

## OVERVIEW & SCRUTINY COMMITTEE

CHAIRMAN: Cllr Mike Haines

EXECUTIVE PORTFOLIO-HOLDER: Cllr

**DATE:** 26<sup>th</sup> October 2018

**REPORT OF:** Marie Downey- Solicitor  
at the request of Cllr Hook

**SUBJECT:** **Unauthorised traveller encampments**

**PART I or II**

### RECOMMENDATION

**The Committee is recommended to note this report.**

#### 1. PURPOSE

To advise the Committee and provide up to date information relating to the enforcement powers that the Council has to deal with unauthorised traveller encampments.

#### 2. BACKGROUND

Unauthorised encampments occur where trespassers enter and occupy land belonging to the local authority.

Unauthorised encampments can cause settled communities significant distress and they perpetuate a negative image of the travelling community, the vast majority of whom are law abiding citizens.

The July 2017 traveller Caravan Count, published by the Ministry of Housing, Communities and Local Government on 16<sup>th</sup> November 2017 illustrates that the number of traveller caravans on authorised sites has risen from 14,498 in July 2010 to 19,071 in July 2017. A 32% increase.

Figures also illustrate that the amount of unauthorised encampments across England accounts for 16% of all caravans in July 2017.

The Equality Act 2010 makes it unlawful to treat someone less favourably because of a range of protected characteristics, including race, nationality or ethnic or national origins. The following of a nomadic lifestyle is lawful, indeed it is a culture that is recognised and protected through legislation. Romany Gypsies and Irish Travellers have been granted protection under the previous Race Relations Acts. The Public Sector Equality Duty applies to local authorities and the police and places a duty on them to have due regard to the need to eliminate unlawful racial discrimination and promote

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equality of opportunity and good relations between persons of different racial groups.

The Council has powers under the planning regime and the Town and Country Planning Act, however this report deals only with illegal encampments by the travelling communities in the short term, rather than sites at which travellers have occupied for some time.

Teignbridge District Council has had 17 incidents of illegal encampments in the past 4 years.

Number of incidents each year:

2012-1 2013-1 2014-1 2015-5 2016-1 2017-4 2018-4

### **3. EXISTING POWERS FOR DEALING WITH UNAUTHORISED ENCAMPMENTS**

#### **1. Application for a possession order in the County court.**

An application to the County Court (local to the occupied land) is made requesting the removal of travellers from the land that they are occupying. A possession order may be secured quickly against trespassers, a minimum of 2 day notice must be given prior to the court hearing taking place.

At TDC, the process is started by following internal policy, this states that two officers visit the travellers and establish that they are on land owned by the Council. The travellers are asked to leave the land immediately and informed that if they fail to do so then the legal process to evict them will begin. Devon County Council are informed as they have a duty to carry out welfare checks.

On their return, the officers draft witness statements and the Council's solicitor drafts the claim. In order to ensure swift action the solicitor will attend the County Court to get the claim issued, this is when the court will set a date for the case to be heard. The paperwork is then served on the travellers informing them of the hearing date.

In 99.9 % of the cases the travellers will leave the land on or prior to the hearing date. If the order is granted and the travellers remain on the land the Council will use the County Court bailiff to assist with the removal, or High Court Bailiffs if the site has a large volume of travellers and there is intelligence to suggest that there may be a breach of the peace. The Council has not had use Bailiffs to remove travellers at any site within the last few years. (Excepting the illegal site at Haldon at which the circumstances were different, in that it had been allowed to become a tolerated site by Devon County Council).

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Using the County Court process is the power most widely used by Local authorities. It is relatively quick and the cheapest option. The court fee at the moment is £355.

The advantage of using the County Court process is that any enforcement action taken is done so under a court order and as such is not open to challenge as a judge has affirmed the decision to evict based on available evidence.

The traveller community are aware of this court process, hence once they are notified of a court hearing date they usually leave the land just prior to or on this date.

### **2. Section 77 Criminal Justice and public Order Act 194.**

Where people are residing in vehicles (including caravans) on land, S 77 of the above Act gives Local authorities power to give a direction to leave the land. This power applies to land forming part of a highway, any other unoccupied land or occupied land on which people are residing without the consent of the owner. It is an offence to fail to deal with a direction and the local authority can apply to the Magistrates Court for an order requiring the removal of the vehicles and any occupants from the land. Officers or agents of the local authority may use reasonable force to evict. It is usually recommended that the police attend to prevent a breach of the peace.

This power is not used by TDC as it could potentially take longer and cost more to evict travellers than using the Part 55 Civil Procedure. Issues would be that Magistrate Court listing times are unknown. It is likely that it would take longer to be given a date in the Magistrates Court, then in order to take the matter to court a summons needs to be issued and there is always difficulty ascertaining the names and addresses of travellers. As a district Council we do not have resources to carry out the eviction ourselves. I do not have a cost estimate for engaging a contractor to assist.

### **3. Power of the police to direct unauthorised campers to leave the land.**

Should trespassers refuse to adhere to a request to leave the land, Sections 61-62 of Criminal Justice and Public Order act 1994 gives the police a discretionary power to direct trespassers to leave and remove any property or vehicles that they have with them. The power applies where the senior police officer reasonably believes that two or more persons are trespassing on land for the purpose of residing there, that the occupier has taken reasonable steps to ask them to leave, and

- A) That any of the trespassers have caused damage to land or property,
- B) That any of the trespassers have used threatening, abusive or insulting words or behaviour towards an occupier, a member of the occupiers family or an employee or agent of the occupier,
- C) That the trespassers have between them six or more vehicles on the land.

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Failure to comply with the direction is an offence.

Under S 62 A-E of the same Act gives police the powers to direct trespassers and travellers to leave the land where there is a suitable pitch available on a caravan site elsewhere in the local authority area.

The latest police guidance states that police should consider using their powers Contained in Section 61 or 62 of the Criminal Justice & Public Order Act 1994 where:

**i) Local amenities are deprived to communities or significant impact on the environment.**

This could include, for example, forming an encampment on any part of a recreation ground, public park, school field, village green, or depriving the public use of car parks. The fact that other sections of the community are being deprived of the amenities must be evident before action is taken.

**ii) There is local disruption to the economy.**

Local disruption to the economy would include forming an encampment on a shopping centre car park, or in an industrial estate, if it disrupts workers or customers, or agricultural land, if this results in the loss of use of the land for its normal purpose.

**iii) There is other significant disruption to the local community or environment.**

This might include where other behaviour, which is directly related to those present at an encampment, is so significant that a prompt eviction by police becomes necessary, rather than by other means.

**iv) there is a danger to life.**

From experience within the Council's area it appears that the police are reluctant to use these powers and that it is left to the local authority to use their powers as landowner and make an application for possession of the land to the Court.

Although the police have these powers there are difficulties from a practical point in them gaining evidence to enable them to ascertain which individual may have committed an offence such as causing criminal damage.

Through The Enforcement Forum Group at Teignbridge we have a very good working relationship with Trading Standards. Both parties will inform each other of any encampments and share any relevant intelligence. Trading Standards will use their powers to deal with criminal activity and matters in relation to illegal vehicles etc.

#### **4. THE USE OF CERTIFIED ENFORCEMENT AGENTS**

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All landowners have a common law right to recover land. An eviction notice giving travellers at least 24 hours' notice to move must be served. If they fail to leave the land the Local Authority may proceed to evict them

If the eviction is to remove travellers from a local authority owned site, then the Human Rights Act must be considered. Article 8 of the ECHR protects an individual's right to home and family life.

There might also be children at the site, in which case there needs to be liaison with social services to ensure they are taken care of and have access to appropriate services.

If there are horses or livestock present, the authority also need to consider the logistics of their removal

Teignbridge and many of its neighbouring authorities are approached by one particular Enforcement Agent on a regular basis. This particular gentleman is persistent in his attempt to persuade the Council to use his services.

He will phone up to say that travellers are in another part of Devon and will soon, be moving on and that they have indicated that they may approach the Teignbridge area. In my opinion, it is highly unlikely that the travellers would ever confide in an enforcement agent where they intend to travel to next and there has never been an instance in which his warning has amounted to an unauthorised encampment within the TDC area.

I have spoken with the solicitor at another Devon authority regarding the use of these particular services, and his comments were as follows.

"They were fine (although overcharged) but actually I don't think they added much value other than having direct contact into the bailiffs. We had travellers move onto a car park and so we wanted them off quickly. We started down the possession proceedings but then resorted to common law. We (our planning enforcement officers) served notice on the Friday saying they needed to be gone by 9am on the Monday and The Enforcement Agency Company sorted out the bailiffs to come at 9am on the Monday. In the end they moved off on the Sunday but the company decided to still 'proactively' police the site, write a report for us and charge us for the pleasure."

Another authority has used certified bailiffs from Bristol for their sensitive sites (e.g. car parks or where environmental damage threatened), certified bailiffs from Bristol – Able Investigations and Solutions Ltd. They present a common law trespass notice. The Council then do welfare assessments. They have to pay Able to come down from Bristol, but found them to be cheaper than the Enforcement Agent who also keeps on ringing them. The bailiffs' fees for this matter were £1,200 for (price quoted was for 2016). There is a comment that it can take up to three weeks to get a hearing date at some other County Courts, again reinforcing that TDC are fortunate to have a good relationship with our local court.

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The Council could approach certified bailiffs with a tow truck to seek making an arrangement but it would cost more than using the civil procedure route, and potentially still need the police to attend if there is an anticipated breach of the peace.

If this method is used the Notice still has to be drafted and served either by Council staff or the bailiff.

### **5: APPLICATION FOR AN INJUNCTION**

Some members have raised the question "Could we seek a permanent injunction or blanket ban within the district to prevent travellers? As some Local authorities have been recently granted one.

The lawyers at a neighbouring authority kindly agreed to share advice from Counsel in relation to seeking an injunction in relation to preventing an unauthorised encampment by gypsies and travellers on a Common where there was a regular trespass committed. The advice contains the following comments:

'I do however consider that if a court was simply faced with an application for an unqualified permanent injunction, it may be reluctant to make such an order, which is a discretionary remedy, without the persons directly affected by the order having an opportunity to object, which would be the position if the application was effectively made *ex parte* before next year's season. It might also be concerned that such blanket order would not serve much purpose, as it would be likely that the order would only be drawn to the attention of the travellers after they had moved on to the Common. Once the travellers are on the Common, then it would be the local authority's duty to make appropriate welfare enquiries - in order to make a decision in the traveller's particular circumstances whether to rely on the injunction to seek their removal.

Given that there appear to have been travellers stopping for many years, the Court might be concerned as to the proportionality of a blanket ban being imposed now. Action to remove them in their particular circumstances, would not have the prior approval of the court. Rather the Council would be in little better position than it already is.'

The Advice continues:

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“One possibility would be to apply for permanent injunction as soon as the first encampment is set up next summer, naming the occupants as defendants, but in reality I do not think that this would significantly change the position, as such travellers would be unlikely to defend the proceedings and the same points, which I have mentioned above, apply to subsequent unauthorised encampments. If the proceedings were defended, it would probably be because the proceedings had attracted wider publicity and drawn attention to the issue with the Common. This would have the effect of escalating the costs of the proceedings and possibly serving to attract others to the Common by way of protest. If the application were not defended then the costs of making the application for an injunction would I hope be of the order of £5,000. If, however, the matter became fully contested then I could easily envisage the costs of each side reaching £20,000, if not more, making the total costs exposure potentially double that amount or more.”

In relation to TDC

It is my legal opinion that a Court would not consider it proportional to make either a blanket ban or an injunction for one specified area within the district. There is not a single piece of land that has seen a regular occurrence of illegal encampments. Areas that have had injunctions granted have been where there has been a very high volume of travellers repeatedly encamping on the same piece of land. District wide, the problems encountered by residents may be one of perception rather than actual nuisance and annoyance, without crime reports and calls logged to the police or the clean up costs amounting to high value, I am doubtful that an application for a permanent injunction would be cost effective or proportionate response.

### **6 GENERAL COMMENT REGARDING CLEAR UP COSTS.**

The above options deal with the power to evict the travellers from the Council Owned land. There is no specific route for dealing with the clear up costs when using the County Court process, an application for costs can be made to the court. As previously mentioned the travellers usually leave the site prior to the court hearing and so the costs are never recouped in reality. Once the site is vacated the Council clears the site up as soon as possible, TDC act expediently to ensure the site is cleared and to a very high standard.

None of the above methods of enforcement allow for the Council to deal with the clear up issues in respect of any fly tipping or litter left behind. The comment that is made by the public is often regarding the fact that they would be subject to prosecution in regard of any fly tipping act that they may commit. Whilst the travellers on an illegal site are also subject to prosecution in respect of any criminal activity including fly tipping the

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difficulty in bringing a prosecution comes down to the evidence and it is almost impossible to establish the identity of which individual has committed the offence, alongside the transient nature of the travellers the local authority has little power to establish the identity and the address of an individual in order to issue a summons for the offence.

### 7 GOVERNMENT VIEW

Government consultation entitled, “ Powers for dealing with unauthorised development and encampments” was published 5<sup>th</sup> April 2018

[Ministry of Housing, Communities & Local Government](#), [Home Office](#), and [Ministry of Justice](#)

The Government were seeking views on the effectiveness of powers for dealing with unauthorised encampments

This consultation ran from  
11am on 5 April 2018 to 11:45pm on 15 June 2018

The results of the consultation have not yet been published.

It appears that prior to this consultation the government’s view was that there are a wide range of powers available to LOCAL Authorities that enable them to deal with travellers.

See example below

A Westminster Hall debate on Unauthorised encampments is scheduled for Thursday 12 October 2017 at 1.30pm. The Member leading the debate is Wendy Morton MP

Over the summer, many of my constituents in Aldridge-Brownhills have once again had to endure the litter, rubbish, antisocial behaviour and noise caused by unauthorised Traveller encampments on public open spaces and village commons. Even our local football club, Walsall Wood, has been affected. I am sure the House understands the upset and frustration this causes. Can we please have a debate in Government time to look at the matter, including at the powers available to councils and police, and—really importantly—the impact on our local communities?

#### **Answered by: Andrea Leadsom | Leader of the House of Commons**

My hon. Friend raises an important point, which is of great interest to Members throughout the House. I am sorry to hear about the issues she has faced in her constituency. The police and local authorities have a wide range of powers available to address the issue. They can direct

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trespassers to leave the land, and remove any vehicle and property if there is a suitable pitch available on a caravan site elsewhere. Failure to comply with a police direction is a criminal offence. It is really important that the police and local authorities work together to address the issue.

**HC Deb 7 September 2017 c314**

### 8. CONCLUSION

Teignbridge District Council act as swiftly as possible once an illegal traveller encampment is reported to them. The policy is followed and the Court approached as soon as an officer visit to the site has been carried out. We are lucky that the Council's Legal departments relationship with the Torquay & Newton abbot County Court is such that they will assist us in getting a claim issued and a hearing date as soon as possible. The law states that there must be two clear days between the claim being issued and served on the travellers and a hearing date. Whilst the public are concerned regarding the arrival of the travellers on any council owned land they should be reassured that the Council have no choice but to act using the powers that they have and abide by the relevant legislation, In comparison to other authorities Teignbridge take action as soon as it is confirmed that travellers are illegally encamped on any of its land.

Although there are a variety of powers available to the Council in practice without the support of the police the local authority are unable to use the options that although are legally available under section 2 & 3 above. Once the results of the consultations are published due consideration will need to be given to it.

**(Officer)** *[please delete (Officer) once name entered]*

**(Designation)** *[please delete (Designation) once entered]*

**Cllr  
Portfolio-Holder for ...**

<b>Wards affected</b>	all
<b>Contact for any more information</b>	marie.downey @teignbridge.gov.uk tel.5102
<b>Background Papers (For Part I reports only)</b>	
<b>Key Decision</b>	N
<b>In Forward Plan</b>	N
<b>In O&amp;S Work Programme</b>	N
<b>Community Impact Assessment attached:</b>	N
<b>Appendices attached:</b>	

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