

**PROCEDURE FOR RESPONSE TO UNAUTHORISED
TRAVELLER ENCAMPMENTS**

Draft

1. Purpose

The purpose of this procedure is to set out a framework for responding to unauthorised encampments in the District of Easington whilst maintaining good relations between the Gypsy and Traveller community and the Settled community.

In exercising this procedure, the Council will endeavour to foster community cohesion and eliminate racial tensions between different communities in the District.

2. Policy

- i) In dealing with unauthorised Traveller encampments, Easington District Council, Durham County Council and the Durham Constabulary will aim to act fairly in balancing the rights and needs of Travellers with those of the settled community in the locality.
- ii) The circumstances of each individual case will always be taken into account.
- iii) All members of the community, be they Gypsies/Travellers or members of the settled community, have a responsibility to show understanding of others and above all respect for the law.

3. The Need for Procedures

- 3.1 Unauthorised encampments are defined by Government as “encampments of caravans and/or other vehicles on land without the landowner or occupier’s consent and constituting trespass.” Gypsies and Travellers (definition in Appendix 1) are one group frequently associated with unauthorised encampments.
- 3.2 There is no specific legislative duty placed on local authorities to deal with unauthorised encampments by Travellers. It is however good practice, promoted by the Department for Communities and Local Government (e.g. Guidance on Managing Unauthorised Camping, 2006) to have a procedure or strategy in place so that the response can be better coordinated, the needs of both the Travelling and settled community are considered, decision making is more clear and consistent, and all parties are better informed.
- 3.3 At present nationally there are more Gypsy/Traveller caravans than there are “authorised” legal places for them to stop. Government research estimates that at any one time there are approximately 4,000 caravans on unauthorised encampments in England.
- 3.4 In County Durham there are six authorised sites, providing 113 pitches (see Appendix 2), there are however no authorised sites in Easington. In comparison to many other areas, the County level of provision is relatively high (representing 38% of pitches in the North East), but these sites are frequently at capacity, and as a result unauthorised encampments regularly occur.
- 3.5 It is difficult to predict just where and when an unauthorised encampment will occur. Many unauthorised encampments are trouble-free and not contentious to the local settled community. In some locations however, there is considerable concern expressed by the local community particularly relating to anti-social behaviour and environmental damage.
- 3.6 We recognise that the settled community can also be responsible for anti-social behaviour. We will deal with any incidents of anti-social behaviour and/or racial hate crime in accordance with the Community Safety Strategy. Racist incidents will not be tolerated. District of Easington Council has adopted the definition of a racist incident as prescribed by the Stephen Lawrence Inquiry: “A racist incident is any incident that is perceived to be racist by the victim or any other person”.

- 3.7 This procedure aims to set out the circumstances and conditions which will influence the agencies involved response to an unauthorised encampment. Whilst ultimately this may become part of a wider Gypsy and Traveller Strategy for County Durham, it does not seek to embrace the wider and important issues of health, education, access to services and other needs of this minority ethnic group.

4. Enforcement Powers and the Location of Encampments

- 4.1 It is important to draw a distinction between encampments on public and private land. If there is unauthorised camping on private land, any action to deal with it will generally be the responsibility of the landowner. All landowners can use their common law right to recover land (i.e. the sort 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.

- 4.2 If the site has become a public nuisance, and the landowner cannot or does not take appropriate action, the relevant local authority will co-ordinate any action it considers appropriate in the circumstances.

- 4.3 The powers available for enforcement against unauthorised encampments include the following:

- Landowners (including local authorities) can go to court and gain a possession order which can be enforced by court bailiffs if necessary;
- Local Authorities can use s77 of the Criminal Justice and Public Order Act 1994 to direct unauthorised campers to leave;
- If unauthorised campers fail to comply with a s77 direction, local authorities can use s78 of the Criminal Justice and Public Order Act 1994 to go to court and get an order which allows the removal of campers;
- The police have a power to direct trespassers to leave land under s61 of the Criminal Justice and Public Order Act 1994;
- The police have a further power to direct trespassers to leave land under s62 A-E of the Criminal Justice and Public Order Act 1994 where there is a suitable pitch available.

These powers can only be used in certain circumstances, which are explained in detail in Appendix 3 and 4.

4.4 Other Enforcement Powers

- 4.4.1 It is important to note that the police and local authorities have a wide range of powers not related to eviction, which may be of relevant to some unauthorised encampments. For example this includes the following:

Anti Social Behaviour. Government guidance advocates that local authorities and police seriously consider the possibility of using Anti Social Behaviour Orders or anti Social Behaviour Contracts against individuals who are persistently acting in an anti social manner. Other measures may include noise abatement notices (Environmental Protection Act).

Waste and Fly-tipping. Local authorities have an important role in preventing accumulation of waste, and may, for example provide bags or skips as a cost effective way of avoiding expensive clean-ups. Fly-tipping is however a criminal offence and if significant concerns arise from monitoring of an encampment, formal action can be taken.

5. Welfare Assessments

- 5.1 Local authorities should be fully compliant with their statutory duties to all members of the community, including Travellers. Of particular relevance is the Human Rights Act 1998 (the right to respect for private and family life) and the Race Relations Amendment Act (2000) which recognises traditional Gypsy-Traveller Groups as ethnic minorities. A summary of implications of this and other legislation is described in Appendix 4.
- 5.2 The decision to evict Travellers from public land will rest with the case conference convened by the local authority that owns the land. Local authorities have an obligation to carry out welfare assessments on unauthorised campers to identify any welfare issues that need to be addressed and taking this into consideration in the enforcement decision. Where police are taking enforcement action, it is good practice for them to liaise with the local authority over any welfare issues.

It is also good practice for local authority officers to be present at any eviction from public land, to ensure that any welfare issues that arise at the time can be dealt with appropriately.

- 5.3 Any welfare needs of unauthorised campers are a material consideration for local authorities when deciding whether to start eviction proceedings or to allow the encampment to remain longer. Welfare needs do not give an open-ended 'right' for unauthorised campers to stay as long as they want in an area. For example, the presence of a pregnant woman or school age children does not, per se, mean that an encampment must remain indefinitely. To defer an eviction which is justified on other grounds, the need must be more immediate and/or of a fixed term. See below for some examples of welfare needs to be considered by local authorities, although the list is not intended to be exhaustive and all cases must be judged on their individual merits.

Good practice suggests that eviction should be delayed while such acute welfare needs exist and are being met; during this period the encampment should be pro-actively managed. (*Source - Guidance on Managing Unauthorised Camping - Department for Communities and Local Government, 2006*)

5.4

Some Examples of Welfare Needs to be Considered in Eviction Decisions

Advanced pregnancy: a period shortly before and after birth in normal circumstances; longer on medical advice if there are complications.

Ill health: indicators might include a hospital appointment booked; in-patient treatment of a close family member; period during which a condition can be diagnosed, stabilised and a course of treatment started.

Educational needs: children in school if within 4 weeks of the end of term or if access to special education has been gained.

This is not an exhaustive list.

- 5.5 In some circumstances it may be appropriate to exclude a single person or family with welfare need from eviction action taken against the larger group. However, this must always be sensitively handled to ensure that an individual is not isolated and unsupported, leading to still greater need. In practice, groups may prefer to move on together. It is important that the appropriate authority follows up identified welfare needs whether or not the encampment is moved on. (*Source - Guidance on Managing Unauthorised Camping - Department for Communities and Local Government, 2006*).

6. The Principles of decision making in these procedures

Decisions about what action to take in connection with an unauthorised encampment must be made in the light of information gathered. Decisions must always be:

‘Lawful’ - that is in line with local policy and procedures, taking into account relevant considerations and not taking into account the irrelevant.

‘Reasonable’ in the legal sense of not being perverse or irrational in the light of the evidence available.

‘Balances’ in that they take account of the rights and needs of both the settled community and Gypsies and Travellers.

‘Proportionate’ - what is proportionate will vary according to the precise circumstances of each encampment, including the nature of the location and the behaviour and needs of the unauthorised campers.

(From DCLG Guidance in Managing Unauthorised Encampments)

7. Procedure for Management of Unauthorised Encampments

The procedure for managing unauthorised encampments on public land is shown in table 1.

Step 1 – Initial Investigation

Once an unauthorised encampment is identified contact will be made with Traveller representatives at the stopover by Durham County Council Travellers Liaison Service. This will be within a target of one working day during the working week. At this stage the Neighbourhood Inspector would normally undertake a community impact assessment to identify the likely policy requirements.

A welfare assessment will be commenced, and initial contact made with the landowner to establish their position on the encampment.

Step 2 – Case Conference

A case meeting will normally be convened, which will include landowner representatives, Durham County Council Travellers Liaison Service, Police, and, on the guidance of the Travellers Welfare Service, a representative from the Travelling Community. There might be circumstances that this meeting takes the form of a conference call between the parties.

In the event of the unauthorised encampment being on land owned by the District Council, the case meeting will typically comprise representatives from Estates, Community Services Department and the Council’s Equality Officer.

The case conference would assess the welfare audit outcome (personal details will not be discussed) together with considering the location of the unauthorised encampment. On land owned by the Local Authorities certain factors will be taken into account, which will inform the decision for the speed in which a direction to leave is issued.

“Issues which will be taken into Account”

If the encampment is on one of the following sites:

- A village green or other open area within or close to a residential area
- A school car park or playing fields
- An urban park
- An industrial estate, retail park or market site
- Recreation ground or public playing fields
- Car parks including hospital supermarket or leisure facility car parks
- A Site of Special Scientific Interest or nature reserve
- The verge of a busy road where fast traffic is a danger to unauthorised campers children
- A derelict area where there would be health and safety concerns
- A highway and is causing an obstruction
- Locations where an active encampment is likely to have an immediate impact on investment potential.

Then, providing the welfare assessment allows, there will be a presumption in favour of a prompt direction to leave. The rationale behind this is that the encampment is more likely to pose health and safety risks to the campers, create greater environmental damage, or the settled community are more likely to be adversely affected by noise or other disturbance associated with the encampment.

The above factors will be taken into account at the case conference and the decision to serve notice, if taken arrived at by the landowner representative, typically at Officer level. Minutes will be taken of these meetings.

Step 3 – Instances of Temporary Acceptance

It is important to emphasise that all unauthorised encampments constitute trespass, and whilst a local authority does not serve an immediate direction to leave, this should not be taken as consent for this occupation.

If the encampment is located in an area unlikely to give rise to anti-social behaviour, or if any direction to leave would be adversely affect significant welfare considerations then the encampment would be temporarily accepted, although this position would not remain indefinite. In these instances the Travellers would be provided with a code of conduct.

Code for Travellers on Land owned by the District of Easington

This encampment is unauthorised

Your temporary stay on this land will depend on your co-operation.

- Keep groups small, typically less than 8 caravans
- Space vehicles out, park away from other groups
- Look after the land you park on and don't cause problems for nearby residents
- Use the toilets provided
- Don't dump or burn rubbish, the Council will provide bags or bins and collect them weekly
- Don't collect scrap or other materials on site
- Park vehicles safely and not on land needed for another purpose
- Keep all animals, especially dogs under control and tether horses at all times
- Co-operate fully with those responsible for the land

Please follow the above advice and in most cases for an agreed period, we will not pursue an immediate order for removal.

It should be noted that in the circumstances described above, that the County Council would typically provide toilet facilities, and the District Council would make arrangements to collect rubbish from the area.

As part of the case conference the Durham County Travellers Liaison Service or the Travellers representative will feedback how long it is proposed that the encampment is on the land. The case conference will determine whether this is an acceptable duration, if not we will work with the Travellers to negotiate a more acceptable time period. In any event, this period is likely to be less than two weeks.

Breach of the code of conduct would result in a case conference being reconvened, where consideration will be given to a direction to more formal action being taken.

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Table 1

**UNAUTHORISED ENCAMPMENT
PUBLIC LAND**

DURHAM COUNTY COUNCIL TRAVELLERS
LIAISON SERVICE UNDERAKES WELFARE AUDIT



CASE CONFERENCE GROUP MEETING INVOLVING:

- County Council Travellers Liaison
- Estates*
- Police
- Community Services Department*
- Equality Officer*
- Legal

* (If encampment on District Council land)

CASE CONFERENCE GROUP CONSIDERS
LOCATION OF UNAUTHORISED ENCAMPMENT
WELFARE CONCLUSIONS

TOLERATE

SITE IS NOT IN AN
UNACCEPTABLE
LOCATION AND/OR
WELFARE ISSUES
IDENTIFIED

YES

WELFARE ISSUES
ADDRESSED IF
APPROPRIATE

TRAVELLERS, WARD
MEMBERS AND SETTLED
COMMUNITY INFORMED OF
DECISION

CODE OF CONDUCT ISSUED & TEMPORARY SUPPORT
(BIN COLLECTION/TOILETS PROVIDED)

CODE OF
CONDUCT

YES

ENCAMPMENT
REMAINS FOR
TEMPORARY PERIOD

NO

DIRECTION TO LEAVE

NO

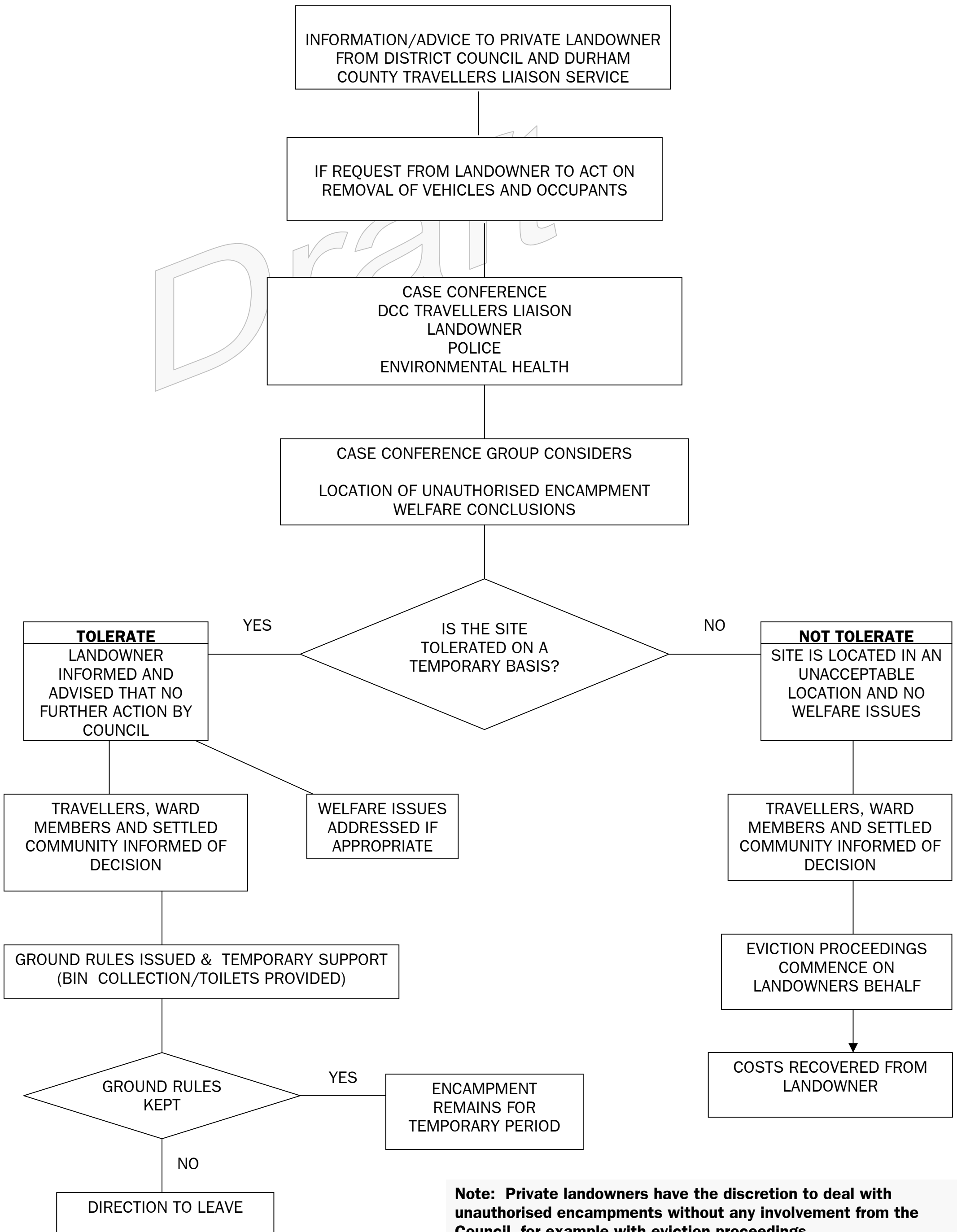
NOT TOLERATE

SITE IS LOCATED IN AN
UNACCEPTABLE
LOCATION
AND
NO WELFARE ISSUES

TRAVELLERS, WARD
MEMBERS AND SETTLED
COMMUNITY INFORMED OF
DECISION

EVICTON PROCEEDINGS
COMMENCE

UNAUTHORISED ENCAMPMENT PRIVATE LAND - A POTENTIAL ROUTE



Note: Private landowners have the discretion to deal with unauthorised encampments without any involvement from the Council, for example with eviction proceedings.

Step 4 – Informing Others of the Decision

The case conference will determine if the encampment is unacceptable or if it is to be temporarily accepted.

In both instances the Ward Members, Travellers and other interested parties in the local community will be informed of the outcome.

Step 5 – Monitoring

All agencies involved, the Police, Durham County Council and the District Council need to monitor the situation. All may receive comments or complaints from either the Travellers or the settled community, and it is important that this information is shared.

There may be instances where the unauthorised encampment begins to cause problems, for example rubbish accumulation or noise. It should be recognised that an early discussion with the Travellers representatives and reminder of the code of conduct could result in ready and immediate improvements.

Step 6 – Instances where Eviction or Direction to Leave is necessary

If the encampment is in an unacceptable location or if the code of conduct is significantly or repeatedly breached action will be taken to evict. Private landowners, the police and local authorities all have powers in this regard. The option as to which powers to use will be a decision for the relevant agencies, and dependant on the severity of the issue.

The police will be responsible for deciding to use their powers under Section 61 of the Criminal Justice and Public Order Act. Their decision will be based on levels of criminal activity, the seriousness of breaches of the peace, and how significant the disruption is to the local community. In practice, the police will always consider using their powers under Section 61 when a particular site is clearly intolerable for any of the reasons mentioned above. The police will take account of the views of the appropriate local authority. Police Commanders will have to confirm any decisions to use or not use their powers under Section 61 of the Criminal Justice and Public Order Act.

If using powers under Section 61 may cause, or increase the chances of, serious confrontation or disorder (for example, if large numbers or particularly aggressive groups are involved), the police and the relevant local authority will work closely together to decide the most effective way of managing and solving the problem. The appropriate local authority and the Police Commander must keep a detailed record of any decisions.

The position of Durham Constabulary can be summarised as follows:

“whilst police powers under S61 will not be viewed as a last resort, they will not be used unless considered to be a proportionate and justifiable response to the circumstances and problems being experienced at the site”

In the majority of instances on public land the local authority will lead in relation to eviction proceedings if they are necessary, and providing welfare considerations have been fully taken into account. The Sections 77-78 of the Criminal Justice and Public Order Act are the most likely powers to be used. The procedures for this are described in detail in Appendix 5.

Definitions used in these Procedures

Gypsies and Travellers: used as a generic term to denote the whole population of those groups, families and individuals who subscribe to Gypsy/Traveller culture and/or lifestyle. The term encompasses ethnic Gypsies and Travellers and those who fall within the legal definition of a 'Gypsy' (s24 of the Caravan Sites and Control of Development Act 1960 as amended by s80 of the Criminal Justice and Public order Act 1994).

Unauthorised campers: people living on unauthorised encampments.

Unauthorised encampments: term restricted to encampments of caravans and/or other vehicles on land without the landowner or occupier's consent and constituting trespass.

Unauthorised development: Gypsy and Traveller sites are among the types of development, which require planning permission. This term is used where such development is carried out on land with the agreement of the landowner, but without the appropriate planning permission.

Sites or Gypsy/Traveller sites: term generally restricted to authorised sites with relevant planning consents (includes sites owned by local authorities and private owners).

Occupier of land: term used in its legal sense as 'the person entitled to possession of the land by virtue of an estate or interest held by him'. This might include a landowner, tenant or licensee but not unauthorised campers temporarily in 'occupation' of the land without any legal estate or interest.

Figure 1: Authorised Sites in County Durham

Site	Number of Pitches
Tower Road, Derwentside	14
Drum Lane, Chester le Street	14
Green Lane, Wear Valley	20
Coundon Grange, Wear Valley	25
Adventure Lane, Durham	17
East Howle, Sedgefield	23
Total	113

Responsibilities in Enforcement and Welfare

Unauthorised encampments fall into two main categories: those on land owned by the local authority (e.g. highways schools, recreation grounds, car parks etc) and those on privately owned land.

i) **Private Landowners**

If there is unauthorised camping on private land, any action to deal with it will generally be the responsibility of the landowner. However, if the site has become a public nuisance, and the landowner cannot or does not take appropriate action, the relevant local authority can co-ordinate any action it considers appropriate in the circumstances.

ii) **Councils - General**

Section 77 allows the Council to require the unauthorised encampers to leave, if appropriate. In addition, council officers can require the unauthorised encampers to remove their vehicles and property. It becomes an offence (with no power of arrest) for the unauthorised encampers if they fail to leave the land and remove their property within a reasonable time, or if they return to that land within three months. Special consideration exists for those who have an illness, an emergency or a vehicle breakdown. Local authorities have a legal obligation to make humanitarian enquiries and to take account of considerations of common humanity whatever the powers used. All decisions by public bodies must be 'proportionate' and accord with the Human Rights Act.

Having made a requirement as above, under Section 77, if the unauthorised encampers fail to comply with the direction to leave, the Council can apply to the Magistrates' Court under Section 78 of the Act to make a Court Order for them to leave with their vehicles. If such an Order is granted, it authorises council officers to enter the land and remove the property (caravans/cars etc.) to a safe place. To obstruct council officers executing such an order is an offence (with no power of arrest). The Council will try to recover costs from the trespassers in such circumstances.

All landowners (including local authorities) can recover possession of their land by using a county court, if their land is occupied by someone without their consent.

iii) **Councils – Durham County**

The Travellers Liaison Service

Durham County Council Travellers' Liaison Service is committed to tackling racism directed against Gypsies and Travellers. It recognises that Gypsies and Travellers have a unique and rich cultural heritage, and are one of Britain's oldest ethnic groups. The Travellers' Liaison Service acknowledges the contribution that Gypsies and Travellers make to society, and seeks to promote respect and understanding for their way of life.

The service currently consists of a manager- who also has responsibility for Durham County Council's Welfare Rights service- a Senior Travellers Liaison Officer, and a Travellers Liaison Officer (temporary post). The Travellers' Liaison Service is responsible for the overall management of the six permanent sites and for all unauthorised stopovers that occur within County Durham. The Travellers' Liaison Service is expected not only to liaise with the Travelling communities, but also those people living in 'settled', housed communities, i.e. the vast majority of the people living in County Durham. The 'settled' community is usually concerned with stopover encampments and their impact.

Police

The duty of the police is to preserve the peace and prevent crime. Trespass on its own is not a criminal offence (i.e. an offence for which the Police have any powers), it is a civil matter. However the Police can apply a Section 61 (Criminal Justice and Public Order Act 1994) if the land owner has taken reasonable steps to require the campers to leave (and they have not done so). In addition, one of the following also has to apply:

Damage has been caused to the land or property

OR

Threatening/abusive/insulting behaviour has been used against the occupier, his family, or agent

OR

The trespassers have six or more vehicles (includes caravans and cars).

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Guidance on Managing Unauthorised Camping **ANNEX A: A SUMMARY OF THE LEGISLATIVE FRAMEWORK**

(Source - *Guidance on Managing Unauthorised Camping - Department for Communities and Local Government, 2006*)

This annex summarises the main legislative framework relevant to a strategy for managing unauthorised camping.

Site Provision

- The Caravan Sites and Control of Development Act 1960 s24 gives local authorities discretionary powers to provide caravan sites.
- While there is no duty on local authorities to provide Gypsy-Traveller sites, Welsh Office Circular 76/94 makes clear that authorities should maintain their existing Gypsy-Traveller caravan sites, and should continue to consider whether it is appropriate to provide further permanent caravan sites for Gypsy-Travellers in their areas.
- The Welsh Assembly Government is currently reviewing policy on Gypsy-Traveller site provision.
- Site provision is governed by planning legislation. Welsh Office Circular 2/94 and “Planning Policy Wales” set out policy on Gypsy-Traveller site provision.

Dealing with Unauthorised Encampments

- There is no specific legislative duty placed on local authorities to deal with unauthorised encampments by Gypsy-Travellers.
- Local authorities can take action as landowners through civil actions against trespass using Civil Procedure Rules Part 55, heard in a County Court.
- Local authorities have powers given by the Criminal Justice and Public Order 1994 ss77 and 78 (see Chapter 6). These 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 CJPOA.
- WO Circular 76/94 provides guidance to local authorities on the exercise of s77 powers, and reminds them of their other duties towards Gypsy-Travellers in terms of education, children and homelessness legislation.
- Case law (starting with the judgement of Sedley J in *R v Wealden District Council ex parte Wales*) 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 Gypsy-Travellers camp on land which they own or on other private land with the consent of the landowner, planning authorities 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 CJPOA (see Chapter 6). Action under s61 is normally much quicker than under s77, and the welfare considerations less onerous although there are certain conditions in the legislation which have to be fulfilled before eviction can take place.
- The Anti-Social Behaviour Act 2003 added new ss61A and 62A into the CJPOA which give police enhanced eviction powers in circumstances where there are suitable pitches on relevant Gypsy-Traveller sites to accommodate the caravans affected. These sections come into force on 27 February 2004.

Other Enforcement Measures

- Local authorities have powers to deal with statutory nuisance (which could include, for example, rubbish accumulation at unauthorised encampments) and noise (see Chapter 7 of this Guide).
- The Crime and Disorder Act 1998 places a duty on chief police officers and local authorities to work together to develop and implement a strategy for reducing crime and disorder. Section 17 imposes a duty on all local authorities (and others) to *'without prejudice to any other obligation imposed upon it . . . exercise its functions with due regard to . . . the need to do all it reasonably can to prevent crime and disorder in its area'*.

Service Provision for Gypsy-Travellers

- Gypsy-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 Gypsy-Traveller children in accessing education, with a Gypsy-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 8: Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Case law has established that, while neither eviction action against trespassers nor planning enforcement is incompatible with HRA, either could potentially breach Article 8 rights if not properly used. Authorities, and other public bodies covered by the HRA, must be able to demonstrate that all eviction and enforcement decisions are 'proportionate' in weighing individual harm (in the loss of 'home' for the Gypsy-Traveller) against the wider public interest. Potential challenge under the HRA means that all decision-making must be fully recorded and evidenced to withstand scrutiny.

First Protocol, Article 1: Protection of property

Every natural and legal person is entitled to the peaceful enjoyment of his possessions. No-one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

This Article might be seen as protecting the settled community's right to quiet enjoyment of their possessions, which might be threatened by nuisance, noise or anti-social behaviour from a problematic unauthorised encampment. This should be one of the considerations to be borne in mind by local authorities and police when considering eviction action. To date there is no relevant case law.

First Protocol, Article 2: Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Education of Gypsy-Traveller children is frequently raised in cases dealing with eviction proceedings, and particularly with planning enforcement actions against unauthorised development. In such cases the question resolves itself to one of the balance between the individual harm to Gypsy-Traveller children's educational needs and the public interest harm in allowing unauthorised development to persist. To date there is no specific case law on arguments relying on this Article in this context.

Article 14: Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property birth or other status.

While Article 14 rights are potentially engaged in any action concerning Gypsy-Travellers (as ethnic groups and national minorities), the Article can only be successfully argued if another Article is found to be breached. Where a claim under any Article is rejected, it follows that any claim under Article 14 also falls.

Race Relations and Equalities

The Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 gives public authorities - including ODPM, 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. It also gives listed public bodies specific duties including one to create and publish a Race Equality Scheme which details how they will meet the general duty. In developing new policies or strategies public authorities must assess their impact on different racial groups, and they must consult. If the impact is negative and disproportionate to the aim of the policy, it must be changed. Once implemented, policies must be monitored for their effect on different racial groups. Authorities must publish the results of monitoring and consultation.

Traditional Gypsy-Traveller groups are recognised as ethnic minorities. Policies for managing unauthorised camping are likely to affect Gypsy-Travellers significantly. The RRA means that local authorities and police must assess the impact of proposed policies on Gypsies and Irish Travellers and must consult on them. If the policies are likely to have a disproportionately negative impact on Gypsies and Irish Travellers, authorities must ensure that this impact is not disproportionate to the aims and importance of the policies. If it is, it is important to take measures to reduce this adverse impact or consider other ways to achieve the aims, which would mitigate its negative effect.

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 RRA 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 Gypsy-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.

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Sections 77-78 Criminal Justice and Public Order Act

(Source - Guide to effective use of enforcement powers - Part 1: Unauthorised encampments- Department for Communities and Local Government, 2006)

- **Section 77** of the CJPOA gives local authorities the power to direct individuals to remove their vehicles and belongings and to leave highway land, or any land occupied without the consent of the landowner, whether owned by the local authority itself or by any other public or private landowner.
- Before commencing any action to evict an unauthorised encampment, local authorities have an obligation to carry out welfare assessments of the unauthorised campers. This may necessitate the involvement of local NHS bodies, where health issues are apparent.
- Local authorities may then draw up a Direction which instructs the unauthorised campers to leave on a particular date and time. This document is approved and signed by an authorised signatory of the local authority (usually a solicitor or legal executive employed by the authority). It also identifies either individuals or vehicles on the unauthorised encampment.
- The Direction is then served on the unauthorised campers by a local authority officer (the document must be given directly to one of the named unauthorised campers or affixed prominently to one of the vehicles).
- If the campers have failed to move and/or remove any vehicles and other property by the date specified in the Direction, or return to the same location within three months of the date of the Direction, they are then committing a criminal offence and may be arrested by the police. If a prosecution is successful they may then be given a custodial sentence of up to three months, or be liable to a fine of up to £1,000.
- In practice however, it can be more effective for local authorities to pursue unauthorised campers who have contravened a direction under Section 77 by using their powers under **Section 78** of the CJPOA. This allows local authorities to advise the Magistrates' Court of the contravention and, if the court is satisfied, then they may grant an Order for Removal of Persons and Vehicles.
- In the first instance, the Listing Clerk at the Magistrates' Court should be contacted in order to obtain a date for a court hearing, which is required before the Order can be issued. Depending on the location of the encampment, the local authority may ask the court to expedite the process so that the unauthorised campers can be moved quickly.
- The appropriate local authority officer then attends the Application Court to make an application for a summons, which can be issued immediately. This summons requires the person(s) in charge of the caravan(s) to appear before a court hearing to answer the complaint.
- The summons is then served on the unauthorised campers by the appropriate local authority officer or by a process server contracted to perform this service for the local authority.
- A hearing in the Magistrates' Court is set for later in the day on which the summons is served, or on the following working day. A solicitor must appear at the hearing on behalf of the local authority. Good practice indicates that, where possible, the same solicitor should be used in all court proceedings relating to unauthorised camping by Gypsies and Travellers so that they have a good working knowledge of the legislation. The solicitor should be provided with all of the necessary court documents as well as any relevant background information (the findings of welfare enquiries for example). The solicitor will request that the magistrate grants an Order for Removal of Vehicles and Persons.

- If the unauthorised campers attend the hearing and contest the eviction, the case may be adjourned in order to allow time to hear all the evidence. However, if the magistrate is satisfied that the correct procedures have been followed, the Order will be granted immediately in normal circumstances.
- Once granted, the Order should be served on the unauthorised campers as soon as possible by a local authority officer or process server, as above.
- Twenty-four hours must be allowed to elapse between serving the Order and any action to remove the unauthorised campers. At any point thereafter, the local authority (or private bailiffs employed on their behalf) may remove the unauthorised campers and their vehicles from the land. As with any eviction, police should be present to ensure that no breach of the peace takes place.

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