

Briefing on Gypsies and Travellers: Advice for Landowners

Scrutiny Committee 21 March 2016

Introduction

The purpose of this briefing paper is to inform members of the processes and responsibilities for the eviction of Gypsies and Travellers from private land where permission from the owners has not given.

Responsibilities – Police and Local Authority

The Council recognises and accepts the rights of travellers/gypsies and also those people on whose land unauthorised camping takes place.

Gypsies and travellers are protected from discrimination by the Equality Act 2010 and the Human Rights Act 1998, together with all ethnic groups who have a particular culture, language or values.

There is a past history and tradition for gypsies and travellers to live in caravans or move around the country. However, encamping on someone's land without their consent is unlawful and in certain circumstances, it is not just a breach of civil law, but also criminal law.

Does the Council or Police have a duty to move gypsies/travellers when they are camped without the landowner's permission?

No. The powers given to local authorities and the police are discretionary and can only be used when certain conditions exist it is therefore usually the landowner's responsibility.

The duty of the Police is to preserve the peace and prevent crime. Trespass on land itself is not a crime – it is a civil matter. Prevention of trespass is therefore the responsibility of the landowner, not the Council or the Police.

As highlighted above and in certain circumstances the Police may activate their powers under section 61-62 of the Criminal Justice and Public Order Act 1994 to require gypsies/travellers to leave. However, the Police are only able to activate these powers where they are satisfied that two or more people are trespassing on the land, and the landowner has taken reasonable steps to make them leave (and they failed to do so). In addition, one of the following has to apply:

- Damage has been caused to 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

However, the police are bound by the Human Rights Act and may be constrained to avoid using Section 61 in circumstances where it would preclude welfare considerations from being applied by the civil courts. Also any enforcement of section 61 by the Police would

require considerable resourcing and consideration would have to be given to having sufficient police officers available etc.

If gypsies/ travellers are camped on Council land, the Council can recover possession of their land by using a County Court Order, if it is being occupied without consent. The Council may also be able to use the powers in section 77-78 of the Criminal Justice and Public Order Act 1994 to direct the occupants to leave. Using this method the occupiers will commit a criminal offence if they do not leave with their vehicle(s) as soon as "practicable" after receiving the direction. This may not be enough however to encourage unlawful occupiers to move. In such a case the Council can apply to the Magistrates Court for an Order for "Removal of Persons and Vehicles." This will involve a Court hearing and the summons for such a hearing will have to be personally served on the occupiers. At the first court hearing if the case is disputed the matter will be set down for a trial and it could take some time for the court to arrange a trial date. If an order is made the Council can enforce it usually by instructing private bailiffs, which can be at considerable cost running into thousands of pounds.

It should be noted prior to issuing any direction the Council will need to carry out welfare assessments of the occupiers including liaising with the NHS and Education Authorities.

This is a cumbersome and time consuming process to the Council. Because of this and the considerable expense of using private bailiffs to enforce the order it is usually not appropriate to use this process for unlawful occupation on private land

Powers of the private landowner to remove unauthorised occupiers

If a landowner discovers unofficial encampment on their property and want to evict they could;

- try to reach an agreement with occupiers for them to move on or
- use the legal system or
- use common law powers of eviction.

If the land is privately owned as previously detailed it is not the local authority's responsibility to end the occupation of the land by gypsies and travellers, it is the landowners. There are a number of steps that can be taken in doing so which are detailed below:

- It is often best for the landowner to initially speak to the travellers to find out how long they intend to occupy the land for and if possible, try to reach an agreement for when they will move on.
- The landowner could contact the local authority for advice. Although the council can only apply for court order if it owns the land. However it may be able to offer advice on preventative measures or occasionally find space on permanent sites if the Council has any.
- A private landowner can issue a claim for possession against the occupiers of an unauthorised encampment on their land in the County Court using the procedure laid down in the Civil Procedure Rules 1998/3132 Pt 55. At least 2 clear days' notice of

the hearing must be given to the Gypsies or Travellers concerned. There will be a charge for the service of papers, legal and court fees which is a cost to the landowner. The cost of any clean-up and disposal of any rubbish on the site is also the landowner's responsibility.

- Common Law Powers of Eviction: There are common law powers of eviction which private landowners can use to remove trespassers from land. These powers involve the use of no more force than is "reasonably necessary" and can be applied even without a court order.

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