

Consultation:

Powers for dealing with unauthorised development and encampments

Question 1

What evidence is there of unauthorised development and encampments in your community, and what issues does this raise for the local community?

The Council's Planning enforcement team investigate breaches of planning control where land is owned and then occupied by Gypsies and Travellers without the requisite planning permission having first been obtained and also where development is not implemented in accordance with the approved plans.

There are currently at least 18 identified cases in the District under investigation because of the unauthorised occupation and development of land and/or by reason of a failure to adhere to conditions attached to a planning permission.

This situation causes tension and suspicion amongst the settled community and gives rise to a lack of trust in the Gypsy Community and the ability of the Council as Local Planning Authority (LPA) to control land use.

The Council has had 20 unauthorised encampments so far this year. They are usually on Parish Council owned amenity land or council owned car parks. Where they are set up on Parish Council land they frequently cause community tension in the local vicinity and local people will avoid the area. There will be an expectation expressed by the local settled community that the Council and Police will remove the encampment quickly, however this will depend on a number of factors including any planned events on the land. The Council can only evict encampments on its land but we have developed a checklist and guide for Parish Councils and allocated a Parish fund to help them protect targeted vulnerable spaces.

When illegal encampments are moved on, Parish Councils and other land owners and nearby Councils are informed and can make necessary security checks. Regular meetings are held between the Parish Council in whose area the transit site is located, together with local businesses and the manager of the transit site to ensure any issues are addressed and tensions managed.

Question 2

We would like to invite evidence of unauthorised encampments which have occurred in the last 2 years, as follows:

- a. the number of instances where trespassers have occupied land without authorisation, including the location and scale of the encampment.**
- b. whether the land in a) required cleaning or repair once the encampment had left,**

and if so, what was the cost?

c. how was each unauthorised encampment encouraged to leave, how long did it take, and was the local authority able to move them on; or did the police become involved?

- a) In 2016-17 there were 21 encampments in the District. The total number of vehicles camped on those sites was 101. The total number of days that sites remained occupied by the unauthorised persons was 85. In 2017-18 the number of encampments was 20, comprising 103 vehicles but the total number of days that the sites were so occupied was 53.
- b) The Council carries out activity to provide bin bags and otherwise engage with unauthorised encampments to encourage them to manage their own waste etc. At the time when a site is vacated the Council cleaning services will carry out an exercise to collect those bin bags and provide any further cleaning activity required. This is carried out within existing budgets so there is no additional cost to Council budgets which can be identified and provided.
- c) Responsibility for taking action against unauthorised encampments has been passed by agency agreement to West Sussex County Council. The time to move encampments was 53 days this year in total though it should be noted that this includes one encampment which took 39 days to obtain possession – in the majority of cases therefore possession was obtained on a same day or next day basis. Details of that site are not known to the Council as the land in question was Parish Council land. Police become involved when needed specifically for sites which cause significant concerns due to their impact upon the wider community and where the authorities are wishing that the Police consider their urgent section 61 and 62 powers. It should be noted that the Council operates a transit site for Gypsies and travellers – by reason of this site the Council and Police are able to use the complete range of existing powers where appropriate and the relevant evidential tests are met as there is a designated site to move travellers on to.

Question 3

Do you think that the existing powers made available to local authorities to remove unauthorised campers from land are effective?

Generally yes, as outlined above most sites are cleared on a same (or next) day basis. There will be occasions where the public expectation is that they should be moved on more quickly but if they do not require Police intervention then most encampments are moved on within 7 days although one site took far longer as set out above.

However the reasons that this Council and Police are able to use all powers are to a large extent due to the ability to demonstrate to the Courts and to a Senior Police officer authorising their use of immediate removal orders that a suitable alternative site exists. Prior to having this site, the number of encampments was between 60 and 80 per annum, whereas since the site was made available the number of encampments is between 15 and 21 per annum and as explained in responses previously, sites are now cleared far more quickly on average.

Question 4

Do you think local authorities could improve their use of existing powers?

The provision of a local transit facility means that the District and County authorities locally (in partnership with the Police) are able to use their existing powers more effectively and have access to a range of relevant powers that would otherwise be unavailable, or less easily available. Anecdotally other authorities having difficulties with use of powers do not provide transit facilities since the level of harm caused by a site needs to be higher to justify their removal from a particular location. When presenting their case to senior police officers or the Court, the ability to demonstrate that an encampment can be moved to a suitable location means that the urgent powers can be utilised more swiftly, which in turn means that arguments as to the site being capable of being a home in human rights act terms are far weaker.

In short, the existing powers use could be improved if they are capable of being used in a context where other action is taken in order to show that they can be effective and where the use of powers is not simply moving travellers from unsuitable location A to unsuitable location B.

Question 5

What other powers may help local authorities deal with unauthorised encampments?

So far as unauthorised encampments on sites which are not owned by travellers are concerned, this Council considers that the wider powers available to it, by reason of having a transit site, are sufficient. In respect of sites owned by travellers which are not the subject of trespass, but which are unauthorised in planning terms, the Council considers that the existing powers are insufficient to address the need to control the use of the land. Where sites do not have planning permission but the owner carries out unauthorised development, the use of Stop Notices and other planning tools do not carry sufficient weight to fully restrain the breach. In addition, the Council has experience of sites which are “parcelled up” and transferred between members of the gypsy and traveller community making effective action in respect of named individuals very difficult. A power to ‘freeze’ development on sites against all persons until planning permission is granted, rather than individual named persons as referred to in a Stop Notice, is thought would be useful. Where land is occupied in breach of planning control, the retrospective nature of a subsequent planning application can cause tension and mistrust among the settled community in relation to the anticipated outcome of the application and the likelihood of further enforcement action in the event that permission is refused.

Question 6

Do you consider that the current powers for police to direct trespassers to leave land are effective?

Due to the wider range of powers available due to the Council’s local traveller facility, the Council’s own experience is that the Police are given sufficiently wide options on direction to trespassers locally. Experience is that police officers consider the range of

powers available to them and work closely with their senior officers as required and have a strong level of knowledge of those powers locally. There were initial discussions with Police locally at the time of the transit site becoming operational, and in particular the proper interpretation of the legal powers available to Police were actively discussed to ensure they were applied consistently and the greatest extent properly available in law. However, once the transit site is full, we have to revert back to the courts to secure eviction which can be time consuming and costly.

Question 7

Would any new or revised powers that enable police to direct trespassers to leave land make it easier to deal with unauthorised encampments?

Whilst powers to (say) criminalise trespasser occupation of land are often proposed, they would not reduce the number of gypsies and travellers or encampments across the country. Existing powers include requirements to assess the welfare and circumstances of the individual and group and assess the location to which the group should then be directed. These directions can be applied selectively based on the evidence. It is difficult to see how powers could be granted which did not operate on an evidential basis similar to those in existence already.

Question 8

Do you consider that the Government should consider criminalising unauthorised encampments, in addition to the offence of aggravated trespass? If so, how should a new offence differ, and what actions and circumstances should it apply to?

The Council considers that there is a significant risk that this would criminalise whole groups by their being in an area. If there is clear evidence of criminal or anti-social behaviour we should utilise the legislation already at our disposal and only target the individuals involved. This evidence based approach, applied to the existing tools, is achieving turnaround in a reasonable period again now compared to prior to having access to a relevant transit site.

The code for criminal prosecutors would provide that conduct repeated is more significant than “one off” incidents. Monitoring which individuals trespasser has been on sites in the wider location is difficult so it is considered likely that criminalised powers would be unlikely to be used. Criminalising this conduct is also likely to reduce the willingness of Gypsies and travellers to engage with police and the authority to enable their location to be managed (for cleanliness) and directed (to a suitable transit location). In occasions where officers have engaged with occupiers of a particular site experience is that their conduct has been better than without and generally compliant, causing lesser friction with the settled community in that area.

Question 9

What barriers are there to the greater use of injunctions by local authorities, where appropriate, and how might they be overcome?

Convincing a court/judge that there is intelligence that an incursion on land is imminent and that the breach of planning control should be apprehended frequently proves

challenging. The Council considers that the courts should be ready to recognise more readily that there is a reasonable prospect that a site is likely to be occupied if there is reasonable information that points in that direction.

There is a concern that the environmental harm arising from unauthorised encampments is frequently seen by the courts to be outweighed by the rights of the occupiers. The result in our experience is that a status quo injunction rather than an order to evict is obtained.

Identifying the individuals who have taken residence on an encampment can be problematic and the civil procedure rules on service upon “persons unknown” are not always easy to evidence as signage can be removed from sites and then service can be denied. The Courts are always reluctant in this Council’s experience to issue orders against “persons unknown” and do so only after very significant Court consideration of same.

Question 10

Do you have any suggestions or examples of how local authorities, the police, the courts and communities can work together more successfully to improve community relations and address issues raised by unauthorised encampments?

A regular liaison meeting is held including local businesses, the relevant Parish Council, the District Council and the County Council transit site manager which has been very successful in managing community tensions in the immediate area of the transit site and reducing the impact of issues by providing a forum in which they can be openly discussed.

Good timely communication and a consistent message around the encampment and the actions to be taken will often alleviate concerns from the community.

Question 11

Are there ways in which court processes might be modified in a proportionate way to ensure unauthorised encampments can be addressed more quickly

Access to the Courts locally has become more difficult and listing matters promptly is often difficult with the Courts giving only an automated response – several general local authority criminal matters (not related to unauthorised encampments) have not been listed for some weeks. Having an established non-CPS “slot” for urgent matters as used to be common practice at the Courts to enable such matters to be heard promptly would be helpful.

Question 12

In your view, what would the advantages and disadvantages be of extending the Interim Possession Order process to open land?

By enabling the use of bailiffs (enforcement officers) and the speed of the administrative mechanisms of an Interim Possession Order (IPO) this would mean that possession of sites from squatters could be achieved quicker than “normal” possession civil procedure

applications. However in that IPO is only available for commercial premises it is not seen how the Courts would accept that a process intended for non-residential premises could be applied without being in breach of the rights of the individual trespassers.

Question 13

Are you aware of any specific barriers which prevent the effective use of current planning enforcement powers?

Barrier - Gathering sufficient evidence to demonstrate that a breach of planning control has taken place or an offence committed is difficult on many traveller sites where proper transfer of ownership is not always clear, the land is not registered and in some cases it appears to this authority is deliberately obstructive and opaque. Delays within the Land Registry in processing land transfers are also a barrier to expediting enforcement. This is especially challenging in cases where criminal powers are being considered since they will be to the “beyond reasonable doubt” test and such ownership denials or transfers quickly throw the Council’s position into challenge.

Barrier - Identifying the responsible person when considering a breach of condition where the owner is unknown or where the person named on the Land Registry cannot be located.

The Council’s use of DVLA records to track down perpetrators may assist.

Question 14

If you are aware of any specific barriers to effective enforcement, are there any resourcing or administrative arrangements that can help overcome them?

- Access to investigative online search engines to research an individual’s data footprint to demonstrate whether they meet the Gypsy and Traveller definition set out in Government guidance in ‘Planning policy for travellers sites’.
- Access to the DVLA database to search for addresses of persons connected with the site is difficult to obtain under the existing access requirements for unauthorised encampment management.
- Sites are often difficult or impossible to view from the public highway so gathering evidence of a significant breach or even identifying whether a breach has taken place is problematic. The use of a ‘Drone’ would assist in the confirmation of a breach of planning control and gaining ‘access’ to a restricted site either by reason of obstruction or dangerous dogs; also, enabling legislation for the use of a Drone
- Reducing the administrative process and the need for so much paperwork within it.

Question 15

Are you aware of any specific barriers which prevent the effective use of temporary stop notices? If so, do you have a view on how these barriers can be overcome?

In our experience, generally there are no specific barriers preventing the use of Temporary Stop Notices which are used widely by the Council’s planning enforcement team. However the identification of named individuals and the purported transfer of land between individuals has caused problems for some sites.

Question 16

How do you think the existing enforcement notice appeals process can be improved or streamlined?

Appellants should be made aware of the need to provide substantive information to back up their claim of gypsy status and why it is necessary for them (i.e. a demonstrable need) to live on the land. If they fail to provide this information in a timely fashion before the Hearing/Inquiry, this should be regarded as a material consideration that weighs against the appellant's case.

The process itself is very long with delays almost built into the system and the pressure of many cases means that requests for adjournment appear to be accepted very willingly. Some public inquiries are given very long programme timings which in turn mean that the alleged breach continues and so the Council then receives comments from the wider community as to their frustration with the protracted nature and slow pace of the process. Anything to accelerate the process would be welcome but in particular clear forms to set out key issues for particular types of appeals would be helpful setting out the evidence in advance so that the Inquiry might make some pre-indications on some points or even make findings if no evidence is submitted.

Evidence from Gypsy appellants is often poorly presented, last minute, insufficiently supported by a planning agent to put representations into a legal context, or not provided at all.

The reference to attending 'horse fairs' is often cited as evidence of following a gypsy lifestyle, whereas what is often lacking is actual evidence of the need to travel for work purposes and an ability to demonstrate a financial gain from travelling. Clarification on what details are required to be provided at Inquiry, by way of evidence about 'economic' travel, would assist.

Officers spend a considerable amount of time researching the background of those claiming gypsy status and endeavour to find out about their way of life. However, planning enforcement officers have limited access to records which may reveal the true way of life led by those the subject of the investigation/appeal and it is not possible to challenge evidence given in verbal statements about the appellant's family/ way of life either in evidence from the named individuals or persons supporting their contentions.

Question 17

How can Government make existing guidance more effective in informing and changing behaviour?

Following the acceptance of any of the above observations, it is requested that online guidance for making an appeal in relation to Gypsy and traveller sites should be updated i.e. the level and standard of evidence that is required.

Question 18

If future guidance was issued as statutory guidance, would this help in taking action against unauthorised development and encampments?

We consider it would ensure greater consistency but resources to ensure that action could be taken for the most significant sites would need to be available in particular if the authority was compelled to comply with statutory timescales.

Question 19

Are there any specific barriers to the provision of more authorised permanent and transit sites? If so, is there any action that the Government could take to help overcome those barriers?

Local communities often object to proposals for gypsy and traveller sites, leading to difficulties for elected members dealing with proposals for site allocation or planning applications. There are perceptions that the planning system is more permissive for members of travelling communities than it is for settled communities. This can be compounded by the granting of retrospective permissions, particularly on appeal. It is also compounded by difficulties in enforcing conditions which can result in the poor appearance of permitted sites.

Gypsy and traveller sites can be concentrated in a limited number of geographical locations which can alienate the communities and parish councils affected.

Changes in government policy can make it difficult for local planning authorities to assess what need they should be providing for. Particular examples are the failure to complete the partial amendment to the South East Plan and the change in definition of a traveller in Planning Policy for Traveller Sites. Both of these changes generated the need to compile a new evidence base on need, rather than focus on provision and site allocation.

The interpretation of Planning Policy for Traveller Sites in relation to 'open countryside' and 'over dominance of settled communities' has caused problems in considering planning applications. The guidance is open to interpretation and can be extremely difficult to draw any objective and defensible conclusion.

Question 20

What impact would extending local authority, police or land owner powers have on children and families and other groups with protected characteristics that public authorities must, in the exercise of its functions, have due regard to under their Public Sector Equality Duty?

The on-site reviews carried out by the inspection officers and education welfare officers when carrying out welfare checks at encampment sites across West Sussex, to consider the specific needs of these groups, significantly supports this public sector duty and shows due regard to the needs set out in this question. Having officers trained in the duty carrying out the work as a formal requirement would be important if this is to move from best practice to a legal requirement. A clear guidance note on the application of the duty in this context, supported by model assessment forms, would be worthwhile

additions to the tools available to the authority as the Courts do sometimes challenge whether welfare reviews are sufficient and being able to confirm that a model version was being followed would be strong evidence of proper process.

Question 21

Do you expect that extending the powers referred to above would have a positive or negative impact on the health or educational outcomes of Gypsy, Roma and Traveller communities? If so, do you have any evidence to support this view, and/or suggestions for what could be done to mitigate or prevent any negative impacts?

The Council has no evidence based response to this question and does not have evidence as to the issues discussed. However as set out in previous responses, criminalising powers is likely to impact upon engagement efforts to encourage compliant behaviour and is likely to be counter-productive. The Council is not an education authority.

Question 22

Do you have any other comments to make on the issue of unauthorised development and encampments not specifically addressed by any of the questions above?

Members of the public expect officers representing the Local Planning Authority (LPA) to robustly investigate whether persons claiming to be a Gypsy fall within the definition in 'Planning policy for traveller sites'.

It is also uncertain whether an LPA can expect members of the travelling community to be able to produce financial statements, accounts or bank details to evidence their financial activity. This would be a strong evidential basis for showing that their lifestyle and income is earned from several locations, but may be seen as intrusive to examine. Government express guidance on this point would be helpful.

It is often difficult to confirm whether a particular family or individual continue to live in a Gypsy lifestyle when they do so for part of the year, or take periods of time living in a set location for some years but express an intention to return to their cultural lifestyle. The case law on this area is somewhat conflicted and some codification to make this assessment might be timely. Many families in the settled community aspire to live in the rural area but do not have the same rights/arguments or policy in support of them doing that through the acquisition of land and the stationing of a caravan. The planning system is not demonstrably fair and balanced or equipped to deal with this argument of comparison between the assessments of settled and Gypsy communities making what appear to be otherwise identical legal arguments.

Where a Gypsy family have a site, based on identified need and them carrying on a 'way of life', the opportunity for their children to continue with that way of life must become less over time based on changing circumstances of reduced opportunities for travelling, stopping and work types. The current policy position does not appear to place any burden of responsibility upon the travelling community to continually evidence that a

travelling way of life is being followed and is maintained beyond what could be described as a 'catchment' area that is within what would be described as a commutable distance for a person from the settled community.

It is also difficult for the Council to apply weight to the argument of a person having an aversion to 'bricks and mortar' accommodation when some Gypsy development becomes akin to 'bungalow' style buildings and sites give an appearance of being a 'property development' opportunity and not simply that of providing a settled base that meets an identified need.