

EXETER CITY COUNCIL

SCRUTINY COMMITTEE - ECONOMY

9 JUNE 2005

EXECUTIVE

21 JUNE 2005

**PLANNING FOR GYPSY AND TRAVELLER SITES AND FOR THE
MANAGEMENT OF UNAUTHORISED CAMPING**

1. PURPOSE

- 1.1 This Report updates Members on the overall planning context for providing Traveller Sites and recommends the adoption of a policy and protocol for handling unauthorised camping.

2. BACKGROUND

- 2.1 Meeting the needs of travellers and gypsies by the provision of appropriate sites has been a concern of government and local authorities over several decades. There is general agreement that the provision of permanent sites is highly desirable and, more recently, recognition that the provision of transit sites has become a critical component of that provision. Providing such sites has however proved problematic in many instances, due to neighbour reaction. The consequential effect is that where there is under provision, the management of unauthorised camping is much more difficult and relations between the settled and travelling communities have tended to deteriorate. Whilst significant progress was made by many authorities in the 1970's and 80's on the provision of permanent traveller sites, the repeal in 1994 of the obligation on local authorities to make such provision has had the effect of substantially slowing the rate of progress in providing new sites. The central government grant regime is also relatively restrictive with comparatively modest sums available and a fixed timetable within which applications must be processed. This is not sufficiently flexible to allow for the extended time that is needed to plan and deliver temporary or permanent sites.
- 2.2 The current position in Exeter is that the City has a permanent traveller site with 11 pitches at Sowton and one private site but there is no provision for transit sites in the County as a whole. Whilst the County Council sought to bring forward sites at four locations to meet the perceived need for transit site provision, these applications were withdrawn after significant adverse public reaction to the specific site proposals. As Members are aware, unauthorised camps have become an increasing problem and the number of instances has risen from 1 in 2001 to 9 during 2004. There are costs associated with unauthorised encampments and in many instances they generate very substantial levels of adverse reaction from neighbours, which is sometimes the result of anti-social behaviour associated with such encampments.
- 2.3 The City Council's current approach to site provision and managing unauthorised encampments has been established for some years. Briefly, the approved Local Plan has a criteria based policy for further site provision but no specific sites were

identified in preparing the Local Plan. The Council has also had in place a protocol for managing unauthorised encampments so that a systematic approach is followed in dealing with these which is consistent with government guidance.

- 2.4 That policy guidance is, however, in the process of change and the emerging advice is outlined in the following section of this paper.

3. SUMMARY OF GOVERNMENT POLICY GUIDANCE

- 3.1 In terms of identifying the need for gypsy and traveller site provision the Housing Act 2004 requires that local housing market assessments should take account of their needs. These studies are being rolled out over the next 2-3 years and Exeter is working with neighbouring authorities seeking to be a pilot for this new approach. Once completed, these assessments will provide data on such needs which can be used for the preparation of Regional Housing and Spatial Strategies and for the development of Exeter's Development Plan and Housing Strategy Documents.

- 3.2 There is also a commitment at regional level to allocate money to meet gypsy and traveller needs. The South West Housing Board's (SWHB) draft Regional Housing Strategy (February 2005) indicates that it will "provide capital funding for the provision of additional transit or settled pitches for gypsies and travellers, where there is clear evidence of need and local authority support." Work on raising the profile has already been done through a regional conference (April 2005) hosted by South Somerset DC. With over 100 delegates from Councils, housing associations and the gypsy and traveller community, it decided to set up a working group that aims to approach the SWHB and ODPM to seek regional and national solutions.

- 3.3 The government issued a Consultation Paper in December 2004 entitled "Planning for Gypsy and Traveller Sites". The proposals which were contained within the consultation paper may be summarised briefly as follows:

- The requirement for authorities to provide an explanation of how the need for traveller sites is to be established.
- The requirement for local authorities to identify suitable sites for gypsies and travellers in their Development Plan Documents and an indication that only in exceptional circumstances will it be acceptable not to identify any sites;
- The expectation that sites should be in Council ownership or control or that there is a realistic prospect of sites coming forward in the plan period.
- Brief guidance to local planning authorities on drafting the criteria to be included in development plans against which any application for a site which is not allocated in the plan will be judged.
- The provision of advice on how local authorities should engage with gypsies and travellers and build trust.

- 3.4 The Council's Planning Member Working Group considered this Consultation Paper on 8 February 2005 and resolved to submit representations to ODPM highlighting:

- the need to recognise that some authorities in particular those that are geographically constrained will not be able to identify appropriate sites without impacting on key open spaces;

- the importance of local landscape and Nature Conservation designations which should be given greater status in revised guidance;
- the general difficulties of bringing contentious allocations forward through the new "streamlined" – development plan process should be recognised;
- the need to allocate greater sums of central government grant for the provision of sites and the need to adopt a more realistic timetable for allocating and drawing down such grants which recognises the lengthy planning and implementation process.

3.5 The third element of advice is contained within a paper produced by ODPM in February 2004 entitled "Guidance on Managing Unauthorised Camping". This sets out a range of objectives behind an unauthorised camping strategy which include:

- ensuring the needs and legitimate expectations of all parties – gypsies and travellers, landowners and the settled community – are considered;
- ensuring that policies and approaches reflect the human rights of both the settled and travelling communities and are compliant with race relations legislation;
- ensuring the prevention of anti-social behaviour and effective enforcement against perpetrators (though it is understood that the intention is still to enforce by eviction where appropriate).

3.6 The Guidance goes on to say that the strategy needs to spell out working arrangements with named officers in each local authority and in the Police Basic Command Unit with clear responsibility for dealing with unauthorised camping. It also advises that there should be regular liaison meetings involving officers in all stakeholder organisations. All local authorities experiencing unauthorised encampments should provide either transit sites or stopping places to cater for gypsies and travellers moving within or passing through their area. Gypsies and travellers should be involved in site planning and design to ensure the sites are well used and are safe. The Guidance also advises that protection of land which is vulnerable to unauthorised encampment is a valid part of the strategy but should not be the sole strategy.

3.7 Advice is provided within the Guidance on whether toleration may be appropriate in certain circumstances, but there is a clear acceptance that some locations will be unacceptable. In dealing with unacceptable encampment locations, the Guidance emphasises that each encampment location must be considered on its merits. The Guidance identifies the sites where unauthorised camping would normally be unacceptable and these include:

- school car park or playing fields
- an urban park
- car parks
- industrial estates
- recreation grounds and public playing fields

3.8 If the unauthorised campers refuse to move from an unacceptable location, the eviction process – including appropriate welfare enquiries – should be commenced. Thus there is not an automatic step to eviction but a necessity to make welfare

enquiries in order to be consistent with the Human Rights Act. While Case Law is developing, it is clear that all public authorities need to be able to demonstrate that they have taken into consideration any welfare needs of unauthorised campers prior to making any decision to evict. In a recent judgement from the Court of Appeal involving Leeds City Council, it was held that the European Court of Human Rights case law is incompatible with the proposition that the public authority when exercising an unqualified right to re-possess its own land could never be guilty of interfering with someone's rights to their home. As a result, this particular case has now been appealed to the House of Lords and will be an important test case. The guidance emphasises that decisions on whether to seek eviction should be lawful, reasonable, balanced and proportionate.

- 3.9 Where eviction takes place, Councils also have responsibilities, under homelessness legislation, towards gypsy and traveller households who have nowhere to place their "vehicles". Under the Housing Act 1996, Section 175, "a person is homeless if he has accommodation, but it consists of a moveable structure, vehicle or vehicle designed or adapted for human habitation and there is no place which he is entitled or permitted both to place it and to reside in it." If a household fitted this definition, it would still have to be in priority need (eg have dependent children), be unintentionally homeless and establish a local connection with Exeter before any accommodation might be provided. However, each case would be decided on its merits with temporary accommodation being provided whilst investigations were being carried out in cases of suspected priority need. These responsibilities are emphasised under the Homelessness Act 2002 as the Council is obliged to prepare a homelessness strategy securing that sufficient accommodation and support is available for people in their district who are or may become homeless.
- 3.10 In response to this emerging advice, the City Council needs to consider its future approach to these matters.

4. CITY COUNCIL POLICY AND PROCEDURE

- 4.1 In terms of future site provision, central government guidance is still somewhat fluid, given that the outcome on the response to consultation on the December 2004 document is still awaited. Preparation of Development Plan Documents will need to reflect the finalised guidance and it seems highly likely that this will explicitly need to address site provision. Without the finalised guidance, however, there is little point in taking this issue forward at the present moment. The County Council has recently reviewed its approach with a paper having been considered by its Community Services Overview/Scrutiny Committee. That report indicated that, in future, the County Council should not pursue the identification of gypsy/traveller site provision in isolation from other partners and indeed a strategy should be devised in partnership with District Councils. A further resolution from the Overview Committee states that District Councils "should assume greater responsibility for identifying possible gypsy/traveller sites". The report will be considered by the County Council's Executive shortly.
- 4.2 In response to the second element of government guidance (dealing with unauthorised gypsy/traveller encampments), officers have been compiling an overall policy statement and a protocol to accompany it. Both of these documents are attached to this paper for Members to consider and approve. The policy sets out the legislative

framework and relevant policies for developing a consistent and considered approach to managing unauthorised encampments. The protocol which is attached has been updated to reflect new guidance and to reflect comments received from partner bodies such as the County Council and Police. The policy has also been the subject of consultation with traveller representatives who gave no comments. The protocol is intended to be an effective working document so that officers can approach individual unauthorised encampments in a consistent manner and in line with the law and ODPM guidance.

- 4.3 It should be emphasised that it is highly unlikely that those encampments which are deemed to be unacceptable can be removed in less than the current timescale of 4-7 days. The Council has explored the use of Section 30 of the Anti-Social Behaviour Act 2003 (at the suggestion of the Home Office) but the Police believe that such powers can only be used to control anti-social behaviour not to achieve the physical removal of unauthorised encampments. A further short document is appended to this paper (Annex 1 of Appendix 2) which is a protocol between the City and County Councils and the Police for dealing with visits to unauthorised encampments.
- 4.4 As suggested in the ODPM guidance, the Council is also taking a range of defensive measures to deter and hopefully prevent use of unacceptable locations such as car parks, open space and play areas. Improvements have been made to a number of sites and work is in hand at other sites over the coming year. Unfortunately no measures are completely fool-proof as illustrated by the experience at Matford Park and Ride last Summer when, despite the extensive measures taken, there was substantial damage to these protective measures and an unauthorised encampment ensued.

5. CONCLUSION

- 5.1 This paper outlines a number of recent changes in guidance to which the Council needs to respond. The documents attached to this paper are for Scrutiny to comment on and for Executive to approve. Further reports will be brought forward if there are significant changes to government guidance or obligations. Officers will continue to give this matter a very high priority but it will not be possible to meet the aspirations of some residents and Members for instant results – this is simply inconsistent with the law and with government guidance.
6. **RECOMMENDED** that Scrutiny Economy comment on the policy and protocols attached to this paper and that Executive approve the documents that are attached.

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Local Government (Access to Information) Act 1985 (as amended)

Background papers used in compiling the report:

Planning for Gypsy and Traveller Sites. Consultation Paper. December 2004. ODPM
Guidance on Managing Unauthorised Camping. February 2004. ODPM
Equality Impact Assessment for Policy on Managing Unauthorised Encampments