

## **Dronfield Town Council**

### **Procedure for handling an illegal encampment (October 2017)**

Set out below are the general principles to be followed in response to an unauthorised Gypsy and Traveller encampments.

#### **1. The Law**

##### 1.1 The Human Rights Act 1998

This Act is described as "An Act to give further effect to rights and freedoms guaranteed under the European Convention on Human Rights."

Wherever the Human Rights Act 1998 (which in essence requires any public body to carry out its functions so as to accord with the Convention) applies to a situation which involves an unauthorised encampment, the relevant public authority when dealing with the encampment must comply with the Act.

In considering action to recover land, local authorities may need to take a balanced approach and also ensure that they have given consideration to the health, education and housing needs of the Travellers. Proportionality will be considered to ensure that there is a balance between the needs of the settled community and the Travellers.

##### 1.2 The Race Relations Act 1975 and the Race Relations (Amendment) Act 2000

Under the Race Relations Act, it is unlawful to discriminate against anyone on the grounds of race, colour, nationality (including citizenship), or ethnic or national origin. All racial groups, including Gypsies and Travellers, are protected from discrimination. The Race Relations (Amendment) Act 2000 placed both a general and specific duty on public authorities bound by the Act.

Under the general duty the requirement is to:

- eliminate unlawful racial discrimination
- promote equality of opportunity
- promote good relations between persons of different racial groups.

The specific duty under the Act requires public authorities to produce and publish a Race Equality Scheme to show how they intend to meet the requirements under the general duty.

##### 1.3 Other Equalities Legislation

More recently, legislation has come into force covering age, gender, disability, religious belief and sexual orientation. Many public authorities are producing a corporate equality plan outlining what they plan to do to ensure equality, diversity and equity in employment and service delivery.

##### 1.4 Statutory Responsibilities

Local authorities have statutory duties in so far as provision of education, housing and social services is concerned. Gypsies and Travellers, like the settled community, have a right to access health provision. Health Services have a Duty of Care towards Gypsies and Travellers. The priorities when visiting an encampment are to assess the health needs of

Gypsies and Travellers and to provide access to such services as are appropriate and are required.

### 1.5 Confidentiality

In dealing with unauthorised encampments, all personal information will be treated as confidential between agencies, in line with normal working practices and procedures. However, it must be remembered that occasionally the public interest and the statutory duties of agencies can override the duty of confidentiality.

In the operation of this guidance information may be shared between responsible authorities in line with the principles of the Derbyshire Partnership Forum Information Sharing Protocol. In addition, information communicated to public authorities may be disclosed to the public under the Freedom of Information Act 2000.

At no time should agencies, employees or members of the Gypsy and Traveller community be offered anonymity for information they wish to share with the agency, where this cannot be provided in law.

## 2. The Procedure

Where a report about an unauthorised encampment on public land reaches Dronfield Town Council, the staff member that takes the report will consult directly with the other relevant agencies concerning the encampment as appears appropriate.

### 2.1 There are three methods of traveller removal are as follows.

1. **Common Law:** The most popular one is under Common Law where Bailiffs serve the notice to the travellers to vacate the land asking them to move immediately. They Bailiffs then leave the site, to cut down on waiting time. If they have moved by 5.00pm that day the land owner can contact us and tell us and there is no cancelation fee for us turning up at 8.00am the next day to remove them.
2. **Magistrates Court Order:** The council 'legal team' can obtain a Magistrate Court order to remove them from the site that can be enforced by Bailiffs. This cannot always be obtained on the same day and in fact can take up to 4 days to get an appointment at court and the damage done by the travellers may have increased having a knock on effect in terms of tidying up costs afterwards.
3. **County Court Order:** The third option is to obtain a County Court Order and this can be escalated to a High Court writ. The main benefit of this is that the police have a duty to assist the Bailiffs in the removal but if the Police do not have enough manpower then the eviction can take a few days.

The Governments advice to local authorities when dealing with illegal encampments states:

"..councils and the police should be ready to take swift enforcement action to tackle rogue encampments and sites. Recent experience has shown us the problems that can be caused for communities by the illegal occupation of land. It is often thought that local authorities and other enforcement bodies have limited powers available to tackle illegal and unauthorised encampments and the nuisance that they can cause. In fact there are extensive powers..."

"Public bodies should not gold-plate human rights and equalities legislation. Councils and the police have been given strong powers to deal with unauthorised encampments and when deciding whether to take action, they may want to consider for example;

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- (a) the harm that such developments can cause to local amenities and the local environment
- (b) the potential interference with the peaceful enjoyment of neighbouring property
- (c) the need to maintain public order and safety and protect health – for example, by deterring fly-tipping and criminal damage
- (d) any harm to good community relations
- (e) that the state may enforce laws to control the use of an individual's property where that is in accordance with the general public interest.

Whilst there is a clear leadership role for local authorities in tackling illegal and unauthorised encampments, they should work collaboratively with other agencies, such as the police or the Highways Agency, depending on where the most appropriate powers sit.

Please note: Local Authorities are advised that gaining a Magistrates Court Order is preferable, but where there are urgent circumstances a Common Law eviction may be more suitable, particularly if removal is needed urgently.

## 2.2 Dronfield Town Council have implemented the following procedure:

### **Step 1: Who to inform**

Initial details of the encampment need to be reported to the District Council, Police, NHS and Environment Agency:

**North East Derbyshire District Council (re: housing & education):** 01246 217246

**Derbyshire Constabulary:** Gypsy & Traveller Liaison Officer: 01773 572088 and email [john.coxhead.524@derbyshire.pnn.police.uk](mailto:john.coxhead.524@derbyshire.pnn.police.uk)

Police Call Centre: 101

**NHS Derbyshire (re: health):** Jane Horton, Amber Valley PCT on 01773 525099 ext 5110

**The Environment Agency:** 08000 807 060

### **Please Note: Welfare Enquiries**

The Council has a statutory obligation towards Gypsies or Travellers under other legislation (mainly regarding children, homelessness and education). Officers should liaise with other local authorities, such as health and welfare services who might have responsibilities towards the families of the Gypsies or Travellers.

Effective welfare enquiries are necessary to identify whether needs exist which might trigger duties or necessitate the involvement of other sectors. The Human Rights Act 1998 applies to all public authorities. With regard to eviction, the issue that must be determined is whether the interference with Gypsy or Traveller family life and home is justified and proportionate.

Any particular welfare needs experienced by the Gypsies or Travellers are material in reaching a balanced and proportionate decision. The human rights of members of the settled community are also material if the Council fails to act or curb nuisance from an encampment.

**The Council is required to demonstrate that it has taken into consideration any welfare needs of the Gypsies or Travellers prior to making a decision to evict, or this could delay court orders being issued.**

Speed of response in relation to making welfare enquiries is key to managing unauthorised encampments so as to minimise disruption. Reports of an unauthorised encampment should be acted on as quickly as possible and information should be passed on for consultation as rapidly as possible.

Contact details at Derbyshire County Council and the NHS for Welfare Enquiries can be seen below;

**Derbyshire County Council:**

Chief Executive Office, Policy Unit: 01629-580000 extension 7384

Legal Services (dealing with unauthorised encampments): 01629 580000 ext 7466

Older People & Vulnerable Adults: 1629 580000 ext 2002

Early Years & Childcare Services Joanne Robinson: 01629 580000 ext 5738

Derbyshire County Council Traveller Liaison Officer: 01629 538466

**NHS Derbyshire (re: health):**

Jane Horton, Amber Valley PCT on 01773 525099 ext 5110

When a relevant authority seeks to gain re-possession of land, it should - if possible - make contact with Derbyshire Gypsy Liaison Group so that there are lines of communication and to explore any opportunity for negotiation and discussion which may lead to solutions before evictions take place.

**Contact Details for Derbyshire Gypsy Liaison Group**

1-3 Ladygrove Mill, Lady Grove Road, Two Dales, Matlock, Derbyshire, DE4 2FG

**Tel: 01629 732744 Fax: 01629 732744 Email: [info@dglg.org](mailto:info@dglg.org)**

Office hours are 10am to 3pm - Monday, Wednesday and Friday

**Step 2: Identify ownership of the land & arrange site visit**

Identify who the owner of the land is and gain evidence of ownership. Then arrange for a visit to the site to be undertaken to establish the exact location and number of occupants on the land.

**1. Dronfield Town Council Owned Land**

Establish if the land is owned by Dronfield Town Council and gain proof e.g. map showing area and deeds.

**2. North East Derbyshire District Council Land**

If the owners of the land are District Council then report it immediately by calling 01246 231111, with details of the location and the number of occupants.

**3. Derbyshire County Council Owned Land**

If the owners of the land are the County Council (this includes highways land) then contact the Traveller Liaison Officer at Derbyshire County Council on 01629 585566, with details of the land and the number of occupants.

**Step 3: Making decisions**

At this stage Dronfield Town Council will take the Common Law approach by contacting Derby Legal Services to serve a notice to the Travellers.

**Derby Legal Services Contact Details**

T: 0843 289 6324 E: [andy.gillott@derbylegalservices.co.uk](mailto:andy.gillott@derbylegalservices.co.uk)

The Authority to Act form then needs to be completed and forwarded to Derby Legal Services before they can act.

Derby Legal Services will then create the Notice, which will give the Travellers until 8am the following morning to leave the site.

If the Travellers are still there after 8am the following morning Bailiffs will be sent to remove the vehicles and there will be one bailiff for every two caravans.

**4. Alternative Options**

If there were any circumstances where Common Law was not the best option then an alternative approach is outlined below.

**Steps 1 & 2**

Repeated as above

**Step 3: Welfare Enquiries**

Inform all the contacts at Derbyshire County Council, listed above.

Decisions about what further action to take in connection with an unauthorised encampment must be made in the light of information gathered from the site as a result of site visits by County Council. Decisions must always be:

- 'Lawful' – that it is in line with policy and procedure, 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.
- 'Balanced' 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 Gypsies or Travellers.

Any welfare needs are a material consideration for the Council 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 Gypsies and Travellers to stay as long as they want in an area. To defer an eviction which is justified on other grounds, the needs must be more immediate and/or of a fixed term. Eviction should be delayed while acute welfare needs exist and are being met, in this period the encampment should be managed pro-actively.

**Step 4: The decision to evict**

Once a decision to evict an unauthorised encampment has been properly taken, the aims should be to:

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- Act quickly and efficiently.
- Use the powers most appropriate to the circumstances
- Reduce scope for challenge through the courts by ensuring that welfare considerations have been taken and considered

There are a number of legal options available;

#### **4.1 Direction to evict**

Advice from the Home Office states where people are residing in vehicles (including caravans) on land the section 77 of the Criminal Justice and Public Order Act 1994 gives local authorities in England and Wales power to give a direction to leave the land. The power applies only to land forming part of a highway, any other unoccupied land or occupied land on which people are residing without the consent of the occupier.

It is an offence to fail to comply with such a direction. If the direction is not complied with, the local authority can apply to a magistrates' court for an order requiring the removal of vehicles and any occupants from the land (section 78). Responsibility for eviction lies with the local authority. Officers or agents of the local authority may use reasonable force to evict. It is usually recommended that the police attend such evictions in order to prevent a breach of the peace.

#### **4.2 Magistrates Court Order**

If a direction has been issued and not complied with contact details for the local Magistrates Court can be found below and an application for an Order for Removal of Person and Vehicles need to be made;

##### **North East Derbyshire & Dales Magistrates Court**

Address: Tapton Ln, Chesterfield S41 7TW T: 01246 224040

Questions likely to be asked at the hearing are listed below;

- What date did the Gypsies or Travellers move onto the land?
- How many caravans are present at the encampment?
- What is the land usually used for?
- Photographs of the land
- Have adequate welfare enquiries been made?
- Has a Direction been served under s.77 Criminal Justice and Public Order Act 1994?
- Any changes to the encampment since the service of the Direction?

The Magistrates Court will then issue an Order for Removal of Persons and Vehicles.

Once the Order has been granted, an officer should serve the Order on the Gypsies or Travellers as soon as possible with the presence of the Police, as above.

Twenty-four hours must then be allowed to elapse between serving the Order and any action to remove the Gypsies or Travellers. At any point thereafter, the Council may remove the Gypsies or Travellers, their vehicles and any other property from the land. The department responsible for the land shall oversee this action and ensure bailiffs are employed on behalf of the Council, if necessary. The Police should be present to ensure that no breach of the peace takes place.

On completion of the eviction, the department responsible for the land will need to consider measures to be taken to ensure the site is adequately secured.

### 4.3 County Court Orders

Where there is an unauthorised encampment on local authority land or on the highway, the local authority with an interest in the land may bring action in the County Court under the Civil Procedure Rules.

Form N5 a Claim for Possession of Property needs to be completed and submitted to the local County Court, details of which are below;

**Chesterfield Justice Centre**, Tapton Lane, Chesterfield, Derbyshire, S41 7TW

T: 01246 224040 or E: [chesterfieldcountycourt@hmcts.gsi.gov.uk](mailto:chesterfieldcountycourt@hmcts.gsi.gov.uk)

You must phone to make an appointment to submit the court papers and pay the applicable fee involved. When submitting the papers, all witness statements must be filed and submitted at the same time.

The County Court will issue a claim form and set a date for the hearing. The claim form must then be served on those persons by:

- (i) attaching copies of the claim form, particulars of claim and any witness statements to the main door or some other part of the land so that they are clearly visible; and
- (ii) if practicable, inserting copies of those documents in a sealed transparent envelope addressed to 'the occupiers' through the letter box; or
- (iii) placing stakes in the land in places where they are clearly visible and attaching to each stake copies of the claim form, particulars of claim and any witness statements in a sealed transparent envelope addressed to 'the occupiers'.

There will be a minimum of 2 days before a hearing can take place.

Where the Council serves the claim form and particulars of claim, the Council must produce at the hearing a certificate of service of those documents.

After considering the claim the Judge will make an order for possession, without requiring the attendance of either party. The Travellers must then move by the date given in the order.

## **Additional Information**

### **Police and their powers**

Before invoking their powers to evict the Police will ensure visits have been made by the appropriate services unless immediate action is required e.g. in serious incidents or to prevent a serious incident. Derbyshire Police recognise the constitutional freedom of individuals to follow their traditional or chosen lifestyle.

Police Powers under **section 61 and Section 62A of the Criminal Justice and Public Order Act 1994** will not be used as a matter of routine. This power only 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 occupier has taken reasonable steps to ask them to leave, and any of the following;

- a) that any of the trespassers have caused damage to the land
- b) that any of the trespassers have used threatening, abusive or insulting words or behaviour towards the occupier, a member of occupier's family or an employee or agent
- c) that the trespassers have between them six or more vehicles on the land

Each case will be looked at on its merits having regard to the safety of the settled community and taking into consideration any aggravating factors of crime or disorder. The Police will follow guidance within their own standing orders.

### **Anti Social Behaviour**

Where Gypsies or Travellers are engaging in anti social behaviour causing alarm, distress or harassment to others the Local Authority can apply for Anti Social Behaviour Orders (ASBOs) under the Crime and Disorder Act 1998. A Local Authority will complete a thorough investigation in consultation with other partnership agencies in order to determine if this is the appropriate action.

ASBOs are used to prohibit perpetrators from continuing to do specified anti-social acts or entering defined locations, in order to protect the public in those areas. Gypsies and Travellers will be treated as everyone else residing in the area and an ASBO would only be sought if their actions constitute anti social behaviour, not because their choice of lifestyle caused someone annoyance. ASBOs are civil remedies and are made in civil proceedings. They can be issued as a stand-alone application or on conviction of a criminal offence. An order lasts for a minimum of two years, but can in some circumstances run indefinitely.

ASBOs often include a prohibition that states it operates in the whole of England and Wales. This means that the order "follows" the perpetrator wherever they may reside. Breaching the terms of an ASBO without reasonable excuse is a criminal offence and usually prosecuted by the Crown Prosecution Service. Breach of an ASBO can result in a fine of up to £5000 and up to 5 years imprisonment for an adult, 2 years for a juvenile.