

EXETER CITY COUNCIL

SCRUTINY COMMITTEE - ECONOMY

9 SEPTEMBER 2004

UNAUTHORISED OCCUPATION OF COUNCIL LAND AND CAR PARKS

1 PURPOSE OF REPORT

- 1.1 At the request of the Chair, this paper has been brought forward for Members to discuss the unauthorised occupation of Council land by travellers.

2 BACKGROUND

- 2.1 Members received a report in June 2003 on the occupation of car parks by travellers from the Directorate's Administration Manager. This outlined the process involved in dealing with travellers and concluded that "the issuing of fines and/or invoices for cleaning the site of debris/rubbish would be at best a symbolic gesture. At worst it would mean significant further expenditure by the Council, the prospect of recovery of which is extremely unlikely. In either case it is likely to be a fruitless use of public funds." The paper went on to say that the policy of the service was to concentrate its efforts on the speedy removal of encampments and to instigate effective clean-up following the departure of travellers. Members resolved, having discussed the issue, not to change the existing approach to handling this problem.
- 2.2 Recently the number of unauthorised occupations has risen and an occupation of the Matford Park and Ride site in June was particularly difficult involving threatening behaviour towards staff and adjoining residents. The Chair has therefore asked that the Committee reconsider this issue.
- 2.3 Central Government advice on handling this issue is unaltered from a year ago. Despite the many suggestions, letters, phone calls and comments in the media that the Council should simply summarily evict travellers, this would be contrary to Government advice and to Common Law. The procedure involving unauthorised occupations, results in a visit to site by two officers of the Council as soon as we are notified of an encampment. This is usually a same day visit. We are legally obliged to establish the circumstances of travellers on any of our land – to ignore this would be to invite Court action against the Council for failing to weigh their human rights against the inconvenience and potential cost of the unauthorised occupation. It could also jeopardise the Council's application for an order for possession. This is not a question of the Council being weak or "a soft touch" which has been alleged – it is simply observing the law as it stands. Over the last few years such occupations have rarely required the exercise of toleration, for example, because of the medical needs of an individual traveller and thus we have proceeded straight to Court for an order for possession. The time taken from an initial visit to the travellers departing is then simply a matter for Court timetables and the serving of eviction notices resulting in the removal of that encampment.
- 2.4 The Chair has raised the question once again of pursuing travellers for costs incurred.

The costs involved are potentially the standard charges that would be issued for unauthorised overnight stays on car parks and the cost of the clean-up, once travellers have left. There are also substantial staff and Court costs involved. Regarding the latter, one of the District judges has indicated that he would not be minded to grant an application for costs if such an application were made. Regarding standard charges, these must be affixed to a vehicle and the registration details provided on the Charge form. This clearly requires the Council's staff to be in very close proximity to travellers to enable them to affix a standard charge to their property. Management advice to staff would be that if such a course of action was to be instructed by Members, this should only be carried out with Police support. The reason for this, is that physical threats in this sort of situation are not uncommon. In the case of a recent encampment when the notices to quit the site were being served, a council officer received a death threat despite the presence of the Police. Thus, it is understandable that staff would feel unsafe when executing such an instruction. In this instance, the Council's "Step Away" policy clearly applies. Members will recall that this involves staff moving away from the threat of physical assault in a situation which is volatile. Without affixing the standard charge to the vehicle we would therefore not be able to pursue any financial redress. Even if the standard charge is affixed to the vehicle, our previous experience suggests that tracing owners will be challenging and securing payment even more so. By definition travellers have no fixed address and therefore pursuit across the country, for people without a fixed address who may change vehicles frequently, is very likely to be a fruitless exercise. Even if it is feasible to pursue a non-payer into Court there is no prospect of an Attachment of Earnings to recover the Council's costs from salaries being made as they are usually self-employed. The only other action available is to instruct bailiffs, but that would mean finding them first.

- 2.5 The issue with re-charging cleansing costs has even less prospect of success. By definition, the cost of clean-ups cannot be pursued until an unauthorised encampment has moved on. Costs would then need to be assessed and council staff or bailiffs serve an application for costs on former occupiers of a site somewhere around the country. The prospects of identifying the right person or persons seems to be rather low. Furthermore, one would then have to serve the proceedings and that in itself will be problematic since by then they could be anywhere in the country and these would have to be effected personally. One of the key weaknesses in securing a supportive court judgement would be that, in effect, collective justice would be being administered – it would be perfectly feasible for an individual traveller to say that their part of the site was tidy and somebody else on site caused all the mess and disturbance. Proof would simply be at the most sketchy level of detail. The chances of a successful Court action are therefore minimal and the prospects of the bailiffs being prepared to enforce the confiscation of vehicles or caravans rather unlikely. Finally, any application for costs carries a further fee of £150.
- 2.6 In all the circumstances, frustrating though this analysis may be to accept, the prospect of successful pursuit of costs from travellers seems rather remote and the safety of staff likely to be a significant factor in even ensuring that the process is successfully begun.
- 2.7 Members will undoubtedly be frustrated with the above advice – the amount of time and energy that is spent on this work is extremely frustrating for officers, particularly

the accusations that are made that we are soft on the problem. Members may therefore wish for a change in the law to be lobbied for that an automatic removal from operational property is legally possible. More proactive support of the Police would also assist in curbing anti-social behaviour, but the resources required for a forcible eviction are likely to be substantial. Officers are in discussion with the Police concerning this matter.

3 RECOMMENDED that

- 3.1 Members note the above report and make representations to the MP and to Government for revisions to the law.

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Local Government (Access to Information) Act 1985 (as amended)
Background papers used in compiling this report:

ODPM February 2004 : Guidance on Managing Unauthorised Camping.