

Report of:	Deputy Managing Director
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Portfolio Leader:	Leader of the Council
Key Decision:	Yes
Report Track:	Cabinet: 21/07/16

CABINET
21 JULY 2016
TRAVELLER AND GYPSY PROTOCOL

1 Purpose of Report

- 1.1 To seek approval of the Traveller and Gypsy Protocol.
- 1.2 To inform Members of the arrangements put in place to prevent incursions on to Council Land and the management/partnership arrangements for dealing with incursions.

2 Recommendations

- 2.1 That Cabinet agree the draft Traveller and Gypsy Protocol.
- 2.2 That, subject to the approval of the Protocol by the Local Strategic Partnership Strategic Board on the 18 July 2016, the Leader of the Council signs the Protocol on behalf of the Council.
- 2.3 That a copy of the protocol (and procedure note) is circulated to all Members of the Council.

3 Key Issues and Reasons for Recommendation

- 3.1 An unauthorised encampment /incursion on Council Land took place in March of this year. The encampment took place at Chase Leisure Centre and since that date the Council has reviewed its procedures for preventing incursions on to Council land and the arrangements /roles and responsibilities for managing the removal of unauthorised encampments.:

- 3.2 A risk analysis has been undertaken of the Council owned sites, including those managed by Wigan and Cultural Trust, to determine any action that needs to be taken to prevent future incursion and these are currently being initiated.
- 3.3 The Council have liaised at officer level with the Police and County Council to determine a joint protocol and joint procedure note for dealing with unauthorised encampments. A copy of the protocol is attached at Appendix A with the procedure note to be separately circulated to all Members.

4 Relationship to Corporate Priorities

- 4.1 The report relates to the Cleaner and Safer Environments and planning for the Housing Needs of the District priorities and the Equality and Collaboration values of the Council.

5 Report Detail

- 5.1 An authorised encampment was established at Chase Leisure Centre in March of this year. The number of vehicles of the encampment increased significantly on day 5 of the occupation. The travellers left the site on day 9 of the occupation following serving of the eviction notice.
- 5.2 The Council have experienced 10 unauthorised encampments on Council land over the last five years and in light of the latest incident a full review of procedures has been undertaken and a draft joint protocol produced in relation to dealing with unauthorised encampments in the Cannock Chase District.
- 5.3 The review entailed a risk analysis of potential encampment sites for Council Owned Land and determination of measures to avoid trespass taking place. The review has also incorporated the sites managed by Wigan Leisure and Cultural trust.. Remedial measures for WLCT sites will be met by the Trust.
- 5.4 A multi disciplinary team have reviewed the procedures for managing the incursion of Travellers; Gypsies etc. on to Council Owned sites and meetings have been held with the Police to determine a joint protocol and procedure note. The two documents outline the roles and responsibilities of the relevant partners; the legal and other powers available to deal with unlawful encampments and the necessary communication channels within the authority and between partners.
- 5.5 The protocol recognises the rights of gypsies and travellers and is intended to deal with all unauthorised encampments within the Cannock Chase District. In relation to non Council owned land the Council will maintain a register of all illegal encampments and on receipt of information re an illegal encampment will attempt to identify the landowner.
- 5.6 The local authority will advise private landowners (if identified) of the presence of an encampment and of the need for them to take all reasonable steps to remove

illegal encampments from their land and will liaise with the police re all encampments. The Council will however not intervene or pursue eviction.

- 5.7 In relation to Council Owned land a separate procedure note has been produced the to ensure the roles and responsibilities of each partner (CCDC, Police and Staffordshire County Council) are clearly stated and cover arrangements are in place if the designated officer is not available (The procedure note will be circulated to all Members of the Council for information).
- 5.8 The aim of the protocol is to achieve, as soon as possible, a locally negotiated and agreed end to the unauthorised encampment that avoids a formal eviction process. However the Protocol /procedure note sets out what the formal process for the eviction may be and the responsible officers from the relevant authorities.
- 5.9 In dealing with eviction it should be noted that a 10 day formal eviction timetable is not unusual however if anti social behaviour/ criminal damage takes places the police are empowered to evict at any time under Section 61 of the Criminal Justice and Police Order Act.

6 Implications

6.1 Financial

The cost of any preventative measures required will be contained within existing resources

6.2 Legal

The various legal powers available to landowners are set out in the protocol. Any illegal or unauthorised encampment on Council owned land is deemed a trespass. Government Guidance recommends that public bodies should use the courts to evict the occupants, i.e. by obtaining a formal possession order and to use Bailiffs to carry out the eviction.

6.3 Human Resources

None

6.4 Section 17 (Crime Prevention)

As per Report.

6.5 Human Rights Act

As Per Report

6.6 Data Protection

None

6.7 Risk Management

Adoption of the Protocol will give the Council a locally negotiated and agreed means of dealing with unauthorised encampments that avoids a formal eviction process in the first instance, while also setting out the formal process for eviction should it be required, and who are the responsible officers from the relevant authorities.

6.8 Equality & Diversity

Provision exists within the protocol for the carrying out of welfare assessments by relevant partner reflecting obligations under the Equalities Act 2010 and the Human Rights Act 1998.

6.9 Best Value

None

7 Appendices to the Report

Appendix 1	Draft Protocol for dealing with unauthorised encampments in the Cannock Chase
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Previous Consideration

None

Background Papers



DEALING WITH UNAUTHORISED ENCAMPMENTS IN THE CANNOCK CHASE DISTRICT

**A joint protocol between Cannock Chase District Council,
Staffordshire County Council, Staffordshire Police and
other public bodies for dealing with unauthorised
encampments in the Cannock Chase Council**

June 2016

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1 Purpose

- 1.1 This protocol sets out the roles and responsibilities of a range of statutory bodies for dealing with unauthorised encampments within Cannock Chase District Council.
- 1.2 The protocol will promote a coordinated approach between Cannock Chase District Council, Staffordshire County Council, Staffordshire Police, other public bodies and local landowners.
- 1.3 The protocol will ensure that all statutory and non statutory bodies act within the law and take into account each authority's responsibilities under the Human Rights Act 1998 and the Equality Act 2010.
- 1.4 The aim of the protocol is to achieve, as soon as possible, a locally negotiated and agreed end to the unauthorised encampment that avoids a formal eviction process. However this Protocol sets out what the formal process for the eviction may be and the responsible officers from the relevant authorities.

2 Principles

- 2.1 The protocol recognises that some members of the travelling community lead a nomadic lifestyle and it respects this choice.
- 2.2 Each authority considers that all members of its diverse community have the right to protection under the law from, harassment, discrimination, nuisance or harm from others.
- 2.3 Good standards of behaviour should apply to all members of the community, settled or travelling. The authorities will balance the needs of travelling communities with those of the settled communities. Each authority takes the view that some members of the travelling community and their families have the right to have their needs for services assessed and addressed on an individual basis.
- 2.4 The council has have a duty through its Local Development Plan to identify appropriate Traveller Site provision in the District and this in the longer term this should lead to a reduction in unauthorised encampment. There are a number of privately authorised sites in Cannock Chase and the Council will need to identify 41 further residential pitches and 5 transit pitches by 2028 however it is unlikely that strategically we would need to provide a site in the near future. Whilst the authority will seek to work with the travelling community to assess their needs illegal encampments will not be tolerated within the District.

- 2.5 All parties to this protocol agree to the sharing of information about illegal encampments within the provisions of the Data Protection Act 1998.

3 Background

- 3.1 The protocol has been drawn up to take into account guidance given in 'Managing Unauthorised Camping A Good Practice Guide, 2004' produced by the Office of the Deputy Prime Minister and the Home Office and the summary of available powers 'Dealing with Illegal and Unauthorised Encampments' published in 2015 by the Department for Communities and Local Government.
- 3.2 The protocol recognises the findings of the Gypsy and Traveller's Accommodation Assessment completed in 2012. Although there is a requirement to identify 41 additional residential pitches and five transit pitches by 2028 that there is no need for transit provision within the District at present. If monitoring of supply against targets identifies a shortfall and or additional demand comes forward, the Council will work positively with the Gypsy and Traveller Community and landowners to bring forward additional pitches/plots. If necessary a formal review of requirements and site allocations will be undertaken no later than 2021.

4 Definitions

- 4.1 This protocol will refer to some members of the travelling community throughout. It is recognised however that although gypsies and travellers occupy the majority of illegal encampments they may not occupy them all.
- 4.2 An illegal encampment for the purposes of this protocol is defined as an 'encampment of caravans and/or other vehicles or other movable or temporary structures on land without the landowner's or occupier's license or consent and which constitutes a trespass'.

5 Role and Responsibility of Partners

- 5.1 The specific roles and responsibilities of the different agencies that may come into contact with unauthorised encampments are set out in Appendix 1.
- 5.2 Cannock Chase District Council will maintain a record of all illegal encampments within the District of which it is notified as part of its role of the Strategic Housing Authority for the area. Details of any illegal encampment in the District should therefore be notified to Cannock Chase District Council to record on its database.
- 5.3 On receiving an initial notification of an unauthorised encampment all staff should be clear that the Designated Officer to deal with

Unauthorised encampment in Cannock Chase Council is the Traveller Liaison Officer (Planning Enforcement Officer) and that Officer should be the first point of contact for all enquiries. If the Traveller Liaison Officer (Planning Enforcement Officer) is not available then their Line Manager, or direct deputy in the Planning Development Control team should be the next person to contact.

- 5.4 All illegal encampments and actions to deal with them will as a matter of course be reported through the Community Safety Partnership Hub to other authorities and agencies.
- 5.5 On first notification of an illegal encampment the person receiving the information should attempt to obtain information on the type of encampment, the number of vehicles, the date of arrival, approximate numbers of people involved and details of land ownership. These details will inform the investigating officer and allow them to make a risk assessment of the situation they may be dealing with.
- 5.6 A standard notification form is included in Appendix 2.
- 5.7 Upon receipt of this information, the Council's Legal Services Section will attempt to establish the exact location of the encampment and ownership of the land.
- 5.8 Each of the participating organisations undertakes to notify the local authority of any encampments on their own land and to take all reasonable steps to remove illegal encampments from land for which they have responsibility.
- 5.9 Where crime has been committed or suspected or damage has been caused to property this should be reported to the Police.
- 5.10 The local authority will advise private landowners (if identified) of the presence of an encampment and of the need for them to take all reasonable steps to remove illegal encampments from their land.
- 5.11 Where private land owners fail to take necessary steps the local authority will consider taking action using its powers under the Town and Country Planning Act and/ or the Caravan Sites and Control of Development Act 1960.
- 5.12 Any costs incurred by the local authority in taking legal action and clearing up following an illegal encampment may be recovered from the land owner or (if possible) the persons responsible for the trespass.
- 5.13 It is unlawful for any person to camp on land they do not own without the landowner's permission. Appendix 3 sets out the powers available to land owners to remove unauthorised encampments from their land. If land owners are in any doubt regarding the use of their powers they should seek independent legal advice.

6. Communication

- 6.1 Illegal encampments generally arrive without warning and can be present anywhere at any given time. The management of illegal encampments involves complex multi-agency interactions and engagement. Informed and consistent communication is required by all involved partners to ensure timely and appropriate action is taken to deal with incidents.
- 6.2 Illegal encampments generally bring with them large numbers of public enquiries and complaints and most complaints are generally received by the District Council and the Police. It is important that responses to enquiries are prompt, consistent and up to date.
- 6.3 Upon notification of an illegal encampment each agency will therefore contact the Council to advise of the location of the encampment and the steps being taken to remove the occupants from the site. The Council will undertake to liaise with all relevant agencies and media outlets and keep them informed of progress as appropriate.

7 Complaints

- 7.1 If a member of the public wishes to complain about any action taken by any of the partner authorities they should be informed to make their complaint in writing or personally to the appropriate authority.

8 Signatories

Signed..... Name..... Organisation..... Position..... Date.....

Appendix 1: Roles and Responsibilities of Agencies

Organisation	Role	Contact
Cannock Chase District Council	Receiving notifications regarding the location, numbers and duration of illegal encampments in its area.	customerservices@cannockchasedc.gov.uk 01543 462621 OOH Control Centre controlcentre@cannockchasedc.gov.uk 01543 574480 CCTV Service cctv@cannockchasedc.gov.uk 01543 574480
	Recording and reporting on the location, numbers and duration of illegal encampments in its area.	
	Managing media and communication regarding unauthorised encampments in its area.	
	Identifying land ownership.	legalservices@staffordbc.gov.uk 01785 619233
	Notifying owners of non Council owned land of the presence of an illegal encampment	Environment and Health,
	Removing illegal encampments from its own land.	Depends on Service Area
	Securing its own land to prevent occupation by unauthorised encampments	Depends on Service Area
	Removing any refuse and remedying any damage following an unauthorised encampment on its on own land.	
	Dealing with any nuisance or accumulations caused by an unauthorised encampment on private land through enforcement of the Environmental Protection Act and other relevant statutes	
	Enforcing the Planning Act 1990 and/ or The Caravan Sites (Control and Development) Act 1968	
	Assessing the level of need for the provision of Gypsy and Traveller's Pitches in its area	

Organisation	Role	Contact
Staffordshire County Council	Taking steps to remove unauthorised encampments from land in their ownership.	
	Undertaking Welfare Assessments to determine level of educational, welfare and social needs	
Staffordshire Police	Assessing whether any criminal activity is or is likely to occur, including a breach of the peace under Section 61 of the Criminal Justice and Public Order Act 1994 and taking appropriate action	
	Accompanying an officer or other relevant person during the service of any document or court papers if it is considered a breach of the peace is likely to occur	
	Attendance on site during the formal eviction process if it is considered a breach of the peace is likely to occur	
Highways Agency	Taking steps to remove unauthorised encampments from land in their management.	
Other Private Landowners	Taking steps to remove unauthorised encampments from land in their management.	

Appendix 2 - Unauthorised Encampment Initial Notification Form

Location	
Date of Arrival	
Number of Caravans	
Details of Landowner	
Number of Caravans	
Number of Other Vehicles	
Number of Occupiers	
Previous Location (if applicable)	
Other Comments/ Information	
Information accepted by	
Date & Time	
Actions/Notifications	

Appendix 3: Powers Available to Deal with Unlawful Encampments

Common Law Powers

- 1 All landowners can use their common law rights to recover land (i.e. the tort of trespass against property). This allows the person in possession of land to evict an individual from their land, seek damages for their trespass on their land, and/or seek an injunction to prevent the trespass from occurring again.
- 2 A trespasser who enters land peaceably is entitled to a request to leave the land before being forcibly removed, however, a trespasser who has entered land with force and violence may be removed without a previous request to depart.
- 3 If the trespasser does not leave the land the landowner may use no more force than is reasonably necessary to evict him or her. Private Bailiffs may be used to carry out the eviction. The issue of what is 'reasonable force' is a question of fact to be decided in each individual case, however it must be an honestly held belief that in the particular circumstances the force that is used is reasonable, rather than excessive. Use of excessive force could give rise to a claim against the landowner by the trespassers.
- 4 Whenever a landowner is considering the use of common law rights he/she should notify the police of his/her intentions so that police officers can be present to prevent any breach of the peace.
- 5 If the police advise that, in the particular circumstances, it is inappropriate to attempt an eviction, action should always be delayed until such time as the police believe that it is safe to continue.
- 6 Parliament provides strong statutory powers to local authorities to enable them to deal with incidents of unauthorised camping under Section 77 of the Criminal Justice and Public Order Act 1994 (giving a direction to leave the land). The civil courts also offer an avenue to deal with unauthorised camping under Part 55 of the Civil Procedures Rules 1998 (making a claim for possession based on trespass).

Civil Law Actions

- 7 The law provides for a range of possible responses to trespass. In simple cases, the landowner may apply for an Order for Possession. (In others the local authority can use its powers), but, where there are aggravating factors of crime and disorder, the police can exercise their powers of removal under Section 61 of the Criminal Justice and Public Order Act 1994. Each case must be treated on its merits with the safety of all concerned, including the occupants and the potential for disorder or disruption as major guiding factors, not just the needs of the occupier of the land.

- 8 The powers available for dealing with an unauthorised encampment are set out below, and, dependent upon the circumstances, the most appropriate option should be used.
- 9 Individual landowners may take legal action to obtain possession of their land. They should obtain their own independent legal advice as to the process involved and likely costs.
- 10 A possession order under Part 55 of the Civil Procedures Rules can be obtained by landowners who require the removal of trespassers from property including land. The claim must be issued in a County Court which has jurisdiction over the affected land/property. A claim can be issued in the High Court in exceptional circumstances where there is a risk of public disturbance and harm to persons or property that requires immediate determination. Local authorities should also be prepared to advise private landowners about their rights to recover land from trespassers through the courts or using common law powers.
- 11 The “ordinary” possession order may be used regardless of whether the property is a building or open land, and regardless of the type of squatter or trespasser. The landowner may combine the application for the possession order with suing squatters for damages and/or an occupation charge for the period of squatting as well as the court fees. A possession order can be secured relatively quickly against trespassers (a minimum of 2 days’ notice before a hearing can take place if the property is non-residential, or 5 days for residential property), but not as quickly as an interim possession order, and is not backed up by criminal sanctions, unlike the interim possession order (see below).
- 12 If trespassers have occupied premises (rather than open land), a landowner could also consider applying (under Section III of Civil Procedure Rules Part 55) for an interim possession order, an accelerated process for regaining possession of property. Once the court has granted such an order and it has been served, trespassers who fail to leave within 24 hours of service of the order or return to the premises within the currency of the order are guilty of an offence under section 76 of the Criminal Justice and Public Order Act 1994.
- 13 The interim possession order has the obvious advantages of speed and being backed up by the criminal law. It is, however, not a final order, and there is a return date at which the court will decide whether to make the order final. If the court decides that the interim order was not justified, the landlord may have to pay damages. The interim possession order is also more restricted in that it may only be used where the property is or includes a building, not open land, and may not be used where the landlord also wishes to claim damages and/or an occupation rent.

Police Powers

- 14 Should trespassers refuse to adhere to a request to leave the land, **Sections 61-62 of the Criminal Justice and Public Order Act 1994** gives the police discretionary powers to direct trespassers to leave and remove any property or vehicles they have with them. The power applies where the senior police officer reasonably believes that two or more people are trespassing on land with the purpose of residing there, that the owner/occupier has taken reasonable steps to ask them to leave, and that one or more of the following circumstances apply:-
- (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 behavior towards the owner/occupier, a member of his/her family or an employee or agent of the owner/occupier; or
 - (c) that the trespassers have between them 6 or more vehicles on the land.
- 15 Failure to comply with the direction by leaving the land as soon as reasonably practicable is a criminal offence. Similarly, it is an offence for a trespasser who has left the land in compliance with an order to re-enter it as a trespasser within 3 months of the direction being given.
- 16 Police have powers under **Section 62 A-E CJPO Act** to direct both trespassers and travelers to leave land and remove any vehicle and property from the land, where there is a suitable pitch available on a caravan site elsewhere in the local authority's area.