

BIRMINGHAM CITY COUNCIL

**REPORT OF THE ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

12 FEBRUARY 2020
ALL WARDS

**CONSULTATION ON STRENGTHENING POLICE POWERS TO TACKLE
UNAUTHORISED ENCAMPMENTS**

1. Summary

- 1.1 On the 5th November 2019 the Home Office have issued a second consultation on strengthening police powers to tackle unauthorised encampments. The consultation closes on the 4th March 2020.
- 1.2 This report advises of the proposed response to the consultation to be made by officers following consultation with the Licensing and Public Protection Committee.

2. Recommendation

- 2.1 That the proposed responses to the consultation be considered by members and that officers be advised of any amendments that the committee wish to be made to the proposed responses.

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3. Background

- 3.1 In April 2018, the Government published a consultation on the effectiveness of enforcement against unauthorised developments and encampments. It sought views from a number of stakeholders including local authorities, police forces, Gypsy, Roma, and Traveller communities and the general public on the scale of the problem, whether existing powers could be used more effectively and if any additional powers were required.
- 3.2 Following that consultation the then Home Secretary, the Rt Hon Sajid Javid MP, announced the Government would look to amend sections 61 and 62A of the Criminal Justice and Public Order Act 1994 to:
- lower the criteria that must be met for the police to be able to direct people away from unauthorised sites and
 - to review how this Government could criminalise the act of trespassing when setting up an unauthorised encampment in England and Wales, learning from the trespass legislation that exists in the Republic of Ireland.
- 3.3 This latest document consults on whether criminalising unauthorised encampments would be preferable to the amendments originally proposed in February 2019 to the Criminal Justice and Public Order Act 1994, and if so, how it should work. The full consultation can be found at <https://www.gov.uk/government/consultations/strengthening-police-powers-to-tackle-unauthorised-encampments>
- 3.4 A council motion was passed at September 2019's meeting of the City Council. The detail of that resolution is in appendix 2 for information. The responses to this consultation are reflective of the motion passed at city council.

4.0 Consultation proposals

- 4.1 The consultation is seeking comments on the following specific areas:
- i. to consult on measures to criminalise the act of trespassing when setting up an unauthorised encampment in England and Wales.
- 4.2 To consult on an alternative approach to the criminalisation of trespass by amending the Criminal Justice and Public Order Act 1994:
- ii. amending section 62A to permit the police to direct trespassers to suitable authorised sites located in neighbouring local authority areas
 - iii. amending sections 61 and 62A to increase the period of time in which trespassers directed from land would be unable to return from 3 months to 12 months

- iv. amending section 61 to lower the number of vehicles needing to be involved in an unauthorised encampment before police powers can be exercised from six to two or more vehicles
 - v. amending section 61 to enable the police to remove trespassers from land that forms part of the highway
- 4.3 Appendix 1 to this report contains the questions from the consultation and the proposed response by your officers on behalf of the committee.
5. Implications for Resources
- 5.1 No specific implications have been identified at this stage. The proposals will potentially change the powers available to Police forces in England and Wales not powers available to Councils.
- 5.2 Birmingham already has a transit site and the ability to direct unauthorised encampments to our own and those of other authorities would ensure that sufficient spaces are available without having to over provide spaces that may or may not be used.
7. Implications for Policy Priorities
- 7.1 This proposal supports the council priorities of making Birmingham a great city to live in.
9. Public Sector Equality Duty
- 9.1 No specific implications have been identified at this stage.

INTERIM ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: Home Office consultation available at:

<https://www.gov.uk/government/consultations/strengthening-police-powers-to-tackle-unauthorised-encampments>

Questions within the consultation on strengthening police powers to tackle unauthorised encampments, with proposed responses.

Q1. To what extent do you agree or disagree that knowingly entering without the landowner's permission should only be made a criminal offence if it is for the purpose of residing on it?

A1. Strongly agree / **Agree** / Neither agree or disagree / Disagree / Strongly disagree

Rationale

Birmingham City Council debated and passed a motion in September 2019 calling government to make this change to the legislation.

Q2. To what extent do you agree or disagree that the act of knowingly entering land without the landowner's permission should only be made a criminal offence if it is for the purpose of residing on it with vehicles?

A2. Strongly agree / **Agree** / Neither agree or disagree / Disagree / Strongly disagree

Rationale

Birmingham City Council debated and passed a motion in September 2019 calling government to make this change to the legislation.

Q3. To what extent do you agree or disagree that the landowner or representatives of the landowner should take reasonable steps to ask persons occupying their land to remove themselves and their possessions before occupation of the land can be considered a criminal offence?

A3. **Strongly agree** / Agree / Neither agree or disagree / Disagree / Strongly disagree

Rationale

Birmingham City Council always engages with persons occupying their land in an unauthorised manner, advising them that they are occupying without permission or consent and that they should leave the land in a reasonable time period. This is usually done following the discharge of the duty to undertake a welfare assessment to ensure that the welfare needs of the persons in unauthorised encampment are considered in the wider process. Continuing to engage in this fashion is sensible, humanitarian and would likely not impinge on a person's human rights. To avoid unnecessary costs, it may be useful to not require such engagement from private landowners who do not have a duty to undertake welfare assessments.

Q4 To what extent do you agree or disagree that a criminal offence can only be committed when the following conditions have been met?

Q4a. a) the encampment prevents people entitled to use the land from making use of it;

A4a. **Strongly agree** / Agree / Neither agree or disagree / Disagree / Strongly disagree

Q4b. b) the encampment is causing or is likely to cause damage to the land or amenities;

A4b. **Strongly agree** / Agree / Neither agree or disagree / Disagree / Strongly disagree

Q4c. c) those on the encampment have demanded money from the landowner to vacate the land;

A4c. **Strongly agree** / Agree / Neither agree or disagree / Disagree / Strongly disagree

Q4d. d) those on the encampment are involved or are likely to be involved in anti-social behaviour.

A4d. **Strongly agree** / Agree / Neither agree or disagree / Disagree / Strongly disagree

Rationale

We have indicated Strongly Agree to all of Qu. 4a to 4d, but we would not want this to be an exhaustive list nor would we seek any one of these to be a sole criterion. We would prefer this to be an indicative list and if any one or more of these criteria were met, then it should automatically make the trespass a criminal offence.

This focus of this consultation is around tackling unauthorised encampments which typically relate to the unauthorised access of land by members of the travelling community with their vehicles for the purposes of residing on the land.

The typical impact of an unauthorised encampment to the landowner is the prevention of the lawful use of the land and damage to the land during the occupation e.g. surface damage, fly-tipping, forced entry and the use of the land as a toilet. These arise as a result of the trespass. If a criminal offence is to be considered, then this should be triggered when any of these criteria are met.

Q5. What other conditions not covered in the above should we consider?

A5. Although it could be considered under damage to land the following should be added more overtly: Any criminal damage to locks, barriers or other property on the site. Wilfully preventing other organised events, for example parking on community football pitches and stopping an organised weekend of football.

Q6. To what extent do you agree or disagree that police should be given the power to direct trespassers to suitable authorised sites in a neighbouring local authority area?

A6. **Strongly agree** / Agree / Neither agree or disagree / Disagree / Strongly disagree

Rationale

This would improve the strategic approach, economic and operational response around dealing with unauthorised encampments at a regional level. This would benefit police forces who operate across local council boundaries and would also tie in with combined authority boundaries. There should be a requirement that the Sec 62A power can only be used if the borough in which the unauthorised encampment is currently residing has such a transit site. This should not be available to boroughs who do not meet the needs of the travelling community. In addition the Sec 62A needs to make it a criminal offence to settle on any land within any borough covered by the Sec 62A direction order.

Q7. Should this be subject to conditions around agreements being in place between local authorities?

A7. Yes / **No**

Rationale

There needs to be a consistency in England and Wales, and this should not be left to local agreements. However, the power to direct to another local authority area should only be available to those authorities with transit sites. It should also be within a reasonable distance such as a contiguous authority or 20 miles radius whichever is the smaller. Birmingham would not want to be using its transit site provision to underwrite an authority without such a facility.

Q8: Should there be a maximum distance that a trespasser can be directed across?

A8. **Yes**/No

Rationale

If yes, what distance should that be? It is unlikely that the needs of the travelling community can be met by directing them significant distances. It seems sensible to apply a caveat that the direction should be no further than an adjacent local authority or 20 miles

whichever is the smaller. The test for reasonability is around access to services such as hospitals. We would not want to be directing a group to a distance which impacted on medical care. In large rural areas the mileage limitation may have an impact not felt with by metropolitan councils.

Q9: Should there be any other conditions that should be considered when directing a trespasser across neighbouring authorities. If so, what should these be?

A9. **Yes/No**

If yes, what should these be? The direction Order should protect all land inside the borough where the notice was served and the borough(s) to which the unauthorised encampment was directed to.

Q10. To what extent do you agree or disagree that the period of time in which trespassers directed from land would be unable to return should be increased from 3 months to 12 months?

A10. Strongly agree / **Agree** / Neither agree or disagree / Disagree / Strongly disagree

Rationale

Having a single direction in a twelve month period reduces the operational involvement of the police and local authorities, slightly reducing operational pressures.

There is however a concern that the operational use of transit sites needs to be updated in Government Guidance¹. At present the direction to a transit site precludes those so served from entering any land within the local authority for a period of three months from the date of the direction. This brings into question the operational use of a transit site and what should be considered a reasonable period of time for a person upon the site to be permitted to be in residence on a transit site. The rationale for a transit site is to support those living a transitory lifestyle and as such a view is that occupancy on the transit site be limited to one month within each period of direction served by the police, in effect permitting a total of four months occupancy in any twelve month period. This is to maintain the operational viability of the transit site and to prevent it becoming a permanent residential site for any group or person(s). there is nothing stated in guidance which advises on this position and as such it is subject to challenge by private solicitors on behalf of the travelling community. Having clarity on this would promote transparency and consistency and reduce needless legal debate. This will be increasingly so if the decision is to shift to a twelve month period of time in which trespassers directed from land would be unable to return.

¹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/418139/15032_6_Dealing_with_illegal_and_unauthorised_encampments_-_final.pdf

Q11. To what extent do you agree or disagree that the number of vehicles needing to be involved in an unauthorised encampment before police powers can be exercised should be lowered from six to two vehicles?

A11. Strongly agree / Agree / **Neither agree or disagree** / Disagree / Strongly disagree

Rationale

In our experience this power has never been exercised solely based on the numbers of caravans present rather it has been based on lawfulness, proportionality and necessity of such an action. The criteria for triggering a direction under s61 is a discretionary choice for the police and is often subject to one of a number of criteria being met, most relating to there being adverse behaviour on the part of the occupants e.g. "that any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his".

Q12. To what extent do you agree or disagree that the police should be granted the power to remove trespassers from land that forms part of the highway?

A12 **Strongly agree** / Agree / Neither agree or disagree / Disagree / Strongly disagree

Rationale

There have been instances where groups have encamped on the highway in industrial parks and this has had operational impacts on local businesses and concerns for the health and safety of the occupiers e.g. when encamped on turning circles for HGV drivers who have pets and children running around their manoeuvring vehicles. The highway back of pavement to back of opposite pavement is totally unsuitable for unauthorised encampments.

Q13: To what extent do you agree or disagree that the police should be granted the power to seize property, including vehicles, from trespassers who are on land with the purpose of residing on it?

A13 Strongly agree / Agree / **Neither agree or disagree** / Disagree / Strongly disagree

Rationale

The power to seize vehicles already exists under s62C. extending this to include property or to be a response following a s61 direction is possible, but a matter for the police to comment. The obvious difficulty is the potential to remove a persons home from a family and this is likely to be disproportionate.

Q14: Should the police be able to seize the property of:

- i) Anyone whom they suspect to be trespassing on land with the purpose of residing on it;
- ii) Anyone they arrest for trespassing on land with the purpose of residing on it; or
- iii) Anyone convicted of trespassing on land with the purpose of residing on it?

A14. Only if it is proportionate to do so. If this power is enacted then there should be clear information on how the property can be recovered or disposed of.

Q15. To what extent do you agree or disagree that the proposed amendments to sections 61 and 62A of the Criminal Justice and Public Order Act 1994 contained in this consultation are sufficient measures to tackle the public disorder issues which are associated with unauthorised encampments without the requirement for introducing specific powers that criminalise unauthorised encampments?

Strongly agree / **Agree** / Neither agree or disagree / Disagree / Strongly disagree

Rationale

The powers under s61 and s62A are discretionary, however if utilised they are a strong deterrent to the establishment of unauthorised encampments. The key aspect however is the presence of a transit site as that opens up s62A. Experience has shown that the absence of a transit site leads to more applications for High Court injunctions and reliance on s61, neither of which are within the control of the local authority. The presence of a transit site however, with support from the local police force is the most fair way to manage the issue of unauthorised encampments.

Q16. Do you expect that the proposed amendments to sections 61 and 62A of the Criminal Justice and Public Order Act 1994 contained in this consultation 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?

A16. Highly positive impact / **Positive impact** / Neither positive nor negative impact / Negative impact / Highly negative impact

Rationale

The most difficult task when dealing with unauthorised encampments is to make a fair and meaningful welfare assessment. Sometimes information is given to try and obtain an extended toleration of the encampment and it is difficult for officers to make an informed decision. The provision of transit sites and or tolerated stopping places significantly aids in a consistent response to welfare needs at a single location. Those with a real need often

have significant supporting information to evidence their needs. However, it is difficult to challenge those who do not have such evidence.

Q17. Do you expect that criminalising unauthorised encampments 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?

A17. Highly positive impact / Positive impact / **Neither positive nor negative impact** / Negative impact / Highly negative impact

Rationale

In our experience those with significant health problems have worked closely with our officers to meet the identified needs.

Q18. Do you have any other comments to make on the issue of unauthorised encampments not specifically addressed by any of the questions above?

A18. None identified

Motion Agreed by Council

- i. Write to the government expressing support for the proposed new powers (relates to extension of Sec 62 to adjacent authority areas) and for making deliberate trespass a criminal offence, but raise concerns about the impact on cash-strapped local authorities of allowing neighbouring authorities to avoid their responsibilities towards the gypsy and traveller community. This letter should make the case for both of these to be implemented as soon as possible and also for additional funding to be provided to police services and local authorities to allow them to carry out this work effectively.
- ii. Continue to work to revise the existing protocol agreed with the West Midlands Police. The council has a legal requirement to meet its equality duty and must consider the welfare of trespassers and is required in law to decide whether it can tolerate the encampment.
- iii. Continue to work on building the detailed evidence base required to gain a city-wide injunction against unauthorised encampments to enable the speedy removal of such encampments and prevent the practice of moving from site to site within the city boundaries.
- iv. Request the relevant Director and officers to see what more can be done to recover costs through the courts from trespassers for the associated legal fees, repairs to property and cleaning costs and to report back to Housing and Neighbourhoods Overview and Scrutiny Committee.
- v. Work with local councillors, friends of parks and other community groups to identify areas vulnerable to trespass and prioritise those for appropriate preventative and deterrent measures as and when funding permits. A report to be provided back to Housing and Neighbourhoods Overview and Scrutiny Committee.
- vi. Promote clearer reporting mechanisms for residents so that swift action can be taken at the first sign of unauthorised encampments being set up and that the relevant officers report back on steps taken to Housing and Neighbourhoods Overview and Scrutiny Committee.
- vii. Considers providing sufficient legal campsites to enable the Council to apply to the Courts for a City-wide injunction to prohibit unauthorised campsites and incursions as a matter of urgency.