

Cabinet

7th February 2019

Cabinet Member Cllr Ray Stanley, Cabinet Portfolio Holder Housing & Property Services.

Responsible Officer Andrew Jarrett, Deputy Chief Executive (S151).

Procedure for Managing and Enforcing Unauthorised Encampments.

Reason for Report:

This report seeks Council approval for the adoption of a corporate policy and procedure for responding to unauthorised encampments on land in the ownership of Mid Devon District Council, including guidance for encampments on land in the ownership of Devon County Council. Where the land is not owned by either Council the relevant land owner (where known) shall be notified.

RECOMMENDATION:

The Cabinet recommends to Council that the proposed corporate policy and procedure for managing and enforcing unauthorised encampments as detailed on Annex A is adopted and implemented by the Council.

Relationship to Corporate Plan: Priority 3: Community- Aim 1

Financial Implications:

There is no existing budget for responding to unauthorised encampments, any costs associated with managing such encampments shall continue to be absorbed by the General Fund and reported to Members via the Asset Directorate.

Legal Implications: The policy includes legal provisions the Council may adopt to remove unauthorised encampments from Council land.

Equality Impact Assessment:

People with the protected characteristic of race, specifically Romany gypsies and Irish travellers are likely to be impacted by this policy and procedure. The policy seeks to balance their rights with the needs of the Council and the wider community. Through the use of this policy outcomes for these groups should improve more generally through the use of welfare assessments. In addition the identification of clear officer roles and responsibilities should enable a quicker and more consistent response and reduce the risk of tension between gypsies and travellers and the settled community.

Risk Assessment:

- Reputational risks to the Council if it does not deal with unauthorised encampments in a consistent way and in line with relevant legislation.
- Risk that we fail in our duty of care to provide appropriate welfare support to members of the Gypsy & Traveller community.
- Risk of potential conflicts with local residential communities.
- Risk of damage to land and property.

1.0 Introduction

- 1.1 This report seeks Cabinet approval for the adoption of a corporate policy and procedure for responding to and enforcing on unauthorised encampments on land owned by Mid Devon District Council. Where the land is not owned by the Council the relevant land owner (where known) shall be notified and general advice provided as required.
- 1.2 Having a clear policy and procedure for responding to unauthorised encampments will ensure that the Council adopts a consistent and proportionate response. It shall also ensure that the Council acts lawfully and that the needs of the Council and those of the community are balanced with the rights of the individuals concerned.
- 1.3 Annex B demonstrates how this procedure will be implemented via a flow chart.
- 1.4 For ease of reference Annex C lists the five key action stages within the procedure.

2.0 Background

- 2.1 Unauthorised encampments could occur on Council land for a variety of reasons. The removal of unauthorised encampments would be costly for the Council to deal with, both in terms of staffing resources and potential clean-up costs.
- 2.2 The Council would currently rely on the expertise of one or two officers to deal with this issue. Whilst this approach would be generally effective it is not seen as sustainable in the long term and a more formalised and corporate approach is required.

3 Assessment

- 3.1 The Council does not currently have an agreed policy or procedure in respect of how it responds to these encampments. A policy is however needed in order to ensure that:

- Officers, Members and the Community more generally have clarity in terms of the actions that the Council can take and under what circumstances.
- Action to tackle unauthorised encampments is undertaken promptly and effectively.
- The Council adopts a proportionate and justified response to tackling unauthorised encampments and avoids the cost of unnecessary or legal action to gain possession of illegally occupied land.
- The Council engages effectively with key stakeholders, particularly Ward Members, residents and the Police.
- The need to take possession action promptly is balanced with the rights (and potential welfare needs) of the individuals concerned.

4 Consultation

- 4.1 Officers considered this proposed policy within the context of the Government publications. *Dealing with illegal and Unauthorised encampments A Summary of Available Powers (2015)* together with the *Association of Chief Police Officers Guidance on Unauthorised Encampments 2011*.
- 4.2 This procedure has been consulted on with key stakeholders including all Town and Parish Councils within the District including Devon County Council. Minor changes have been made as a result of the consultation.
- 4.3 Legal services have also reviewed the procedure, as agreed at the Community Policy Development Group meeting held on the 18th September 2018.

5 Annex A

- 5.1 A copy of the proposed policy/procedure can be referred to on Annex A.
- 5.2 The proposed policy contains the following key points:-
- Nominated Officers have now been identified and will now take the lead in dealing with unauthorised encampments on Council land.
 - All unauthorised encampments shall be moved on as quickly as is practicably possible.
 - In all cases a proportionate approach shall be taken with respect of the use of legal proceedings to secure possession. In order to avoid unnecessary legal costs or abortive proceedings a negotiated

solution would generally be sought prior to the commencement of any legal action.

- The period given prior to the **commencement** of eviction proceedings will generally be 48 hours (Monday to Friday); however this period may be extended depending on the location, and the impact of the encampment, the circumstances and the stated intentions of the trespassers themselves.
- Where an encampment presents an immediate health and safety risk to either the public or the trespassers themselves immediate possession shall be sought.
- In the majority of other cases, for example in relation to unauthorised encampments on public open space located within a residential area, parkland or carparks, possession action would generally be commenced by the Council within 48 hours (Monday to Friday).
- In other instances, where for example the location of the unauthorised encampment has a relatively low impact or where the circumstances of the trespassers themselves require flexibility, then at the discretion of the Deputy Chief Executive (S151) a "grace period" may be given before possession action is taken.
- As part of its procedures, the Council will seek to identify and appropriately meet any relevant welfare needs through a standardised 'welfare assessment'. This welfare assessment is required both to help inform the Council's decision regarding the use of enforcement powers and where required to signpost to other relevant agencies

5.3 The Council has a variety of powers at its disposal to regain possession of its land. This includes powers to seek injunctions to prohibit trespass under Section 222 of The Local Government Act 1972 as well as the power to seek possession of land under the Civil Procedure Rules Part 55.

5.4 Generally the most appropriate power in relation to unauthorised encampments is Sections 61, 62 and 77 of the Criminal Justice and Public Order Act 1994. Section 77 of that Act gives Local Authorities the power to give a direction to leave land to people residing in vehicles, including caravans, on land on which they are residing without the Council's consent. Failure to comply with such a direction means the local authority can apply to the magistrate's court for an order requiring the removal of the vehicles and occupants.

In addition under certain circumstances, the Police have a discretionary power to take action in accordance with Sections 61 and 62 of the same Act. This gives the Police powers to direct trespassers to leave and

remove any property or vehicles where the landowners has given a direction for the trespassers to leave and they have failed to do so. Trespassers must also have either: -

- damaged land or property; or
- used threatening, abusive or insulting words or behavior or
- have six or more vehicles.

5.5 Under these sections of the Act, failure to comply with the direction by leaving the land as soon as is reasonably practicable is an offence however the Police response will take into account issues of behavior and the impact on the relevant land owner and settled community, each case is considered on its own merits. Attached to this report as Annex D is a publication from the government that makes it clear on the Police powers apply where there is a suitable pitch available on a caravan site elsewhere in a local authority area.

Decisions regarding the length of any verbal notice period or decisions to commence legal action to move trespassers on shall be made by the Deputy Chief Executive (S151), delegated to the relevant officer and considered in the context of the findings from the site inspection and the outcomes of the welfare needs assessment.

5.6 Where trespassers do not move on at the end of any given verbal notice period the Council will take appropriate action including the use of private bailiffs to repossess its land.

5.7 It is acknowledged that any unauthorised encampment would generate numerous enquiries from the public, directed both towards the Council's Call Centre and local Ward Members. To mitigate against this it will be the responsibility of the nominated officer to keep both local Ward Members and Customer First updated regarding the actions being taken to manage the situation.

5.8 In order to support the wider communications attached to this issue a communications plan has been produced.

5.9 The policy covers instances of unauthorised encampments on Council owned land however many encampments occur on land that is not owned by the Council. In these instances the Council shall advise the relevant landowner and provide advice and assistance as required. It is the responsibility of that land owner to take any action they deem to be necessary to recover possession of their land.

6 Financial Issues

6.1 There is no existing budget for responding to unauthorised encampments, any costs associated with managing such encampments is absorbed by the Asset Directorate and reported to Members accordingly.

7 Conclusion

- 7.1 Having a clear policy and procedure for responding to and enforcing on unauthorised encampments will help ensure that the Council adopts a consistent and proportionate response. It shall also ensure that the Council acts lawfully and that the needs of the Council and community are balanced with the rights of the individuals concerned. It is therefore recommended that the proposed policy (Annex A) is adopted and implemented.

Contact for more information:

Andrew Busby Group Manager Corporate
Property and Commercial Assets

Tel (01884 234948 abusby@middevon.gov.uk)