirements for service upon 'persons unknown' under the provisions of Part 55 of the CPR.

Having effected service of the Court papers, the representative of TPS will complete a Certificate of Service in the format required by the Court to confirm the details of how the papers have been served.

TPS will arrange for the Certificate of Service (and a copy of the Court papers) to be brought back to the offices of HLS prior to the day of the hearing. A representative of TPS will then hand the Completed Certificate of Service to the HLS and will report any relevant information relating to the situation at the occupied site.

HLS will draft Court Order. Two Orders should be drafted. Both orders should read “possession forthwith (etc)” and leave blanks for the attendance of the Defendants. One order should also include an order for costs, so “the Defendant/s do pay the Claimant’s costs, assessed at £? (currently £227) within 28 days”. The other will omit reference to the costs being awarded.

A representative of HLS will attend court for the Court Hearing along with the GLO who may be required to give evidence. A forthwith Order for possession shall be sought.

Should the possession be undertaken on behalf of a client other than the Gypsy Liaison Office, all references to the GLO above should be replaced by references to an appropriate representative of the client.

Following a Possession Order being made by the relevant County Court, the HLS representative shall obtain all necessary copies of the sealed Order from the Court. Arrangements will then be made to ensure that the trespassers are served with the Order for Possession (either by the GLO or TPS).

At the date of possession as ordered by the Court, arrangements will be made to enforce the order should the trespassers not have vacated the land. This will involve further court fee and instructions to the County Court Bailiff.

NOTICE TO OCCUPIERS

Open Space adjacent to

I HEREBY GIVE YOU NOTICE that you are occupying the above land illegally without permission, licence or consent of Hampshire County Council.

I have to inform you that unless the land is vacated by you, your vehicles, caravans, animals and other property by appropriate legal action will be taken to secure and enforce your removal.

Should this enforcement action be necessary you will be held responsible for all costs of your removal and transportation and Hampshire County Council make take proceedings against you for the recovery of these costs.

Hampshire County Council will be entitled to take such action because you have failed to respond to a request to leave the land on which you are currently trespassing.

Dated

Kevin Gardner LLB, Solicitor
Head of Legal Services
Hampshire County Council
The Castle
Winchester
Hampshire SO23 8UJ
Telephone: 01962 847377

Magistrates Court Procedure for Possession where land is unlawfully occupied by travellers

This procedure relates to possession proceedings where land is unlawfully occupied.

All initial reports of encampments should be referred to the Gypsy Liaison Officer (GLO), Rural Services Group, Culture, Communities and Business Services (CCBS). The GLO will issue instructions to Hampshire Legal Services (HLS).

- 1 HLS will receive instructions from the GLO or Assistant GLO or other relevant Instructing Officer detailing: where trespass is; who is in occupation of the land; what steps have been taken to date to remove the trespassers; the urgency of taking legal actions, i.e. influenced by Press interest, local residents pressing for action, Councillor involvement etc.
- 2 HLS with the GLO will establish who owns the land. If it is not Hampshire County Council owned or if it is but is privately leased then the onus for any action will be on the owner/tenant of the site.
- 3 The GLO will carry out welfare checks on those encamped and prepare a report. The decision whether to tolerate or not will be decided on the basis of this report, which should set out all the human rights issues. It has been agreed that the Head of Hampshire Legal Services, or one of his delegates, will make the decision to tolerate or not. If Court action is required they will indicate this on the report and sign the report, where indicated.
- 4 The GLO will arrange for Head of Hampshire Legal Service to make the decision after initial consultation with the Team Leader - Highway Litigation (when consideration will be given as to the appropriate forum for the court action i.e. Civil or Magistrates' Court, and the timescale required). It is important to ensure that this decision is also made in consideration of the County Council's Policy regarding the Management of Unauthorised Encampments.

5 HLS will conduct a Highways Status search/Rights of Way search/obtain Deeds and ensure there is adequate evidence of title before proceeding. In the event that there is no documentary evidence of title, a Witness Statement will be prepared for an officer who is able to confirm that the land in question has been maintained as public highway for a period of years.

6 HLS will agree with the GLO the area of land for which possession is being claimed, with reference to a plan (that plan to be used in the Court Bundle).

HLS will ensure that the GLO has authorisation from the Head of Legal Services to take Possession Proceedings.

8 If the decision has been made **not** to tolerate the incursion and to proceed using Criminal Procedure a Direction under the Criminal Justice and Public Order Act 1994 is required to be served on the travellers.

9 HLS will arrange for GLO to serve the Direction. The deadline for them to quit the site should be decided by the GLO in light of the Welfare Report. The Direction is served either by GLO or where that is not possible a Process Server. *NB: It is advisable to get a Council Officer to accompany this Process Server so that they can attend Court to give evidence of service.* The legislation enables us to put the Direction up on site so usually we do a mixture of personal service and displaying on site.

10 HLS will arrange for whoever serves the Direction to complete and sign a Certificate of Service with a copy of the Direction attached to the Certificate in the format required by the Court to confirm that the papers have been served.

11 If the Direction is not complied with HLS will draft the papers required by the Court as it will be necessary to obtain an Order for their eviction from the Court. HLS will draft the Summons, Complaint and Order.

12 HLS will obtain dates to avoid for the listing of the hearing from the GLO and members of the Highway Litigation Team and get a Court date for the hearing. Bear in mind that a summons must be served on the travellers giving them at least 24 hours notice of the Court date. (Make sure your witness (see 9) can attend Court on the day). You may feel that it is appropriate to obtain these dates/times before the deadline for the incursion to quit has passed (you can **and must** always cancel if not needed).

13 Once the papers have been prepared by HLS the GLO will need to take four copies of the summons and two copies of the complaints to the Court to be signed by the Court. The Court will keep one of each and return the others to the GLO for service.

14 The GLO will then have to arrange to copy the summons and complaints and arrange for service (as before at 9). They must retain one original and serve at least one original on the travellers. Naturally it would be a good idea to make numerous copies so that a copy of the summons can be handed to all on site and be put up on site as appropriate (in plastic wallets etc).

- 15 NOTE: Remember to get those who serve the summons to sign a Certificate of Service (as before at 10).
- 16 HLS will prepare submission for Court.
- 17 HLS will make sure you have deeds for the land in question so that we can prove our ownership/interest (see 5 above)
- 18 HLS with the GLO will make sure that they have a plan (see 6 above) of the site and that "X" marks where the incursion is situated (note plans from deeds are often way out of date).
- 19 HLS will prepare Court Order (for the Magistrates to sign if they decide to grant an Order).
- 20 HLS will prepare a Court bundle which includes the welfare report, the Direction as served, the Summons as served, Certificates of Service and a plan of the site.
- 21 HLS will ask the GLO to arrange for someone to visit the site before the Court to check whether travellers are still there. If they have gone, we will need to withdraw. HLS will notify the Court
- 22 A representative of HLS will attend Court with the GLO and the witness, if different.
- 23 If the Magistrates grant the Order, this will need to be executed. The Gypsy Liaison Officer will need to contact police to help out in this regard in liaison with the Officers who have assisted you.

property and remove the vehicles and any other
they have with them from the land forthwith.
That Hampshire County Council by its officers
and servants be authorised to take such steps

as

are reasonably necessary to ensure that this
Order is complied with and in particular is
authorised to enter upon the said land being

are

and is further authorised to take such steps as
reasonable necessary in relation to securing
entry to the land and the removal of the said
vehicles or other property

Justice of the Peace

**COMPLAINT FOR ORDER TO REMOVE VEHICLES UNLAWFULLY ON LAND
SECTION 78 CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994**

DATE :

DEFENDANTS : Persons unknown - all occupants of vehicles
on/at land known as

ADDRESS : Vehicles occupying the land known as

MATTER OF COMPLAINT : The Defendants continue to occupy land known
as in contravention
of a Direction Notice served under Section 78 of
the Criminal and Public Order Act 1994

ON THE COMPLAINT OF : Kevin Gardner LLB Solicitor, Head of Legal
Services, Hampshire County Council

COMPLAINANT : Hampshire County Council

ADDRESS : Chief Executive's Department, Hampshire
County Council, The Castle, Winchester SO23
8UJ

Signed Dated

Kevin Gardner LLB Solicitor
Head of Legal Services
Hampshire County Council
The Castle
Winchester

Hampshire SO23 8UJ

Taken before me
Justice of the Peace
Clerk to Magistrates Court

Certificate of Service
(Criminal Procedure Rules r 4.2)

I, _____ of Hampshire County Council, The Castle,
Winchester in Hampshire certify that at _____ hours on _____ day of May
20____, I served the occupiers of vehicles on or at land at
in Hampshire with the Summons dated _____ 20 of which this is a true copy
by:

Displaying the said Summons on the land in question in manner designed to
ensure that it is likely to be seen by any person camping on the land as per
S79(2) and (3) Criminal Justice and Public Order Act 1994 and /or Serving
said Summons on the occupiers personally

Dated the _____ day of _____ 2011

Signed.....