

BIRMINGHAM CITY COUNCIL

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

14 FEBRUARY 2018
ALL WARDS

UPDATE REPORT ON UNAUTHORISED ENCAMPMENTS

1. Summary

- 1.1 This report provides Committee with an update on work being undertaken to improve the response to unauthorised encampments in the city since the last report on the 15 November 2017.

2. Recommendations

- 2.1 That the report is noted and outstanding minute number 935(ii) be discharged.
- 2.2 That Committee ask for a further report to be brought in 3 months to update on the various work items contained within this report.

Contact Officer: Mark Croxford, Head of Environmental Health
Telephone: 0121 303 6350
E-mail: mark.croxford@birmingham.gov.uk

3. Background

- 3.1 This report is an update on activities since the last report to your Committee on 15 November 2017.
- 3.2 An unauthorised encampment is one which is established on land without the express permission of the landowner. The groups responsible generally comprise elements of Gypsy, Romany, Traveller or other ethnic groupings and are collectively known colloquially as “travellers” or more correctly GRT.

4. Injunctive Action

- 4.1 It has been necessary to apply for an Injunction against an individual from the GRT community. Following numerous threats to officers, bailiffs and antisocial behaviour to the wider community Birmingham County Court ordered that JOHN CASSIDY (Whether by himself or by instructing, encouraging or allowing any other person) shall not:
1. Use or threaten to use violence, harass or intimidate any person.
 2. Cause harassment, alarm and distress or nuisance and annoyance to any person when communicating with any employee or sub-contractor of Birmingham City Council or any other official agency including West Midlands Police officers to include by not limited to verbal or racial abuse, shouting or swearing.
 3. Enter or remain on any land within the area outlined in black on the Map attached, denoting the city boundary of the City of Birmingham for the purpose of establishing joining or being part of an encampment on that land.

The court further ordered that: A power of arrest made under section 4, Anti-social Behaviour Crime and Policing Act 2014 applies to all paragraphs of the above order.

5. Executive Management Team (EMT) Report

- 5.1 On the 23rd of January 2018, Cllr Trickett, the Cabinet Member for Clean Streets, Recycling and Environment, took a report to EMT, focusing on transit site provision. A copy of the report is attached at Appendix 1. The report was received and agreement was given to:
- i. Prioritise returning Tameside Drive back into a fully managed site, with the existing occupants having a tenancy agreement and the remaining pitches being made available for transit provision.
 - ii. To bring the 2 other sites in the Birmingham Development Plan into operation.
- 5.2 It is estimated that this could provide the city with 10 to 15 pitches on Tameside Drive, 10 to 15 pitches on Hubert Street car park and 4 pitches on Aston Brook Street North a total of 24 to 34 subject to specification.

- 5.3 In addition the Cabinet Member is to explore the possibility of identifying additional negotiated stopping sites. These are sites which are less formal than a transit site, where encampments could be tolerated for a short period of time. More information will become available once the officer group starts to investigate this option. It is based on the experience of Leeds in West Yorkshire. This is acknowledged by government as being good practice and more information is available at <http://leedsgate.co.uk/negotiated-stopping>.

6. Consultation

- 6.1 The report is for information and, therefore, no consultation has been undertaken.
- 6.2 Information continues to be made available to MPs and elected members to offer support in reducing the impact on communities that unauthorised encampments have and to reduce the burden on land owning departments.

7. Implications for Resources

- 7.1 Regulation and Enforcement is responsible for the assessments leading up to legal action, the service of notices and arrangement of resources for an eviction to occur. The default costs (bailiff actions), the repair of land its cleansing, is borne by the land owning departments. The Environmental Health resources employed in carrying out the work detailed in this report are contained within the approved budget available to your Committee.

8. Implications for Policy Priorities

- 8.1 This work supports the Regulation and Enforcement Division's mission statement to provide 'locally accountable and responsive fair regulation for all - achieving a safe, healthy, clean, green and fair trading city for residents, business and visitors'.

9. Public Sector Equality Duty

- 9.1 The management of unauthorised encampments is a process that affects groups and individuals who are (mostly) from specific and defined ethnic minorities e.g. Romany Gypsies, Irish Travelers.

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: Nil

Report to:	Executive Management Team
Report of:	Joint Report of Corporate Director, Place and Corporate Director, Economy
Date of Meeting:	22 January 2018

Subject:	Provision of accommodation for the Gypsy, Romany and Travelling community
Relevant Cabinet Member(s):	Cllr. Lisa Trickett, Cabinet Member for Sustainability Cllr. Peter Griffiths, Cabinet Member for Housing Cllr Barbara Dring, Chair of Licensing and Public Protection Committee
Corporate Priority Supported:	Housing – A great city to live in

1	Purpose of report
1.1.	To inform EMT of the powers available to a local authority to manage unauthorised encampments.
1.2.	To inform EMT of trends in unauthorised encamping within the Birmingham area.
1.3.	To inform EMT of the current position with regards to accommodation within Birmingham, having regards to the needs of the travelling community and the provision of available sites.
1.4.	To inform EMT of available options to better manage unauthorised encampments and as appropriate to provide for the needs of the travelling community.

2	Decision(s) recommended
2.1.	EMT agree that the Corporate Director Place identifies capital funding and submits a match funding bid to the Homes and Communities Agency in January 2018 to progress the two sites in the Birmingham Development Plan.
2.2.	On completion of the updated Gypsy and Traveller Accommodation Assessment a report is brought by Corporate Director Economy to EMT to advise on the recommendations of the assessment.
2.3.	That the Corporate Director Place report back in 2 months to EMT on the progress of bringing Tameside Drive back into operational use.

3	Background
	<p><u>What is an unauthorised encampment?</u></p> <p>3.1. An unauthorised encampment (UE) is a collection of vehicles incorporating caravans established on land for the purposes of residing on that land for a period of time without the landowner's consent. It is sometimes also referred to erroneously as an "illegal encampment" – see 3.6 below.</p> <p>3.2. UEs are typically established by members of the Gypsy, Romany and Traveller communities (GRT).</p> <p><u>Report Context</u></p> <p>3.3. On the 2nd October 2017 the Cabinet Member for Sustainability held a summit with some local MPs, Chair of Licensing and Public Protection Committee, Police and Crime Commissioners Office and officers. The details of attendees and agreed actions are attached in appendix 5</p> <p>3.4. The purpose of the summit was to consider the impact of unauthorised encampments in Birmingham. It was acknowledged that there are some encampments which cause little to no damage however there are some which have caused significant damage and anti-social behaviour where ever they camp. It was generally agreed that the lack of suitable and sufficient alternative accommodation for the travelling community leaves our open spaces open to unauthorised encampments.</p> <p>3.5. Where suitable alternative facilities are available then additional powers are available allowing those camping on land to be directed to the alternative provision. Additionally it would support the application of a more generalised injunction to protect the open spaces. This report is to inform the debate on the provision of transit sites in Birmingham.</p> <p><u>Powers related to unauthorised encampments</u></p> <p>3.6. The establishment of a UE is not a criminal act; there is no immediate sanction against a UE. It is a civil matter derived from the tort of trespass.</p> <p>3.7. There are a range of powers available to landowners and specifically Local Authorities (L/As) to regain possession of their land. There are also a range of powers available to the Police to deal with UEs. Guidance is given in Dealing with Illegal and Unauthorised Encampments, issued in March 2015 by the Department for Communities and Local Government. A copy is attached at Appendix 1.</p> <p><u>Summary of available powers</u></p> <p>3.8. The main provisions to recover sites can be categorised in 3 ways.</p> <ul style="list-style-type: none"> • Court Order on application by the local authority. • Notice issued by Police to leave site • Common Law powers <p>3.9. Court Orders are slow as they require notice to be given to those likely to be subject to the order of the hearing dates (including 2 clear days' notice) and require evidence and case files to be prepared and submitted in advance of the hearings. It is reported by the other West Midlands Councils that use this process it can take 7 to 14 days to be completed and costs are significant for each application. If a Court order for recovery of land is granted, this enables the L/As to employ bailiffs to recover the land and it is a criminal / arrest-able offence to obstruct a bailiff in the exercise of the court order.</p> <p>3.10. Sections 61 & 62 of Criminal Justice and Public Order Act 1994 gives the police discretionary powers to direct trespassers to leave land and remove any property or vehicles they have with them. The Section</p>

62A-E power enables the Police to direct those subject to the notice to a suitable site (most likely a transit site but it could be another more acceptable open space).

- 3.11. Under common law any land owner is entitled to recover their land from trespassers. Once the trespassers have been advised the land owner wishes to recover their land, a bailiff can be employed to use reasonable force to remove those trespassing. There is no court order which allows a speedier resolution however it is not an arrestable offence to obstruct a bailiff in these circumstances.
- 3.12. Birmingham City Council has used this common law power since the 1990s as a cost effective and expedient method of recovering vacant possession. It is not unlawful however successive guidance from Government has recommended L/As not use this power and instead use the Court Order powers. Guidance from Barristers is that it is not unlawful to use this power but it needs to have a strong policy behind it. That policy is in the Joint Protocol for Managing Unauthorised Encampments.

Joint Protocol for Managing Unauthorised Encampments

- 3.13. The Council, in partnership with West Midlands Police (WMP) employ a joint protocol (Joint Protocol) to direct how unauthorised encampments will be managed within The Council's area. This joint protocol, or memorandum of understanding, has been in operation since 2000, is regularly reviewed and is currently at edition 8 dated October 2015.
- 3.14. The Joint Protocol informs that the Council will use common law powers and explains how and under what circumstances they will be used and how The Council will work with WMP, including under what circumstances WMP will consider using their powers under CJPOA 94. The Joint Protocol allows the Council and WMP to manage unauthorised encampments in a transparent and consistent format.
- 3.15. The processes around the re-possession of land are maintained, managed and undertaken by the Environmental Health service within the Regulation & Enforcement Division. There is no statutory duty on The Council to manage unauthorised encampments, nor to regain possession of land. This is a non-statutory function presently undertaken by Environmental Health.

Legal position related to unauthorised encampments

- 3.16. Previous cases confirm that the Gypsy, Romany and Travellers are protected under Article 8 of The Human Rights Act, specifically Right to way of life. ("Right to respect for private and family life")
- 3.17. The Courts have confirmed that Romany Gypsies and Irish Travellers are ethnic groups under the Equalities Act and are protected against discrimination.
- 3.18. Public Authorities are legally required to consider welfare issues for anyone on an unauthorised encampment prior to deciding any course of action to recover vacant possession. This is due to all public authorities to a greater or lesser amount having a responsibility to the health, welfare and education of everyone in their district. As a result a welfare check is carried out on each new encampment (however, see 3.20 below).
- 3.19. In 2006 a case was taken against Crawley Borough Council for automatically deciding to evict unauthorised encampments from their land. In the judgement of R. (on the application of Casey) v Crawley BC [2006] every council should consider 3 pathways before deciding on any course of action.

"Effectively, if an unauthorised encampment arises and there are no alternative authorised pitches in the area, local authorities have three clear paths relating to how they can resolve the encampment. Each option should be carefully considered:

- *Path 1 - To seek and obtain possession of the occupied site (eviction proceedings).*
- *Path 2 - To 'tolerate' the Gypsy or Traveller occupiers, if only for a short time, until an alternative site can be found or the occupiers move on voluntarily.*
- *Path 3 - To find an alternative site, if only on a temporary basis, and offer the Gypsy or Traveller occupiers the chance to move onto it."*

3.20. In the opinion of your officers, the lack of provision of suitable sites/pitches leads to the tension between the settled and travelling community and the repeated eviction and reoccupation of parks and open land in the city. It is also very difficult for those undertaking the evictions to undertake full welfare checks. This does not serve the GRT community well, nor BCC in deciding to recover land if it is unaware of all relevant circumstances that exist on site as required by the Crawley BC decision. Best practice would be for a multidisciplinary team consisting of health, education and social work to undertake such visits. Currently Environmental Health and the Police make such enquiries and signpost any issues as best they can.

3.21. It is also the Police and Crime Commissioners position and that of his officers, that all of the 7 Metropolitan Authorities in the WM Policing area should have a transit site. The PCC has also stated that if the authority has such provision then it is more likely the Police would intervene and direct U/Es to these sites – see Appendix 2.

Current transit site provision in Birmingham

3.22. The City Council does not currently have an operational Transit Site. It should be noted that there is no legal requirement to provide one. The only duty from this matter flows from the assessment in the Birmingham Development Plan (BDP). An officers group has been established to bring the allocated BDP sites forward and also to further identify other sites based on identified additional need. This group includes representatives from Planning, Legal Services, Housing and Environmental Health. Appendix 3 details these sites.

3.23. There is one historical transit site at Tameside Drive which although previously designated for transit purposes it is permanently occupied by a single family. Housing and Legal Services are working to bring part of the site into use for transit purposes, accepting that the current occupiers now have permanent rights of occupation of a proportion of the site. Previous legal challenge by BCC to evict that family was unsuccessful which has provided the current occupiers a firm legal basis to reside there permanently. There are currently 17 plots/pitches on Tameside Drive. Current occupiers are up to date with rent on a double plot but do occupy a larger section of the site. Housing and Legal Services are negotiating with the occupiers to regularise their occupation.

3.24. The Tameside Drive site is not in an ideal location when considering Homes and Community Agency (HCA) Guidance on this (see indent below) and also further compounded with the location of the HS2 line development works adjacent. It could however assist in Environmental Health and WM Police being able to justify the use of relevant powers to expedite evictions if it became an operational transit site.

"It is essential to ensure that the location of a site will provide a safe environment for the residents. Sites should not be situated near refuse sites, industrial processes or other hazardous places, as this will obviously have a detrimental effect on the general health and well-being of the residents and pose particular safety risks for young children." HCA

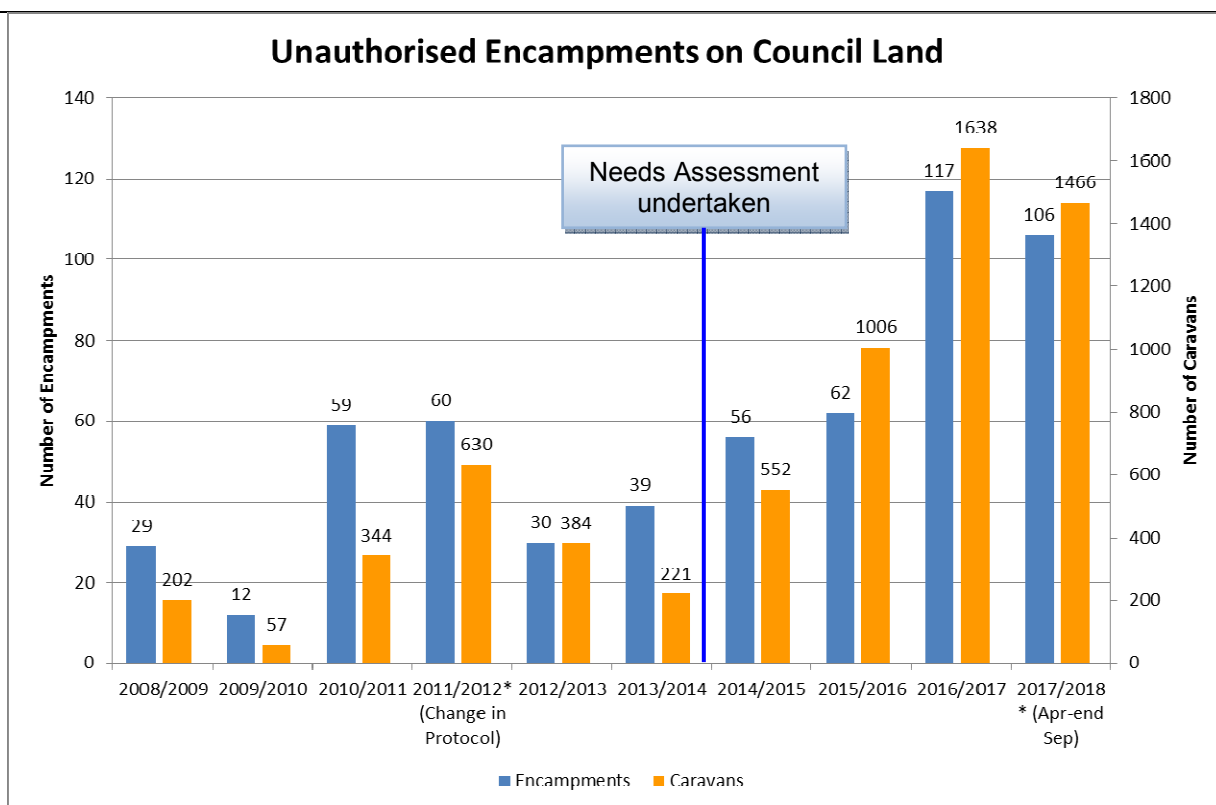
3.25. Both of the sites allocated in the BDP are in the process of being progressed for development through Housing and BPS. The design and costs are being determined and planning applications are being prepared for change of use.

Planning policy for Traveller sites

- 3.26. Under national 'Planning Policy for Traveller Sites' (PPTS) (2015), local planning authorities, when preparing local plans, are required to:
- Include a criteria based policy to provide a basis for decision making.
 - Establish accommodation needs in terms of numbers of pitches required.
 - Identify a supply of specific deliverable sites sufficient to provide five years' worth of sites against the identified need.
 - Identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15.
- 3.27. The Birmingham Development Plan (BDP) was adopted in January 2017. It includes a criteria based policy which sets out the criteria which will be used to assess the suitability of potential sites and to determine planning applications.
- 3.28. The Gypsy and Traveller Accommodation Assessment (undertaken as part of the BDP in 2014) identified a need for 8 permanent pitches and 10-15 transit pitches in Birmingham by 2031. It also recommended that 5 stopping places be provided.
- 3.29. Two sites were identified in the BDP at Hubert Street/Aston Brook Street North and Rupert Street/Proctor Street, both in the Nechells Ward. Both sites are owned by the City Council and at the time of the last needs assessment they were deemed sufficient to provide at least a five year supply of permanent pitches and meet all identified need for transit pitches.

Update of Needs Assessment

- 3.30. Recent trends in unauthorised encampments has required that consideration be given to update the Gypsy and Traveller Accommodation Assessment. The following graph identifies the numbers of caravans and sites used each fiscal year. It is noteworthy that the last needs assessment was undertaken in 2014 which coincided with a drop in GRT visitors to the city. The trend prior to 2014 was a downward one. However in 2014 /15 this trend reversed and numbers have increased markedly.



- 3.31. For this reason Economy Directorate will undertake an updated assessment to provide a robust evidence base for the size and type of additional sites that will be required including the requirement for settled and transit site(s). It is anticipated that the update is completed early in 2018.
- 3.32. Environmental Health are of the view that a site / sites to accommodate up to 50 pitches may be required based on recent trends or alternatively a number of smaller sites should be developed with a capacity of around 20 pitches – although this will be determined by the updated needs assessment outlined above. National guidance and learning from other providers is that transit sites should be smaller, accommodating approximately 15 pitches, so this could potentially increase the number of sites required. There is also evidence from the GRT community that smaller sites tend to integrate with neighbourhoods much better than large sites.
- 3.33. The BDP states that the broad location for additional sites should be in the South Western part of the city. The following criteria set out in Policy TP34 of the BDP policy will be used to assess the suitability of potential sites.
- The site is of sufficient size to accommodate pitches/plots of an appropriate size, and, in the case of Travelling Show-people, to accommodate appropriate levels of storage space.
 - There is safe and convenient pedestrian and vehicular access to and from the public highway and adequate space for vehicle parking and manoeuvring within the site.
 - The site is accessible to shops, schools, health facilities and employment opportunities and is capable of being served by services such as mains water, sewerage and power and waste disposal.
 - There is no conflict with other relevant policies such as those relating to the protection of the Green Belt, other greenfield land and industrial land, and those concerned with development within areas at risk of flooding and on contaminated land.
- 3.34. There are other issues to consider in regard to the bringing forward of the proposed new sites and any additional (larger) sites identified:

- The management function to operate sites as a transit site
- Funding and procurement of works required to bring into proper use.

3.35. Recently Telford Council and Sandwell Metropolitan Borough Council have reported significant reductions in unauthorised encampments following the provision of a transit site. Sandwell in particular are being held up as an exemplar in this field by the WM PCC office. Appendix 4 details the site they have provided and headline statistics.

Management function

3.36. The City Council (Housing Management function) does not currently have the capacity, specialist skills and knowledge to effectively manage such sites. Some authorities e.g. Solihull and Sandwell have outsourced this function and BCC Procurement Services have been asked to begin scoping how this can best be achieved in Birmingham. They have also been tasked with developing a potential procurement process for any current and future management requirements. There is however a budgetary issue with regards to how to progress this work, as identified above.

Funding a transit site

3.37. There is currently no capital budget provision to deliver these sites. An initial feasibility carried out by Acivico estimates the capital cost to bring the 2 sites in the BDP forward would be in the region of £250k. In addition it is estimated that costs associated with Tameside Drive would be approximately £100K. In order to progress these sites, capital funding needs to be identified. The work would need to be started without further delays if the City is to meet the spring 2018 deadline which coincides with the start of the travelling season.

3.38. The Homes and Communities Agency (HCA) are welcoming bids within the Affordable Homes programme for match funding new developments for GRT sites but the City Council will be required to meet such costs as procurement, management, delivery fees and any development cost match funding and there is currently no defined budget allowance for such costs.

3.39. There are also Procurement costs associated with identifying a suitable managing agent to operate the transit sites once they have been brought into use. Procurement have been engaged to undertake some market testing for the management function of any new sites and once the results are available they will be fed back to EMT.

3.40. Transit sites are regularised with short term tenancies and to this end basic sanitation and waste functions are provided. Sandwell MBC charges £80 per week with a deposit of £250. Based on this model it is foreseeable that the revenue costs should be covered for any site that is brought forward in Birmingham.

Next Steps

3.41. Submit bid to HCA for funding to develop the two BDP allocated sites. In doing so, match funding needs to be identified.

3.42. On receipt of confirmation of a capital budget submit planning applications for BDP allocated sites

3.43. Update the needs assessment.

3.44. In response to the up dated needs assessment, the council needs to decide if strategically the city wishes to have additional transit sites based on the result of the updated needs assessment.

3.45. If this is the case how many; of what size; and where.

3.46. That funding for their development be made available.

3.47. Identify additional sites based on updated needs assessment and the strategic decision made by EMT.

Appendices

Appendix 1	DCLG, <i>Dealing with illegal and unauthorised encampments, A summary of available powers</i> , March 2015, DCLG, HO, MoJ
Appendix 2	Statement from Police and Crime Commissioner
Appendix 3	Allocated sites for GRT provision within the BDP
Appendix 4	Sandwell MBC Transit Site

Contact Officer(s)

Mark Croxford
Head of Environmental Health
0121 303 6350
mark.croxford@birmingham.gov.uk

Note for LPPC

T

Appendix 1 can be viewed at

<https://www.gov.uk/government/publications/dealing-with-illegal-and-unauthorised-encampments>

Appendix 2 has been shared with LPPC before and can be supplied electronically if requested.