

POLICY ON MANAGING
UNAUTHORISED GYPSY AND TRAVELLER
ENCAMPMENTS



Background

Managing Unauthorised Camping: A Good Practice Guide was first issued by DETR and the Home Office in 1998, following which the City Council developed a protocol for dealing with unauthorised encampments. There have been a number of developments since 1998 that have resulted in the ODPM and Home Office re-issuing the guidance in 2004.

These developments include:

- An amendments to the *Good Practice Guide* issued in July 2000 which dealt with advice about 'toleration' of encampments and made it clear that there will always be some circumstances where encampment cannot to be allowed to remain.
- The Human Rights Act 1998 came into force in October 2000, incorporating the European Convention on Human Rights into British law.
- The Race Relations (Amendment) Act 2000 was introduced which has extended responsibilities given by the Race Relations Act 1976.
- The Commission for Racial Equality published *Gypsies and Travellers - A Strategy 2004-2007*, which sets out the Commissions position in respect of Gypsy Travellers.
- The Anti-social Behaviour Act 2003 introduced measures to tackle, amongst other things, littering and fly-tipping and introduced a new police power to evict unauthorised campers.

The new *Good Practice Guide* encourages local authorities to develop strategies for dealing with unauthorised encampments, in partnership with the police and other bodies, in order to be clear how they will respond to an encampment in their area, who will take the lead and what other agencies may need to be involved.

This document provides a framework in which clear, consistent and appropriate decisions can be made on unauthorised encampments, clarifying roles and responsibilities in order that all parties to the strategy know who will do what in different circumstances. The document is based upon '*Protocol for managing unauthorised encampments – Management guide for use by County and District Councils, Gloucestershire Police and Primary Care Trusts*' produced by Tewkesbury Borough Council and other Gloucestershire authorities. That document was consulted upon widely and formed the basis of Tewkesbury Borough Council's status as a 'Beacon Authority' for community cohesion.

The appendix introduces Devon County Council's '*Policy and Practice guidelines relating to People of a Nomadic Lifestyle Residing in or Resorting to Devon*', which details the role of the County's Gypsy Traveller Liaison Officers and their relationship with the police. That document also clearly sets out the actions that the County Council and police will take in relation to unauthorised encampments.

Objectives

The overall objective of this document is to assist the City and County Councils, the police and others to tackle unauthorised encampments in the most appropriate manner in order to minimise the disruption to both Gypsy Travellers and the settled community.

The document aims to –

- Clarify the legislative framework to ensure that any actions undertaken in respect of unauthorised encampments are taken in full knowledge of the law
- Emphasise the importance of striking a balance between the needs and expectations of members of the settled community, landowners and Gypsies and Travellers
- Set out a protocol to be followed in order to provide an effective response in the event of unauthorised encampments
- Encourage a consistent approach in the event of the occurrence of unauthorised encampments

A Summary of the Legislative Framework

The following is a summary of the main legislative framework applicable to a strategy for managing unauthorised encampments.

Site Provision

The Caravan Sites and Control of Development Act 1960 s24 gave Local Authorities discretionary powers to provide Gypsy sites. This power was strengthened by The Caravan Sites Act 1968 which imposed a duty on certain councils to provide adequate accommodation for Gypsies. At that time Exeter was exempted from the duty to provide sites because Gypsies did not traditionally visit or stay in the City itself.

This duty to provide sites was repealed by the Criminal Justice and Public Order Act 1994, although DoE Circular 18/94 made it clear that those Councils, either Unitary or County Councils which had provided sites, should maintain their existing Gypsy caravan sites, and should continue to consider whether it is appropriate to provide further permanent caravan sites for Gypsies in their areas. The Criminal Justice and Public Order Act 1994 also introduced enhanced powers to deal with unauthorised encampments.

The Government is currently reviewing policy on Gypsy site provision. Gypsy Sites Refurbishment Grant makes limited funding available for provision of new sites. Private site provision is governed by planning legislation. DoE Circular 1/94 sets out the Government's policy on Gypsy site provision and urges local planning authorities to consider, and to look favorably, at applications for Gypsy sites in development planning and development control.

Dealing with Unauthorised Encampments

There is no specific legislative duty placed on Local Authorities to deal with unauthorised encampments by Gypsies and Travellers. However Local Authorities can take action as landowners through civil actions against trespass using Civil Procedure Rules Part 55, heard in a County Court.

In addition Local Authorities have powers given by the Criminal Justice and Public Order Act 1994 ss77 and 78 which require cases to be brought in the Magistrates' Court.

Common law rights to recover land from trespassers are also available to Local Authorities over land they occupy. Authorities are, however, advised not to use such powers unless there is exceptional justification for doing so and, for example, the police are unable to use their powers under s61 of the Criminal Justice and Public Order Act 1994.

DoE Circular 18/94 provides guidance to Local Authorities on the exercise of s77 powers, and reminds them of their other duties towards Travellers in terms of education, children and homelessness legislation.

Case law has developed and clarified the courts' expectations of the welfare enquiries and decision-making processes Local Authorities should adopt in making evictions under 1994 Act and other powers.

Where Travellers camp on land which they own or on other private land with the consent of the landowner, district councils may take planning enforcement action, or prosecute for running a caravan site without a site licence.

The Police have parallel powers granted by s61 of the Criminal Justice and Public Order Act 1994..

The Anti-social Behaviour Act 2003 added new Sections 62A to E into the Criminal Justice and Public Order Act 1994 which give police enhanced eviction powers in circumstances where there are suitable pitches on relevant Gypsy sites to accommodate the caravans affected. These sections came into force on 27 February 2004

Other Enforcement Measures

District councils have powers to deal with statutory nuisance, which could include rubbish accumulation at unauthorised encampments and noise

Service Provision for Gypsies and Travellers

Gypsies and Travellers are entitled to access health, housing, education and welfare services as citizens in the same way as members of the settled community.

There is specific recognition of the needs of Traveller children in accessing education, with a Traveller Grant payable under s488 of the Education Act 1996.

Human Rights

The Human Rights Act 1998 incorporates the European Convention on Human Rights into British law. Several Convention rights are relevant in dealing with unauthorised camping. The main relevant rights are:

- Article 1: Protection of property
- Article 2: Right to education
- Article 8: Right to respect for private and family life
- Article 14: Prohibition of discrimination

Race Relations and Equalities

The Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 gives public authorities, including the Office of the Deputy Prime Minister, the Home Office, Local Authorities and the police, a general duty to eliminate unlawful discrimination, and to promote equality of opportunity and good race relations in carrying out their functions. Both Gypsies and Irish Travellers are recognised as ethnic minorities.

Since eviction of unauthorised campers and enforcement against unauthorised development are likely to have a large effect on the public, and in particular on the Gypsy Traveller population, they are functions highly relevant to the Race Relations Act 1976 general duty and should be prioritised in Race Equality Schemes. When evicting and enforcing, authorities need to ensure that they act in a way which meets the three elements of the general duty and so as to have the minimum negative impact on the Gypsies and Travellers involved.

Local Authorities and police must always be able to show that they have properly considered the race and equalities implications of their policies and actions in relation to unauthorised encampments and unauthorised development by Gypsies and Irish Travellers. They must be able to demonstrate that their policies and actions are proportionate bearing in mind all the circumstances of the case.

Local information and data – last 5 counts

A twice yearly count of Gypsies has taken place on a single day in January and July since 1979. Exeter City Council has participated in these and taken care to provide accurate information. The results of the last 5 counts, published in Housing Data and Statistics for the Office of the Deputy Prime Minister, indicate that apart from in January 2002, when there were 2 caravans parked on unauthorised sites, none have been present in Exeter, on the day of the count, since the count held in July 2001.

Outside these census days the following unauthorised encampments on operational land owned by the City Council have been recorded.

2001 - 1
2002 – 2
2003 – 7
2004 – 9

It should be noted that some of these recorded encampments may be the same group of travellers moving to a new site.

The County Council keeps its own record relating to encampments on land in their ownership and private land. Since December 2000 there have been 9 encampments on their 'Park and Ride' sites.

Approach to site provision

The County Council owns a permanent residential Gypsy site in Exeter which provides pitches for 11 caravans which are occupied on a long term basis by Gypsy families who have lived on the site for many years. This site has recently been extensively redeveloped and improved.

The Exeter Local Plan: 1995 to 2011, policy CS9, sets out the criteria which must be met for an application for a Gypsy site to be acceptable.

In the past the County Council also provided an unofficial transit site, adjacent to the permanent site. This land has recently been sold for redevelopment. The County Council are actively seeking alternative provision but this has not yet been made.

To date the City Council has been unsuccessful in identifying suitable land, within its ownership and within the boundary of Exeter, suitable for use for temporary stopping places but will continue to review this situation through its Property Group.

The City Council will also sympathetically consider any planning applications received from private land owners either for permanent or transit sites which fulfil the criteria set out in the Local Plan.

The need to review provision for Gypsies and Travellers has also been identified in Exeter City Council's Housing Strategy 2004 – 2009 and as an important factor to be considered in the Council's Housing Needs Surveys.

Whilst the Devon County Council owns and manages [through an agent] the permanent residential site Exeter City Council regularly monitors conditions to ensure that health and safety standards are maintained on the site.

Policy when unauthorised encampments arise, working arrangements with other agencies

The Local Authorities

Local Authorities have responsibilities to react to, and consider unauthorised camping in order to take appropriate action. Within Exeter this responsibility may fall upon either Devon County Council or Exeter City Council.

In addition to its responsibility for considering unauthorised camping in respect of the use of land the County Council also has responsibilities for the welfare and education needs of Travellers living in, or visiting Exeter. Social Services and Education Services have the same

responsibilities for Travellers as they have for other individuals within the Community. Both of these services will be involved, where necessary, whenever an unauthorised encampment occurs on any land in Exeter.

The Police

The police have various powers to deal with unauthorised encampment by virtue of the Criminal Justice and Public Order Act 1994. However, before this power can be applied the specific criteria identified within the legislation must be met and any welfare issues in relation to Travellers given due consideration.

Primary Care Trust

The Primary Care Trust has responsibility for health services irrespective of whether individuals are part of the settled community or Travellers. A representative of the relevant Primary Care Trust will be invited to participate when consideration is given to unauthorised encampments, in cases where health related issues have been identified.

Private land owners

Where unauthorised encampments occur on private land the landowners themselves have responsibility to deal with the encampment and have civil powers available to them, exercised through the County Court. In exceptional cases the City Council or the Police can exercise their powers under the Criminal Justice and Public Order Act 1994

Gypsy Traveller Liaison Officer

Devon County Council employs Gypsy Traveller Liaison Officers who act as a point of contact, support and advice to both the settled and travelling communities. Effectively the Gypsy Traveller Liaison Officers act as arbitrators / negotiators in respect of issues affecting Gypsy Travellers resident on both permanent Gypsy sites and on unauthorised encampments.

Policies

The Exeter Local Plan – 1995 to 2011, sets out the criteria which must be met for an application for a Gypsy site to be acceptable.

Exeter City Council has an operational protocol for dealing with unauthorised camping on land owned or controlled by the City Council. That protocol sets out clearly the actions that the City Council will take in respect of unauthorised encampments.

Both of these documents have been developed with regard to the Council's Equality Plan

Devon County Council and The Devon and Cornwall Constabulary have a joint document '*Policy and Practice guidelines relating to People of a Nomadic Lifestyle Residing in or Resorting to Devon*' which expands upon the role of the Gypsy Traveller Liaison Officer and his

relationship with the Police. That document also clearly sets out the actions that the County Council and Police will take in relation to unauthorised encampments. [Appendix 2]

The Lead Authority

The lead authority responsible for considering what action to take in respect of an unauthorised encampment will normally be as follows:-

- Devon County Council - in respect of unauthorised camping on land in the ownership or under the control of the County Council and on the highway.
- The City Council - in respect of unauthorised camping on City Council owned land.
- The Police – In those circumstances where the decision has been taken to use powers under Section 61 of the Criminal Justice and Public Order Act 1994
- In some cases the lead authority will not be easily identified, for example, because an encampment may be on both public and private land. In such cases the decision as to who will be lead authority will be based on the extent to which encroachment is on the highway or private land, eg if the majority of the land occupied is highway it will be the County Council.

Action to be taken in the event of an unauthorised encampment

When an encampment is brought to the attention of the City Council enquiries will be made into the ownership on the land. Depending on the ownership either the City Council's protocol will be invoked or the appropriate lead authority informed in order for them to invoke theirs.

At the first opportunity a representative of the lead authority and the Police will jointly visit the encampment to establish approximate numbers of people and vehicles involved, attempt to ascertain the likely duration of the encampment, advise on welfare matters and explain the standards of behaviour expected if the encampment is to be tolerated.

Consideration of existing Unauthorised Encampments

When a view is taken to allow an unauthorised encampment to remain, or if an encampment has been in place for some time, the Lead Authority will keep the encampment under review to ensure broad compliance with any original decisions and the guidelines set out in their Protocol.

As part of the management of unauthorised encampments, the Lead Authority will decide whether or not it is necessary to offer to provide basic facilities. Such facilities will include water, toilets, wheelie bins and skips for rubbish and will be provided at the expense of those camping

The Lead Authority will ensure that any mess is promptly removed both during the encampment and immediately upon its vacation, except when an encampment is on private land, when clearance is the responsibility of the landowner.

If there is escalation in the scale of unauthorised camping or significant change in the level of anti-social activity in the area, the lead authority should carry out a further consultation.

Nuisance Policy

Without prejudice to the duty of the Local Authority (e.g. the County Council's duty to assert and protect county highways), action will be taken against unauthorised encampments of Travellers on land in the control of the Local Authority in cases where the encampments are on operational land, eg playing fields and car parks. In all other cases regard will be had to the following criteria when toleration is being considered:-

- Hazards to road safety or to public health.
- The size, location, nature or persistence of nuisance. Examples of nuisance could include:-
 - **Health** Where there is cause to believe that an unauthorised encampment could cause a health or welfare risk to the public.
 - **Safety** Where the encampment causes a hazard to the travelling public, either personally or on the road.
 - **Noise** When nearby residents are disturbed by late or all night parties, barking dogs, generators etc.
 - **Dogs** Where there are uncontrolled dogs, or dogs kept which are intimidating to persons and/or livestock e.g. dogs covered by the Dangerous Dogs Act.
- The impact on the enjoyment, use or habitation of adjoining or nearby property. This would include damage to the Local Authority's or the Highway Authority's property or prejudice its use and enjoyment by legitimate tenants or occupants:-
 - **Damage** Where Travellers have gained access forcibly, e.g. broken fences or locks.
 - **Public Enjoyment** Where the encampment affects the proper use of public open space or similar land or property owned by the local authority.
 - **Obstruction** Encampments on land where use by groups who would normally have access is denied e.g. improper use of the highway, which denies motorists, the use of the resting places for which they were intended.

Resources

Whilst the County Council employs full time Gypsy Traveller Liaison Officers the responsibility for dealing with Gypsy Travellers on City Council owned land falls upon staff in the Estates Department, with monitoring of the condition of the permanent site being undertaken by the Environmental Health Services Unit. In both of these cases there is a designated contact officer but no specified budget.

One of the major resource implications to the City Council is the cost associated with clearing sites used as unauthorised encampments. Cleansing services have dealt with 15 of the 16 unauthorised encampments since March 2003 at an average cost, which was not 'charged out', of £1250 per encampment.

The County Council, have been charged £5,230 for the clearance cost of the 9 'Park and Ride' encampments mentioned earlier.

Clearly, given the variable nature of unauthorised encampments, it is not possible to predict likely demands upon the services involved in order to set a budget.

Monitoring

In order to monitor progress in respect of the Policy, and to provide a more accurate indication of the numbers of Gypsy and Travellers visiting the City than the twice yearly count, standardised methods of recording unauthorised encampments have been developed to record the—

- location of unauthorised encampments, both Council and private land
- number of caravans, vehicles and individuals involved
- duration [including dates] of each encampment
- outcome – namely the action that was deemed appropriate by the lead authority to deal with the encampment
- estimated costs involved in dealing with unauthorised encampments, eg clean up costs.
- the number of planning applications received for the development of Gypsy and Traveller sites in Exeter and their outcomes
- number of homelessness applications received from Gypsies and Travellers and their outcomes

These figures will be reported on an annual basis to the Property Group and the Corporate Equalities Group

A multi Agency liaison group will review the working arrangements contained within the Policy and to ensure that all appropriate agencies are involved in decision making and have an input into the decision making process. That group will also organise training and be responsible the development and publication of advisory leaflets.