

BIRMINGHAM CITY COUNCIL

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

14 DECEMBER 2016
ALL WARDS

UPDATE REPORT ON UNAUTHORISED ENCAMPMENTS

1. Summary

- 1.1 This report provides an update on the joint protocol between Birmingham City Council and West Midlands Police for the management of unauthorised encampments and informs on the changes to the protocol.
- 1.2 This report provides an update on the trends in illegal site occupation since the last update in October 2012.
- 1.3 This report provides an update on work being undertaken to source an alternate site to use for transit purposes and informs on the updated position.
- 1.4 This report also advises on the enforcement options being considered including the seeking of an injunction to protect certain 'test' sites and the exercise to assess the costs in outsourcing the enforcement activities to professional bailiffs.

2. Recommendations

- 2.1 That outstanding minute number 640(ii) be discharged.
- 2.2 That Committee agree to a further report be brought in 6 months to update on the various work items contained within this report.

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3. Background

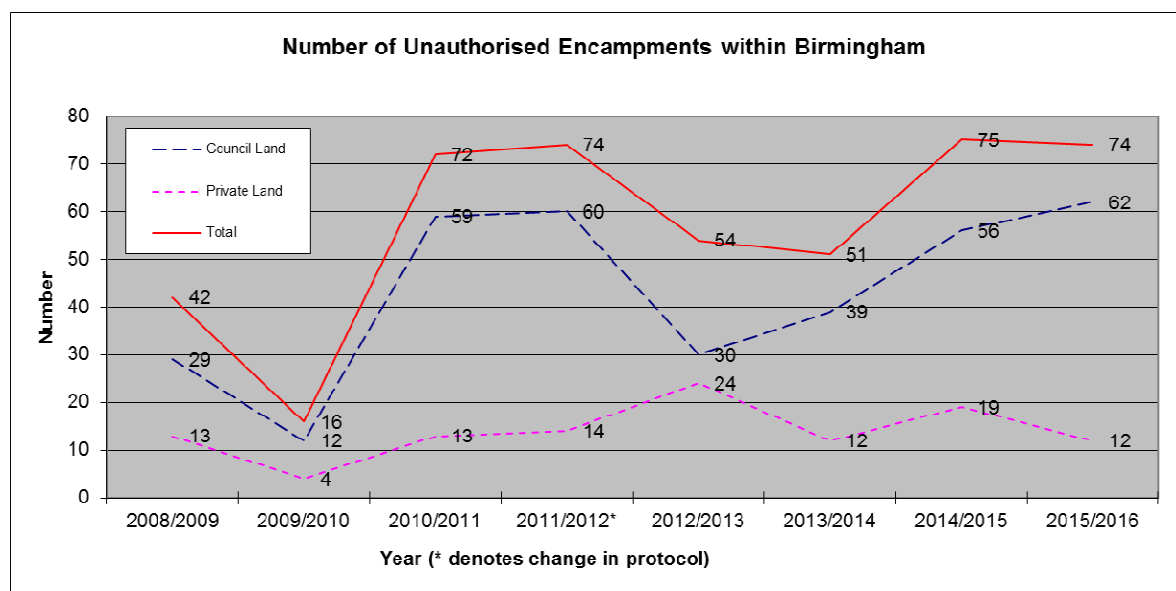
- 3.1 An unauthorised or illegal encampment is one which is established on land without the express permission of the landowner. The groups responsible comprise elements of Gypsy, Romany, Traveler or other ethnic groupings and are collectively known as travelers or GRT.
- 3.2 The primary impact arising from such an encampment is the occupation of public / open land, thereby precluding the settled community from using the land for the purposes for which it is lawfully intended. Additional impacts typically include forced entry onto the land via the damaging fences or gates; other damage being caused to the land, the most obvious being the damage to grassed areas from the passage of numerous vehicles; and in many cases the leaving of rubbish or flytipped materials arising from daily occupation or work activities.
- 3.3 The issue of illegal encampments is both emotive and highly politicised and often results in local residents, politicians and landowners seeking to influence the actions of the local authority and Police to remove the trespassers and return the land to lawful use in a short space of time.
- 3.4 Birmingham City Council (BCC) and West Midlands Police (WMP) first agreed a joint protocol in relation to the management of unauthorised encampments in 2000. The protocol sets out the procedures to be adopted by both agencies to provide for a fair, balanced and appropriate service. The Protocol is subject to regular review and in August 2011, edition 7 was issued.
- 3.5 The Protocol is typically reviewed every 5 to 6 years and in keeping with this timescale, a formal review was commenced in October 2015, and in November 2016 edition 8 was agreed with WMP.

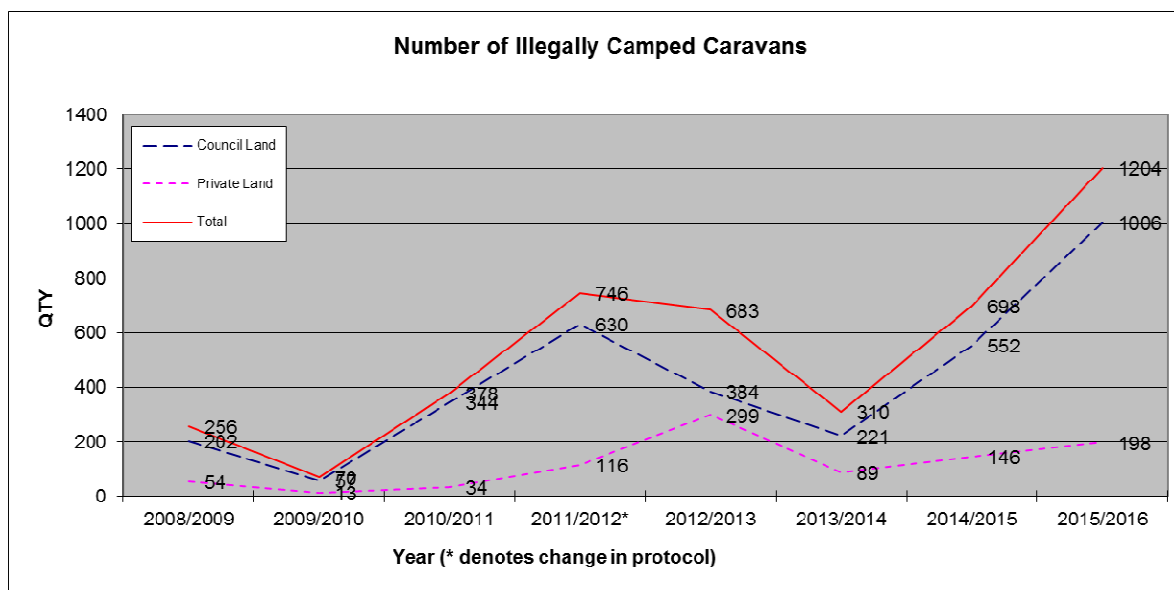
4 Update on the Revised Protocol

- 4.1 The primary change to edition 8 of the Protocol is to reduce the permitted residency time on non-through roads from 7 days to 2 days. This residency time is in line with that afforded for urban parks and other public open space.
- 4.2 This is in response to the repeated occupation of key sites in the City where the occupation has caused an impact on business access to premises and day-to-day operations. An example of a site which has suffered from repeated occupancy in this way is Lea Ford Road in Shard End.
- 4.3 A copy of the revised protocol is available to any Elected Member or member of the public upon request and will be uploaded onto the website in due course.

5 Management Information

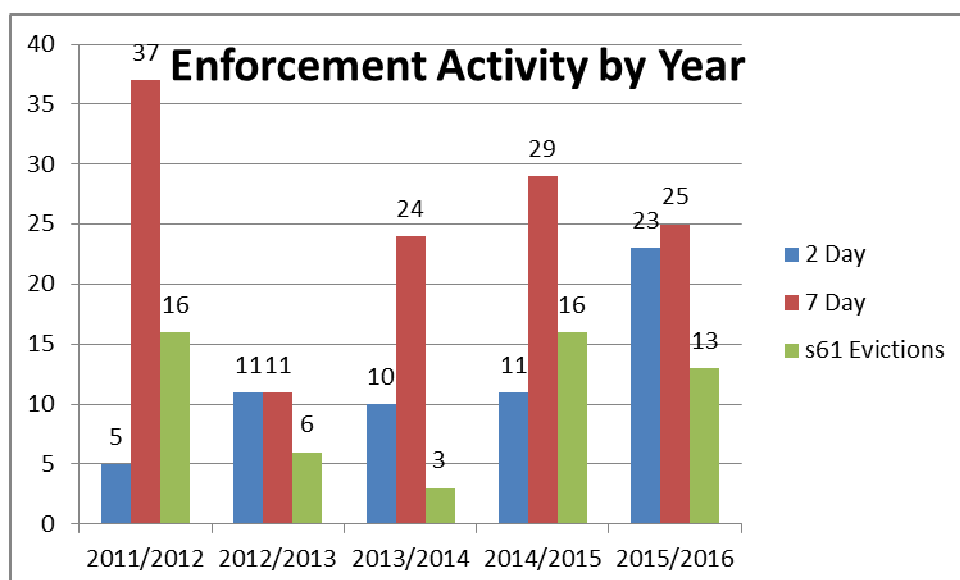
- 5.1 Environmental Health maintain two metrics to track the trends in occupation, these being the number of sites occupied each month and the number of caravans noted at each encampment. The method used is consistent and has been so for around 8 years of recording. This then allows us to identify and track trends.
- 5.2 The data presented below displays the number of encampments reported and the number of caravans counted within each month. Where a group move from one part of the city to another they will be counted again as a new encampment. The number of encampments can fluctuate if groups are moved on repeatedly and also depending on the site and the method of removal i.e. whether a group occupies a site for 7 days, or 2 days or is moved on after a day via WMP s61 action e.g. one group could occupy a site for 7 days whereas another could be moved on 2-3 times in that same period due to the sensitivity of the sites occupied.



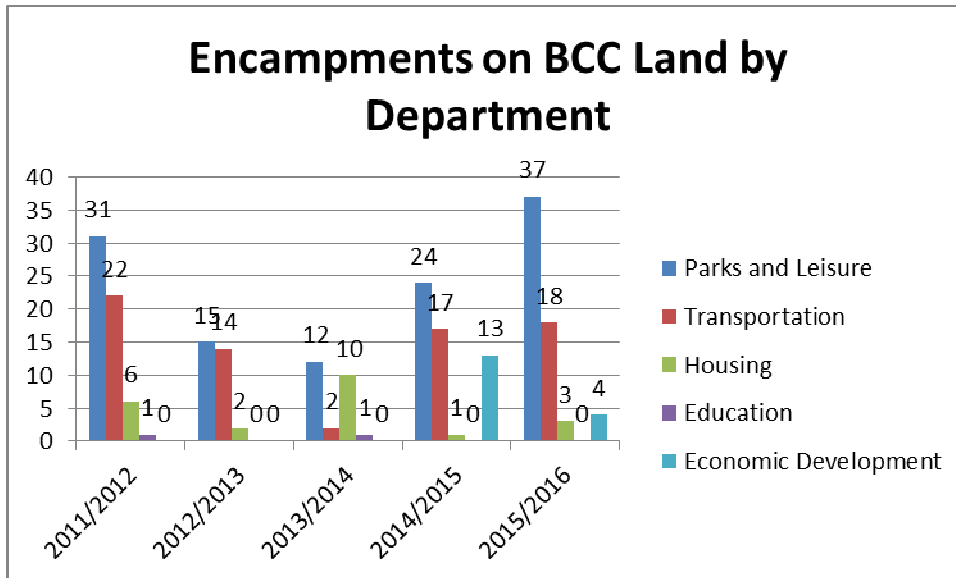


5.3 Whilst it can be difficult to understand why numbers fluctuate it is noticeable that in 2011 edition 7 of the Protocol became live which reduced the residency time from 7 days to 2 days on urban parks and public open space. This may account for the reduced incidences in 2012/2013 as the city may have been viewed as having a more robust enforcement strategy although numbers have increased in the last two years with the last year showing a prevalence for larger encampments.

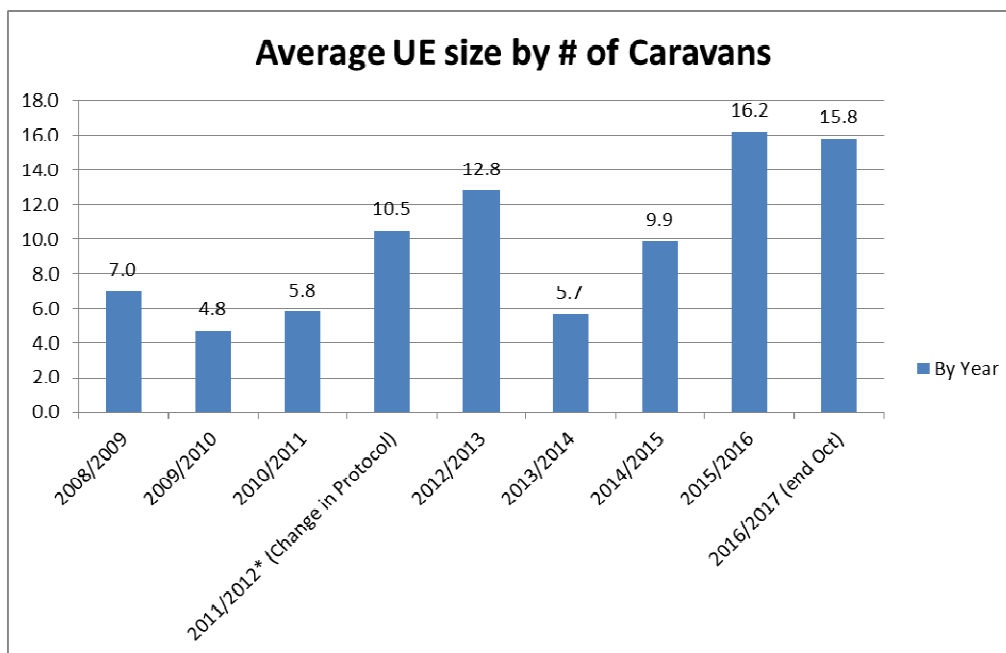
5.4 The following chart displays the amount of enforcement action taken over the last five years. This covers s61 notices issues by WMP and also 2 day and 7 day common law notices served by the Council Enforcement Officers.



5.5 Information is also held on the landholding Department affected by each encampment. It can be seen that parkland is the most common land affected, with Transportation land in the form of 'no-through' roads being the next preferred.



- 5.6 A final point of information that bears relevance for our enforcement activity this year is the growing average size of encampments as evidenced by the graph below. The last two years have seen an increase in larger encampments which poses greater problems as they are typically less reluctant to move on and gain some security from numbers. It also provides for greater intimidation to officers.



6 Other Impacts Arising from Unauthorised Encampments

- 6.1 Aside from the obvious issue arising from the illegal occupation, namely the interruption with the lawful use of the site, there are other obvious issues that arise:

- direct damage caused to land,
 - refuse and other materials left post departure, and
 - antagonism to / from and conflict arising with the settled community.
- 6.2 The latter point is hard to quantify from the Council's perspective, and is more a matter for WMP. The first item is more obvious and relevant to BCC, e.g. damage to locks / gates to permit access, damage to soft surfaces, etc. these costs are borne by the landowning Department and information on these retained by the Department.
- 6.3 The middle item is one which tends to evoke most outrage as it is generally perceived that the impact arising from the illegal occupation is extending beyond the stay of the group and there is a sense of injustice arising from the Council having to clear up refuse which other people would have to pay to dispose.
- 6.4 Consideration has been given on many occasions to taking enforcement action against groups where refuse has been deposited but the difficulty arises from needing to prove 'beyond all reasonable doubt' who actually was responsible for depositing any waste. It is not acceptable to consider this as a group responsibility under the relevant statutes.
- 6.5 An alternate option is the use of civil powers which are based 'on the balance of probabilities' but in this instance legal advice suggests once more that there needs to be a responsible person and a group cannot be considered in this fashion.
- 6.6 Notwithstanding the point above, Environmental Health are presently exploring the option of obtaining an injunction to protect land subject to excessive amounts of camping in the last year. The land in question is Selly Oak Park, Selly Oak Recreation Ground and Hazelwell Recreation Ground. This is a test of the ability of civil powers to support our objectives and the sites in question are relevant in terms of timing and demonstrable in terms of the impact. To date this is proving to be an extensive piece of work, although it is hoped this can be streamlined for future cases.
- 6.7 It is very important to stress that not every unauthorised encampment brings with it all or any of these problems and the actual impact and scale tends to vary by encampment and also based on the present interests of the group. This makes anticipating the impacts difficult and unpredictable.

7 Update on the Provision of a Transit site

- 7.1 In the last update report on Unauthorised Encampments, dated 17 October 2012 the position with regard to the current transit site at Tameside Drive was outlined. There has been no change to the legal position of this site in the last twelve months. To advise, the site is occupied by one family and does not operate as a transit site. There is, however, a piece of work underway to

revisit the overall use of the site to see if any of the unoccupied pitches can be returned to lawful use. This is at an early stage and is being led by Housing.

7.2 The consideration of an alternate transit site has been ongoing for a number of years and is presently being considered alongside the provision of a suitable number of permanent pitches. The lead service for determining need and identifying suitable sites is the Joint Economic Unit within Planning and Regeneration. The most up-to-date position provided is dated July 2016 and this is reproduced at Appendix I.

7.3 There has been some joint work with colleagues from neighbouring authorities in an attempt to identify a piece of land that could be used as a joint transit site. Given the average size of encampments is growing the focus has been on a large enough plot of land to house the needs determined by Birmingham, not many of which are available. One developing prospect is a site in Sandwell, just across the boundary from Birmingham and discussions are presently underway as to whether this would be suitable and indeed possible.

8 Update on the Enforcement Service

8.1 The present service is delivered through two Council officers who undertake the visits and the enforcement activity. They are supported by colleagues from Parks and Leisure who provide cover when the main officers are on leave.

8.2 One of the constructive criticisms of the service is that it does not provide a 7 day service. A further issue to consider is the increase in the size of the encampments and the corresponding health & safety ramifications in dealing with larger groups of GRT who are increasingly intimidating towards officers, often despite Police presence.

8.3 An option being explored is to procure the services of professional bailiffs to conduct the on-site interactions and lead on any enforcement. This has gone to procurement and the responses are in the process of being assessed. If this is a viable option then there may need to be a Council wide consideration around funding, dependent upon the costs.

9 Implications for Resources

9.1 The resources employed in carrying out the work detailed in this report are contained within the approved budget available to your Committee.

9.2 The assessment of unauthorised sites and any subsequent eviction action is presently undertaken by one full FTE officer within Environmental Health, who has support from a second officer (0.5 FTE). It is important to understand that this function is not the sole, or indeed primary, role of either officer rather it is an additional function taken on when the full time Traveler Enforcement Officer (as was) left the organization sometime around 8 years ago.

- 9.3 The budget available for this work is in the region of £20,000 and how this is used going forward will need to be considered as part of the exercise around outsourcing elements of the service to professional bailiffs.

10 Implications for Policy Priorities

- 10.1 The protocol contributes to fulfilling the Council's vision (Vision 2020) set out in the *Council Business Plan for 2016*, specifically to provide 'thriving local communities' and to work towards delivering 'a healthy, happy city'.
- 10.2 The work also 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'.

11 Public Sector Equality Duty

- 11.1 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 Travellers. It is, therefore, both necessary and appropriate that a strategic approach be taken to ensure that the rights of the individuals and of the groups concerned are not breached and that they are not adversely affected by the process on the grounds of their ethnicity.
- 11.2 It is also necessary for public bodies to be mindful of the wider settled community and their rights to access urban parks and public open space for the manner in which they are designed and maintained.
- 11.3 The needs and demands of both travelling groups and the settled community can often be in opposition and in rare occasions lead to conflict. It is important, therefore, that the issue of community cohesion be considered and built into the strategic process to ensure that the principle of fairness is applied equally, openly and consistently.
- 11.4 The Joint Protocol entitled *Managing Unauthorised Encampments* between Birmingham City Council and West Midlands Police has been in existence from the year 2000 and the latest version has undergone an equalities scrutiny process within both organisations to ensure equality, fairness and promote community cohesion. The updated version (edition 8) will be subject to the same, albeit updated, process.

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: NIL

Gypsy and Travellers Sites - Briefing Note (at July 2016)

Government Policy

- CLG published new guidance 'Planning Policy for Traveller Sites' (PPTS) in August 2015 revising the previous 2012 guidance. This sets out the Government's new approach to planning policy for Travellers. The main changes are:
 - Revisions to guidance strengthening protection of green belt
 - Protection is given to sensitive sites (e.g. SSSIs & local green space) in the event that a five year supply of land cannot be demonstrated
 - Can now take account of nomadic lifestyle (or absence of) when assessing need.There are no fundamental changes affecting the City Council.
- Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.
- Key requirements of the PPTS are that, when preparing a local plan, local authorities should:
 - 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.
- A local plan must be in conformity with the guidance to be found 'sound'.

Criteria Based Policy

- A criteria based policy was included in the submission version of the Birmingham Development Plan (BDP).

Needs Assessment

- A PPTS compliant needs assessment was undertaken in early 2014 and was published in May 14.
- It found that the city required 8 permanent pitches and 10-15 transit pitches.

Site Identification

- This included a "call for sites" inviting interested parties, including Travellers, to put forward suggestions for consideration. There was a very poor response and no realistic opportunities were identified. No potential sites were suggested by Travellers.
- The search, therefore, concentrated on City Council owned land. Around 60 potential sites were identified. 50 were dismissed as being too small whilst 10 were sufficiently promising to warrant more detailed investigation. 8 of these were subsequently dismissed for reasons such as Green Belt and other policy designations, HS2 safeguarding, flooding issues and pending sale.
- The review identified two suitable sites. These are located at:

- Hubert Street/Aston Brook Street East. This is a small extension of an existing private site (which generates some of the additional need).
- Rupert Street/Proctor Street on land currently used as a temporary car park.

Both sites are owned by the City Council. They are sufficient to provide at least a five year supply of permanent pitches and meet all identified need for transit pitches.

Process and Progress

The process for bringing these sites forward is to firstly allocate them in the Birmingham Development Plan and, once the plan is adopted, obtain planning permission. This has progressed as follows:

- The BDP was subject to public examination by an independent inspector with hearings held in October and November 2014.
- The inspector published proposed modifications in July 2015. One of those modifications is that the two sites should be allocated in the plan.
- Statutory public consultation on the inspector's proposed modifications was undertaken for eight weeks and closed on the 12th October.
- Only 2 of the 1,200 comments made were concerned with the proposed Travellers sites.
- These comments were from the National Federation of Gypsy Liaison Groups (generally supportive) and a consortium of business located close to the proposed Rupert St/Proctor Street site (objecting).
- The inspector considered the comments and issued his final report, finding the plan 'sound' in March 2016.

Going Forward

The intention was for the BDP to be considered at Cabinet on 28th June and for Council to adopt the plan on 12th July.

However, on 26th May the Minister of State for Housing and Planning, Brandon Lewis wrote to the leader of the Council directing the City Council not to take any steps with regard to adoption of the Plan following concerns expressed by Andrew Mitchell, MP for Sutton Coldfield in respect of the plan's proposals for 6,000 new homes on Green Belt land in Sutton Coldfield. Officials from the Department of Communities and Local Government are reviewing the plan. The Minister will then make a decision on whether the direction can be lifted and the plan be adopted. (It is not envisaged that this will be a lengthy delay).

Once the Plan is adopted (and the sites allocated) the process for bringing the sites forward for development will be:

- Identify a development / site management partner with experience in this work area to work alongside the City Council.
- Prepare and submit a bid to the Homes and Communities Agency (HCA) for funding to develop the sites. (The most significant threat to delivery would be if HCA funding was not forthcoming or was not sufficient to cover development costs).

Planning and Regeneration (PandR) have led on this work and will do so until the BDP is adopted. Thereafter Places Directorate will be responsible for implementation. (PandR cannot submit a planning application to itself).

Hubert Street



Proctor Street

