

AGENDA

External Affairs, Partnerships and Liaison Committee

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Dear Councillors

Notice is hereby given of a meeting of the External Affairs, Partnerships and Liaison Committee to be held as follows:

Date: Thursday, 27 February 2020 **Time:** 7.00 P.M.

Venue: St George's Suite, The Basildon Centre, St Martin's Square, Basildon, Essex, SS14 1DL



Chief Executive

MEMBERSHIP:

Councillors FELLOWES, GORDON, HOLLIMAN, LAWRENCE, MCGURRAN AND SARGENT

(Group Leaders or Deputy Leaders may attend pursuant to Committee and Sub-Committee Procedure Rule 10.)

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For further details and general enquiries about this meeting, contact Anne Page

DATE OF PUBLICATION: Wednesday, 19 February 2020

SCOTT LOGAN, CHIEF EXECUTIVE, THE BASILDON CENTRE, ST MARTIN'S SQUARE, BASILDON, ESSEX SS14 1DL. TELEPHONE (01268) 533333

1. APOLOGIES FOR ABSENCE:

2. DECLARATIONS OF INTEREST:

To receive any declarations of interest from Members in accordance with Part 2, Paragraph 9 of the Members' Code of Conduct.

3. MINUTES: (Pages 3 - 8)

Confirmation of minutes of the meeting of External Affairs, Partnerships and Liaison Committee held on 8 January 2020.

4. SOCIAL HOUSING IN THE BOROUGH - UPDATE:

Presentations from Elaine Navin, Regional Neighbourhood Service Manager - Swan Housing Association, Moira Griffiths Group Director - Peabody and Council representatives.

5. RESPONSE TO GOVERNMENT CONSULTATION ON STRENGTHENING POLICE POWERS TO TACKLE UNAUTHORISED ENCAMPMENTS:
(Pages 9 - 59)

6. WORK PROGRAMME: (Pages 61 - 63)

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MINUTES**External Affairs, Partnerships
and Liaison Committee**
.....**Minutes of a meeting held on Wednesday, 8 January 2020****PRESENT:**

Councillor Fellowes (Vice Chairman)
Councillor Gordon
Councillor Holliman
Councillor Lawrence
Councillor McGurran (Chairman)
Councillor Sargent

ALSO PRESENT:

Councillor Louise McKinlay
 Martin Lucas, Deputy Director The Essex Community Rehabilitation
 Company (CRC)
 Carolyn Butlin MBE, Manager Service Delivery from CRC
 Owen Dickinson, Manager Service Delivery from CRC

OFFICERS IN ATTENDANCE:

Service Director, Assistant Director Communities, Head of Engagement,
 Manager Housing choice, Community Safety Manager and Senior
 Governance Officer

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SCOTT LOGAN, CHIEF EXECUTIVE, THE BASILDON CENTRE, ST MARTIN'S SQUARE, BASILDON, ESSEX SS14 1DL. TELEPHONE (01268) 533333

5. APOLOGIES FOR ABSENCE:

No apologies for absence were received.

6. DECLARATIONS OF INTEREST:

Item 4 – Care Leavers

Councillor Gordon declared a non pecuniary interest as a member of BASW (British Association of Social Workers), registered Social Worker with Social Work England and member of Social Workers Union.

Councillor Gordon - Lobbied

Item 5 – Probation and Community Payback

Councillor Gordon declared a non pecuniary interest as a member of BASW (British Association of Social Workers), registered Social Worker with Social Work England and member of Social Workers Union.

7. MINUTES:

The Minutes of the meeting of the External Affairs, Partnerships and Liaison Committee held on the 7 November 2019 were approved as a true record and signed by the Chairman.

(For voting see Appendix, Column 1)

8. CARE LEAVERS:

Members were provided with a presentation from Councillor Louise McKinlay from Essex County Council (ECC) which provided an update on the work that the ECC had completed through the programmes Care Leavers and Just About Managing (JAMs) throughout the county. Councillor McKinlay advised that the Care Leavers Programme was specifically focusing within the key areas of housing, work experience opportunities and Council Tax exemption for Care Leavers up to the age of 21, with an aim to work alongside partners across the County. Detail was provided on the Just About Managing (JAMs) programme, which has been created to ensure help was provided to families who sat just above the need for intervention – these families had been identified by using the Joseph Rowntree Foundation's Minimum Income Standard. Members were advised that in depth analysis and research was about to be undertaken by Britain Thinks to test and validate assumptions, identify the themes to explore, identify issues with existing services and provision, and to develop a range of materials to use for future stakeholder engagement. Councillor McKinlay advised that ECC was actively seeking involvement from all partners and asked that the Council suggest areas that could be used as pilots to support these programmes.

Members thanked Councillor McKinlay and advised that the Council was actively seeking to investigate the exemption of Council Tax for Care Leavers and explained this was an item due to go to the Policy and Resources Committee this municipal year. A Member requested officers liaise with Councillor McKinlay to discuss the potential of collaborative working alongside the council's successful apprenticeship scheme for Care Leavers and an update be provided at the scheduled March Committee. In response

to questions, Councillor McKinlay explained that the ECC was currently completing a review on the Mental Health care provided to all young people within the county and future plans included mental health support training to be provided to Social Workers, more early intervention and lower level support and further online and community support groups. It was noted that the work of JAMs overlapped with the Council's work mobilising and engaging residents with the Local Delivery Pilot project currently being developed. Councillor McKinlay requested that all officers and Members liaise directly with ECC if they wished to discuss any future collaboration with pilots or projects.

9. PROBATION AND COMMUNITY PAYBACK:

Members were provided with a presentation from Martin Lucas, Deputy Director, Carolyn Butlin MBE, Manager Service Delivery and Owen Dickinson, Manager Service Delivery from The Essex Community Rehabilitation Company (CRC), which included an update on Community Payback and Case Management within the County. Members were advised that the CRC provided probation services to medium and low risk offenders across Southend, Essex and Thurrock and case management, interventions and custody work for adult offenders. Detail was provided on the Community Payback scheme, which has provided over 198,000 hours work in the community in the past 12 months including grounds maintenance, community garden schemes and support at the Round Table fireworks events. It was explained that in order for the programmes to be a success there was a need to work in collaboration with all local public sector partners and businesses where possible.

Members requested clarification on how support was being provided for offenders with substance misuse and mental illness. It was explained that a number of programmes were in place exploring positive ways to engage with CRC clients alongside external partners MIND and Open Road. Members and officers discussed opportunities of working together in detail. Confirmation was requested on how the Council could facilitate further opportunities for Community Payback across the borough and it was agreed that officers would liaise with the CRC to remove any barriers that prevented this work being carried out.

10. OUR PLACE - PHASE ONE FINAL REPORT AND NEXT STEPS:

Members were provided with a report and presentation detailing the statistical data of the wide ranging community engagement programme Our Place - Phase One. It was explained that the full data of 1,700 quantitative surveys, 1,500 structured conversations and discussion groups, was collated and analysed in December 2019.

Members expressed their thanks to the officers involved in collecting and collating the data and to the residents of the borough for their time and involvement with the project. A Member advised that it was a powerful

narrative which would not only help the Council design its future plans but would also feed in to and support with the Council's stakeholders' strategic plans such as Basildon and Thurrock University Hospitals NHS Foundation Trust. With regard to costings for Phase One it was confirmed that £35,000 of the allocated £50,000 budget had been utilised to support the project and it was explained the outstanding £15,000 would be used to kick start Phase Two of the project, if Members agreed with the proposed recommendation within the Report. Members were advised that the aim of Phase Two was to pull together groups of stakeholders, other public bodies, 3rd sectors and more residents for further specific analysis. It was explained that, if agreed, the full plan and costings for Phase Two would be designed and presented at the March 2020.

In a response to a query regarding why the Basildon Sporting Village had not had a stronger presence within the report, the Committee was advised the Sporting Village was not included on the list, but more work would be done in Phase Two to understand how the residents view this facility. It was explained that it should be noted that in the qualitative work, the Sporting Village was not an item which was consistently raised, either in a positive or negative light.

RESOLVED –

1. That the committee notes the findings of the work completed in Phase 1 of the Our Place project.
2. That the committee agreed for Phase 2 to begin, as set out in the report, to begin co-development of a narrative for Basildon using the research findings as a basis, engaging stakeholders, partners and residents.

(For voting see Appendix, column 2.)

11. WORK PROGRAMME 2019/20

The Committee considered and noted the work programme for the remainder of the municipal year.

CHAIRMAN

RECORDING OF VOTES

Vote Number	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
CONSERVATIVE																			
Holliman P	A	A																	
Lawrence D	A	A																	
Sargent T	A	A																	
LABOUR																			
McGurran	F*	F*																	
Gordon A	F	F																	
INDEPENDENT																			
Fellowes D	F	F																	
Vote Number	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19

KEY:

F = In Favour
A = Against
- = Abstain
O = Not present for vote
* = Casting vote in favour
∅ = Casting vote against
= No vote cast

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BASILDON BOROUGH COUNCIL

Report to: External Affairs, Partnerships and Liaison Committee
27 February 2020

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

Report by: Head of Engagement

Enquiries to: Samantha Nicholson, Senior Policy and Engagement Officer on
(01268) 208065 or email samantha.nicholson@basildon.gov.uk

Enclosures: Enclosure No. 1 – Government Consultation Paper
Enclosure No. 2 – Proposed Council Response
Enclosure No.3 – 2018 Response To Government Consultation on
Unauthorised Development and Encampments

EXECUTIVE SUMMARY:

In June 2018, Basildon Council submitted a formal response to the Government's consultation on powers for dealing with unauthorised developments and encampments. On 6 February 2019, the Government released its response to the consultation which included confirmation that the Home Office would undertake a review to determine whether it should criminalise the act of setting up encampment. At present, the act is defined in law as trespassing, a civil matter.

This report provides members an opportunity to make representations to the Government by responding to the consultation on strengthening police powers to tackle unauthorised encampments, attached at **Enclosure No.1**.

CORPORATE PLAN PROMISES:

- A place for everyone to call home
- A place where everyone prospers
- A place to be proud of

WARD(S):

All Wards

RECOMMENDATION:

The Committee notes the contents and approves the council's response to the government consultation on strengthening police powers to tackle unauthorised encampments as set out in Enclosure No.2.

BACKGROUND

On 6 April 2018, the government launched the 'Powers for dealing with unauthorised development and encampment' consultation. The consultation provided an opportunity for the Council to make representations to the Government on a number of issues related to the organisation's experience of dealing with unauthorised development and encampments in the borough. In anticipation of the consultation, the Council held a Breakfast Summit on 9 November 2017 to discuss with key partners a joint way forward in dealing with illegal traveller encampments and at its meeting held on 14 December 2017, Council resolved the following:

"That this Council:

1. Notes the recent parliamentary debates on Unauthorised Encampments held in the House of Commons on 9 October and in Westminster Hall on the 12th of that month and welcomes the contributions made by our local MPs, Mark Francois, Stephen Metcalfe and John Baron.

2. Believes that Basildon Borough is a tolerant community but that illegal encampments are blighting the lives of both the settled community and the majority of law-abiding members of our Gypsy and Traveller community, whose collective reputations are unjustly tarnished by the illegal actions of a lawless minority.

3. Welcomes the announcement by the Department for Communities & Local Government that the Government are to consult on the effectiveness of enforcement against unauthorised developments and encampments and resolves to contribute positively to that consultation.

4. Furthermore, wishes for the Policy and Resources Committee to explore in more detail the so-called 'Irish Option' and the merit of including this within the consultation response to Government in the form of a report to the Policy and Resources Committee with a verbal update to be presented to Full Council before the end of the municipal year."

On 21 March 2018, the Policy and Resources Committee considered a report on the so-called 'Irish Option', which is generally understood to be the criminalisation of trespass, similar to how it currently exists in the Republic of Ireland.

The Policy and Resources Committee resolved:

"That the Committee notes the so-called 'Irish Option' and the merit of including this legal measure within a response to the anticipated Government consultation on the impact of unauthorised encampments on local communities through the establishment of a working group, to begin as soon as possible in the new municipal year, also with the intention of presenting a verbal report on this matter to Full Council in the next municipal year".

A Member led Working Group met on 5 June and contributed to the formulation of a response to the consultation, which was approved for submission by the Policy Oversight and Strategy Committee on 14 June 2018. A copy of the Council's response is set out in Enclosure No.3.

On 6 February 2019, the Government released its response to the consultation on powers for dealing with unauthorised developments and encampments. In publishing its response, the Home Secretary announced a review would be undertaken by the Home Office to determine whether it should criminalise the act of setting up encampment.

On 5 November 2019 the Government launched a consultation on strengthening police powers to tackle unauthorised encampments. The deadline for responses is 4 March 2020. A proposed response to this consultation is attached at **Enclosure No. 2**, for Members consideration. This response has been developed with the input and expertise of officers from across a range of functions across the council, including planning and enforcement. This response is also consistent with the previous response given in 2018.

OPTIONS

The council does not have to issue a response to this consultation. However, the risk of choosing not to reply is that Basildon Council would not issue a formal view on an issue that has the potential to directly impact the council's operations, and those of key statutory partners, i.e. Essex Police.

LEGISLATION/POLICY

The Council has the power under S111 of the Local Government Act 1972 to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

The Human Rights Act 1998

The Local Government Act 1972

Criminal Justice and Public Order Act 1994

The Equality Act 2010

GENERAL INFORMATION

Corporate Plan Promises

Responding to Government consultations on matters of importance to the borough fulfils the council's community leadership role and provides an opportunity to influence outcomes that align with the council's ambitions.

Financial Implications

There are no direct financial implications associated with consideration of this report.

Risk Management Implications

Relevant risks and opportunities in connection with this matter have been considered and are referred to in the body of the report, as appropriate.

Diversity, Inclusion and Community Cohesion Implications

The diversity, inclusion and community cohesion implications have been considered in the preparation of the council's response to the consultation attached at **Enclosure No.2**.

Other Relevant Considerations

None.

Background Papers

None.



Home Office

Strengthening police powers to tackle unauthorised encampments

Government consultation

This consultation begins on 05/11/2019

This consultation ends on 05/03/2020

About this consultation

To: This consultation is open to the public.

We will be particularly interested to hear from local authorities, police forces, Gypsy, Roma, and Travelling communities and the general public.

Duration: From 05/11/2019 to 05/03/2020

Enquiries to: Strengthening police powers to tackle unauthorised encampments consultation
Police Powers Unit
Home Office
6th Floor, Fry Building
2 Marsham Street
London
SW1P 4DF

Email:
UnauthorisedEncampmentsConsultation@homeoffice.gov.uk

How to respond: Please provide your response by 05/03/2020 at:
www.gov.uk/government/consultations/strengthening-police-powers-to-tackle-unauthorised-encampments

If you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may download a word document version of the form and email or post it to:

Strengthening police powers to tackle unauthorised encampments consultation
Police Powers Unit
Home Office
6th floor, Fry Building
Home Office
2 Marsham Street
London SW1P 4DF

Email:
UnauthorisedEncampmentsConsultation@homeoffice.gov.uk

Please also contact the Police Powers Unit (as above) if you require information in any other format, such as Braille, audio or another language. We cannot analyse responses not submitted in these provided formats.

Response paper: A response to this consultation exercise is due to be published at <https://www.gov.uk/search/policy-papers-and-consultations>

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1. Foreword by the Home Secretary

We are fortunate to live in one of the most tolerant countries in the world, which has a proud tradition of promoting respect for the rule of law, for property, and for one another. This Government is committed to creating a just and fair country, where equality of opportunity flourishes and the life chances of all are enhanced. I am clear that that this must be built on shared rights, responsibilities and opportunities.

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.

In response to the consultation my predecessor, 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.

He also confirmed Home Office officials would 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. This consultation document sets out the information gathered during that consultation, makes proposals for change and seeks views on those proposals.

This document consults on whether criminalising unauthorised encampments would be preferable to the amendments we originally proposed to the Criminal Justice and Public Order Act 1994, and if so, how it should work. It sets out a proposed package of measures in some detail, as well as some more general questions.

The Government recognises that the proposals contained in this consultation are of interest to a significant minority of Gypsies, Roma and Travellers who continue to travel. The Government's overarching aim is to ensure fair and equal treatment for Gypsy, Roma and Traveller communities, in a way that facilitates their traditional and nomadic way of life while also respecting the interests of the wider community. In June this year the Government announced that the Ministry of Housing Communities and Local Government will lead development of a cross-government strategy to improve outcomes for Gypsy, Roma and Traveller communities.



Rt Hon Priti Patel MP

Home Secretary

2. Executive summary

We would like to consult on measures to;

- Criminalise the act of trespassing when setting up an unauthorised encampment in England and Wales.

We would also like to consult on the following alternative approach to this issue:

- Amending section 62A of the Criminal Justice and Public Order Act 1994 to permit the police to direct trespassers to suitable authorised sites located in neighbouring local authority areas.
- Amending sections 61 and 62A of the Criminal Justice and Public Order Act 1994 to increase the period of time in which trespassers directed from land would be unable to return from 3 months to 12 months.
- Amending section 61 of the Criminal Justice and Public Order Act 1994 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.
- Amending section 61 of the Criminal Justice and Public Order Act 1994 to enable the police to remove trespassers from land that forms part of the highway.

This consultation is open until 05/03/2020; details of how to respond are set out towards the front of this document.

3. Introduction

The vast majority of travelling communities reside in caravans on authorised traveller sites. Indeed, out of the 23,726 caravans in England and Wales in July 2018, only 1049 (4.4%) were on unauthorised sites that were not owned by the occupants. However, there have been long-standing concerns about the disproportionate impact of these unauthorised encampments, where significant distress has been caused to local communities and where local authorities have consequently had to deal with a range of issues.

Recognising these concerns, the Government published a consultation in April 2018 on the effectiveness of enforcement against unauthorised developments and encampments. Through that consultation, we sought views from a number of stakeholders including local authorities, police forces, travelling communities and the general public on whether there is anything we can do to ensure that existing powers can be used more effectively and if additional powers are required. It was led by the Ministry for Housing, Communities and Local Government in partnership with the Home Office and Ministry of Justice.

The responses to the consultation were clear¹, suggesting that significant problems are created by many unauthorised encampments. Responses highlighted the sense of unease and intimidation residents feel when an unauthorised encampment occurs, the frustration at not being able to access amenities, public land and business premises, and the waste and cost that is left once the encampment has moved on.

Parliament has already given local authorities and the police significant powers and duties designed to help them manage the impact of unauthorised encampments on local communities, including local authority and police powers in the Criminal Justice and Public Order Act 1994.

However, the Government heard compelling evidence, in response to the consultation, that stronger powers are needed to be able to address the issues and concerns identified.

That is why in February 2019, the previous Home Secretary announced that the Government would publish a further consultation on extending police powers by making a series of amendments to sections 61 and 62A of the Criminal Justice and Public Order Act 1994. These amendments would permit the police to direct trespassers to suitable alternative sites located in neighbouring local authority areas (as well as the authority which the encampment was currently situated within); to increase the period of time in which trespassers directed from land would be unable to return from three, to twelve months; to lower the number of vehicles needing to be involved in an unauthorised encampment before police powers can be exercised from six to two vehicles; and to enable the police to remove trespassers from land that forms part of the highway.

The Government also heard arguments that England and Wales should follow the so-called 'Irish model' for dealing with unauthorised encampments. This approach

¹ <https://www.gov.uk/government/consultations/powers-for-dealing-with-unauthorised-development-and-encampments>

criminalises trespass in certain circumstances. The responses to our consultation demonstrated that the majority of respondents believe the Government should consider criminalising unauthorised encampments in England and Wales, by creating an offence of trespassing when setting up an unauthorised encampment.

That is why the previous Home Secretary announced that Home Office officials would undertake a review into how this Government can 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.

Having considered the findings from that review, we would like to test the appetite to go further and broaden the existing categories of criminal trespass to cover trespassers on land who are there with the purpose of residing in their vehicle for any period, and to give the police the relevant powers to arrest offenders in situ and to seize any vehicles or other property on existing unauthorised encampments (or those in the process of being set up) immediately.

We are therefore consulting on whether and how the setting up of or residing on an unauthorised encampment should be made an offence, as well as seeking views on the previously proposed changes to 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, which could be introduced as an alternative to criminalisation.

4. The proposals

This chapter sets out options to extend police powers to tackle unauthorised encampments, including the creation of an offence of trespassing while setting up an unauthorised encampment, as well as other measures to extend police powers to direct trespassers, who have the intention to reside there, to leave land.

4.1 Criminalising Unauthorised Encampments

Through the Government's consultation on the effectiveness of enforcement against unauthorised developments and encampments, the majority of respondents said they believe we should consider criminalising unauthorised encampments, as has been done in the Republic of Ireland. A similar offence also exists in Scotland.

The Republic of Ireland: Criminal trespass and site provision

The Irish Government has criminalised trespass in certain circumstances, in conjunction with a statutory requirement for local authorities to provide traveller sites. In response to concerns about trespassers occupying public spaces and private land, the Irish Republic introduced the Housing (Miscellaneous Provisions) Act 2002² (the Act).

The Act made it an offence for any person to enter and occupy land without the owner's permission - or bring any "object" on to the land - if this is likely to "substantially damage" the land or interfere with it.

The offence contained in Section 24 of the Act has the effect of criminalising trespassers who occupy land without consent. The legislation does not amount to a ban on all unauthorised encampments. It criminalises encampments that 'substantially' damage the land or prevent use of the land by the owner or other lawful users.

The Act gives the Irish police discretion to direct trespassers to leave land if it is suspected that this offence is being committed. Failure to comply with a direction is also punishable by a fine and/or a one-month prison sentence. It is for the police to consider which approach to adopt depending on the individual circumstances of the case and the encampment.

Scotland: Criminal trespass

Under the Trespass (Scotland) Act 1865, it is an offence to occupy private land without the permission of the landowner³

² <http://www.irishstatutebook.ie/eli/2002/act/9/section/24/enacted/en/html#sec24b>

³ <http://www.legislation.gov.uk/ukpga/Vict/28-29/56>

It was generally viewed by respondents to the consultation in 2018 that criminalisation of unauthorised encampments would act as a deterrent to future encampments and allow the police to enforce removal of trespassers in a timelier fashion. Advantages were seen in financial terms in both the cost of evicting trespassers and clean-up costs.

We would like to gather views on broadening the existing categories of criminal trespass.

The Government could make it an offence to enter or occupy land subject to certain conditions being met. We would welcome your views on what the conditions and threshold for this offence should be. For example, in the Republic of Ireland it is a criminal offence to enter or occupy land without the landowner's consent or bring any "object" on to the land - if this is likely to cause "substantial damage". Imposing conditions such as a need to require proof that damage or harm has been caused will help limit prosecutions to cases where there is an element of public disorder for which there is an interest to protect against and explicitly reflect the balance between land owners' rights to peaceful enjoyment of their property and travellers' rights to privacy and family life.

Question

Q1: To what extent do you agree or disagree that 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?

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

Please explain your answer

Question

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?

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

Please explain your answer

The Government could stipulate that the landowner or representatives of the landowner must take reasonable steps to ask trespassers to leave. This would help the police to demonstrate where a trespasser is **knowingly** trespassing. However, in some instances, landowners may feel afraid to approach trespassers.

Question

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?

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

Please explain your answer

Question

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

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

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

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

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

c) those on the encampment have demanded money from the landowner to vacate the land; and/or

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

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

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

Please explain your answer

Question

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

4.2 Criminal Justice and Public Order Act 1994

Under Section 61 of the Criminal Justice and Public Order Act 1994, the police have powers that allow them to direct trespassers to leave land. The requirements of these powers are currently:

- I. that the trespassers have an intention to reside on the land for any period;
- II. that the occupier or someone on the occupier's behalf has taken reasonable steps to ask the trespassers to leave;
- III. that: either (a)
 - any of the trespassers have caused damage to land or property; or
 - that any of the trespassers have used threatening, abusive or insulting words or behaviour towards the occupier, a member of the occupier's family or an employee or agent of the occupier;or (b) that the trespassers have between them six or more vehicles on the land.

Section 62A of the Criminal Justice and Public Order Act 1994 allows the police to direct trespassers to remove themselves and their vehicles and property from land on which they have the intention to reside where a suitable pitch is available within the same local authority area. The police must consult every local authority within whose area the land is situated to confirm if a suitable pitch is available on a relevant site.

Responses to the consultation from the police and some local authorities highlighted how a lack of availability of transit sites means that they are unable to exercise some of their existing powers such as section 62A of the Criminal Justice and Public Order Act 1994 which provides a power to remove trespassers to alternative available sites.

We would welcome views on whether to amend section 62A of the Criminal Justice and Public Order Act 1994 to permit the police to direct trespassers to suitable authorised sites located in neighbouring local authority areas.

Extending this power would make it more likely that the police could act where there is a shortage of site capacity in one particular area. However, we believe that such changes may need to be subject to conditions around:

- Agreements being in place between local authorities. Local authorities have advised us that the use of such a power without agreements in place would deter them from creating more authorised sites. This would be counterproductive.
- A maximum distance that trespassers should be directed across. In some rural areas, a site in a neighbouring local authority area could be several hours drive away. It could be considered unreasonable to relocate someone that far.

Question
<p>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?</p> <p><i>Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree</i></p> <p><i>Please explain your answer</i></p> <p>Q7: Should this be subject to conditions around agreements being in place between local authorities?</p> <p>Q8: Should there be a maximum distance that a trespasser can be directed across?</p> <p><i>Yes / No</i></p> <p>If yes, what distance should that be?</p> <p>Q9: Should there be any other conditions that should be considered when directing a trespasser across neighbouring authorities.</p> <p><i>Yes / No</i></p> <p>If yes, what should these be?</p>

Failure to comply with a police direction under Section 61 or 62A of the Criminal Justice and Public Order Act 1994 is a criminal offence punishable by a fine and/or a custodial sentence of up to three months' imprisonment, as is re-entry onto the land by persons subject to the direction within three months.

Respondents to the consultation suggested that the current three-month period during which a trespasser is prohibited from returning to a location once directed from the site by the police should be increased.

We would welcome views on whether to amend sections 61 and 62A to increase the period of time in which trespassers directed from land would be unable to return from three months to twelve months. This would provide greater protection to land targeted by the same group of trespassers on a regular basis.

Question

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 three months to twelve months?

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

Please explain your answer

Section 61 of the Criminal Justice and Public Order Act 1994 grants police the power to direct trespassers to leave if there are six or more vehicles present on the land they are trespassing on. However, if there are fewer than six vehicles present, police do not obtain the power to direct trespassers to leave.

We would welcome views on whether to amend section 61 of the Criminal Justice and Public Order Act 1994 to lower the number of vehicles needing to be involved in an unauthorised encampment from six to two, before police powers can be exercised. This will increase the opportunity for police intervention where smaller encampments are present.

Question

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?

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

Please explain your answer

We would welcome views on whether to amend section 61 of the Criminal Justice and Public Order Act 1994 to enable the police to remove trespassers from land that forms part of the highway. The police are currently restricted in dealing with these encampments unless there is a suitable pitch in the same local authority area. This could make it easier for the police to tackle problematic encampments.

Question

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?

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

Please explain your answer

We believe giving the police powers to seize property, including vehicles, could enable the police to remove unauthorised encampments more quickly and act as deterrent to setting up an unauthorised encampment. We would welcome views on whether to grant police powers to seize property from trespassers and in what circumstances they should have these powers.

Question

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?

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

Please explain your answer

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?

Please explain your answer

As stated earlier, we would envisage that the above amendments to the Criminal Justice and Public Order Act 1994 would be as an alternative to criminalising unauthorised encampments, rather than in addition to.

Question

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

Please explain your answer

4.3 Impacts on the Gypsy, Roma and Traveller communities

While there are clear challenges presented to settled communities by unauthorised encampments, it is also highly likely that such unlawful encampments can lead to significant hardships for Gypsy, Roma and Traveller communities themselves.

The 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. Therefore, we would welcome views on any adverse impacts that these proposals could have on the Gypsy, Roma and Traveller communities.

Question

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?

Highly positive impact / Positive impact / Neither positive nor negative impact / Negative impact / Highly negative impact

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?

Question
<p>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?</p> <p><i>Highly positive impact / Positive impact / Neither positive nor negative impact / Negative impact / Highly negative impact</i></p> <p>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?</p>

4.4 Other Comments

Question
<p>Q18: Do you have any other comments to make on the issue of unauthorised encampments not specifically addressed by any of the questions above?</p>

5. About you

Please use this section to tell us about yourself

Q19: Full name	
Q20: Job title or capacity in which you are responding to this consultation exercise (for example, member of the public)	
Q21: Date	
Q22: Company name/organisation (if applicable)	
Q23: Address	
Q24: Postcode	
Q25: If you would like us to acknowledge receipt of your response, please tick this box	(please tick box)
Address to which the acknowledgement should be sent, if different from above	

Q26: If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

6. Contact details and how to respond

Please respond using the online system available at:

www.gov.uk/government/consultations/strengthening-police-powers-to-tackle-unauthorised-encampments

Please submit your response by 05/03/2020

You are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may download a word document version of the form and email it or post it to:

Strengthening police powers to tackle unauthorised encampments consultation
Police Powers Unit
Home Office
6th Floor NW, Fry Building
Home Office
2 Marsham Street
LONDON
SW1P 4DF

Email: UnauthorisedEncampmentsConsultation@homeoffice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Home Office at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available online at www.gov.uk/government/consultations/strengthening-police-powers-to-tackle-unauthorised-encampments

Alternative format versions of this publication can be requested from:
UnauthorisedEncampmentsConsultation@homeoffice.gov.uk

Publication of response

A paper summarising the responses to this consultation will be published in [insert publication date, which as far as possible should be within three months of the closing date of the consultation] months' time. The response paper will be available online at www.gov.uk/government/consultations/strengthening-police-powers-to-tackle-unauthorised-encampments

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Home Office.

The Home Office will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

7. Impact of Proposals

Impact Assessment

In accordance with the Better Regulation Framework Manual issued by the Department for Business, Energy and Industrial Strategy (BEIS)⁴, an initial assessment of the impact of these proposals has been carried out and no material financial impact on business, charities or voluntary bodies is envisaged. Impact on the public sector, such as the police and the Crown Prosecution Service, is expected to be relatively minor.

Equalities Statement

Section 149 of the Equality Act 2010 places a duty on Ministers and Departments, when exercising their functions, to have 'due regard' to the need to eliminate conduct which is unlawful under the 2010 Act, advance equality of opportunity between different groups and foster good relationships between different groups.

In accordance with these duties, we have considered the impact of the proposed changes on those sharing protected characteristics in order to give due regard to the matters mentioned above.

Eliminating unlawful discrimination

The Traveller community includes Romany Gypsies and English, Scottish, Welsh and Irish Travellers are legally recognised as ethnic groups under the Equality Act 2010.

We recognise that the proposals outlined in this document could have an adverse impact on some members of this minority group. Indeed, in response to the original consultation, some traveller groups, human rights groups and legal organisations told us that criminalising trespass would be a disproportionate response that would impact on their way of life. However, we also recognise the distress that local communities and businesses face as a result of unauthorised encampments. While we recognise that not all unauthorised encampments cause disruption and impact communities, there is evidence that shows where this is the case, the financial costs falling to landowners to evict and to clear sites along with the impact to the community can be significant.

The Home Office will seek views on all proposals and any mitigating actions to limit any disproportionate impact on the Travelling community, as well as any indirect impacts on other protected characteristics, such as disability. The Public Sector Equality Duty is an ongoing duty that will be kept under review as we develop the policy.

⁴ See: <https://www.gov.uk/government/publications/better-regulation-framework-manual>

Advancing equality of opportunity between different groups

We recognise the rights of Romany Gypsies and English, Scottish, Welsh and Irish Travellers to follow a nomadic way of life in line with their cultural heritage.

The vast majority of the Traveller community, estimated to be over 80%, live in caravans staying on permanent public and private sites which have planning permission, or in residences of bricks and mortar. A small minority of Gypsies and Traveller caravans that are classed as unauthorised are those staying in one area and are likely to be on local authority housing waiting lists, those who travel seasonally for work and a very small number who travel across the country.

The Government's overarching aim is to ensure fair and equal treatment for Gypsy, Roma and Traveller communities, in a way that facilitates their traditional and nomadic way of life while also respecting the interests of the wider community. In June this year the Government announced that the Ministry of Housing Communities and Local Government will lead development of a cross-government strategy to improve outcomes in areas including health, education and employment for Gypsy, Roma and Traveller communities.

The Home Office will seek views on all proposals and any mitigating actions to limit any disproportionate impact of the Travelling community.

Fostering good relationships between different groups

It is possible that these new measures could lead to a reduction in unauthorised encampments, which in turn could improve relations. On the other hand, it is also possible that coverage of these measures could reinforce prejudices against Travellers, even those who are compliant with the law.

The Home Office will seek views on all proposals and any mitigating actions to limit any disproportionate impact of the Travelling community.

8.Consultation Questions

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?

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

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?

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

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?

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

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

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

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

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

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

c) those on the encampment have demanded money from the landowner to vacate the land; and/or

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

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

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

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

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?

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

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

Yes / No

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

Yes / No

If yes, what distance should that be?

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

Yes / No

If yes, what should these be?

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?

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

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?

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

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?

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

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?

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

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?

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

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?

Highly positive impact / Positive impact / Neither positive nor negative impact / Negative impact / Highly negative impact

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?

Highly positive impact / Positive impact / Neither positive nor negative impact / Negative impact / Highly negative impact

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

9. Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>



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Any enquiries regarding this publication should be sent to us at public.enquiries@homeoffice.gsi.gov.uk.

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Question

Q1. To what extent do you agree or disagree that 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?

Strongly Agree

It should be a criminal offence for anybody to knowingly enter land without the landowner's permission for the purpose of making it their permanent home using tents or other temporary structures, including caravans. This potential change in law would most likely impact Gypsies, Roma and Travellers who travel within the UK. If this approach were to be taken, it would be important to ensure that a sufficient number of pitches were available nationwide to provide people the alternative to reside in a legal, temporary manner that respects their traditional way of life. Likewise, consideration would need to be in circumstances where an individual is homeless and whether suitable alternative provision has been made available.

Question

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?

Disagree

As above. It should be a criminal offence for anybody to knowingly enter land without the landowner's permission for the purpose of making it their permanent home using tents or other temporary structures, including caravans and vehicles. This potential change in law would most likely impact Gypsies, Roma and Travellers who travel within the UK. If this approach were to be taken, it would be important to ensure that a sufficient number of pitches were available nationwide to provide people the alternative to reside in a legal, temporary manner that respects their traditional way of life. Likewise, consideration would need to be in circumstances where an individual is homeless and whether suitable alternative provision has been provided.

Question

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?

Strongly Agree

It seems reasonable for the land owner to have a responsibility to direct any persons occupying their land to remove themselves and their possessions from it. Failure to do so would mean they are allowing the occupation of their land and are responsible for permitting its use in that way, which could make them liable to Planning Enforcement issues for unauthorised change of use of land.

In practise it may be beneficial to have greater clarification of what 'reasonable steps' means. For example, would a written note from the landowner to the person(s) occupying their land suffice? If not, consideration could be given to introducing a standard process that could be applied by a landowner or representatives of the landowner, where such circumstances arose. Any activity required of the landowner or representatives of the landowner to ask persons occupying their land to remove themselves should be at minimal cost and risk to the landowner.

Question

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

- a) The encampment prevents people entitled to use the land from making use of it;
Strongly Agree
- b) The encampment is causing or is likely to cause damage to the land or amenities;
Strongly Agree
- c) Those on the encampment have demanded money from the landowner to vacate the land;
and/or
Strongly Agree
- d) Those on the encampment are involved or are likely to be involved in anti-social behaviour;
Strongly Agree

The power of arrest for trespassing on land for the purpose of residing on the land should be conditional upon the likelihood of causing damage to the land or amenities, or that threats or intimidation have been used or anti-social behaviour has taken place.

Question

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

Nil.

Question

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?

Agree

This proposal is good in theory – and echoes the approach that is currently adopted in respect of homeless persons requiring temporary accommodation – however, in practise it would be unworkable at this time, as it relies solely on suitable authorised pitches (especially transit in nature) being available in neighbouring local authority areas. Given that there is a national shortage of authorised pitches, it is very unlikely that neighbouring authorities will have availability. This would certainly be the case in Essex. It could also result in less co-operation between local authorities, particularly if trespassers are encouraged to go to a neighbouring authority only to find pitches are no longer available and they then trespass on land in that area.

To make this a feasible proposal, the government would need to ensure that a suitable number of pitches (especially transit pitches) are available, and that they are dispersed proportionally across the country. In the Republic of Ireland, it is understood that an assessment of current and future traveller pitch need was undertaken, with the exercise concluding that need was met through the provision of a sufficient number of traveller pitches. This exercise supported the argument that local authorities had met their statutory duty and could resist challenge from gypsy traveller families that their rights under the European Convention of Human rights could be breached. This context does not exist in the UK. The government may wish to consider a similar type of exercise if availability of suitable, legal pitches is pertinent to its proposals.

In addition, this proposal places further pressure on police resources to identify if spaces are available. To be successful it would require independent administrative support, similar to the kind of support

that is provided by the Essex County Traveller Unit (ECTU) to allow expedient resolution when situations arise. In the same way that housing officers are able to consider the circumstances of the person requiring accommodation, a body responsible for finding available pitches would also be able to identify any circumstances that would require the trespasser(s) to be close to that local authority area i.e. children in education, employment, carer responsibilities.

Question

Q.7 Should this be subject to conditions around agreements being in place between local authorities?

Yes

Question

Q.8 Should there be a maximum distance that a trespasser can be directed across?

Yes

Local authorities are required to provide accommodation to an individual or person(s) where they meet the statutory homeless duty. In doing so, local authorities need to demonstrate the accommodation offered is the closest available provision that meets the circumstances of the person(s) in need. A similar approach could be adopted when determining the maximum distance that a trespasser can be directed across. On a case by case basis, is it reasonable for trespasser(s) in question to travel the distance required to reach an available pitch, wherever that may be?

Question

Q.9 Should there be any other conditions that should be considered when directing a trespasser across neighbouring authorities

Yes

A trespasser or trespassers should only be directed across neighbouring authorities when a legal pitch is available for their occupation in the neighbouring authority.

Question

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 three months to twelve months?

Strongly Agree

This was previously suggested by Basildon Council in our response to the consultation 'Powers for dealing with unauthorised development and encampments'. Increasing the period of time that trespassers are unable to return to land acts as a further deterrent to reoffending.

Question

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?

Strongly Agree

This was previously suggested by Basildon Council in our response to the consultation 'Powers for dealing with unauthorised development and encampments'. In Basildon borough it has been quite

common for the travelling community to enter the borough in convoys of more than six vehicles, however these often disperse and set up encampments with smaller groups of vehicles thereby avoiding the risk of a s.61 direction. Lowering the number of vehicles needing to be involved in an unauthorised encampment allows greater opportunities for existing legislation to be used more effectively.

Question

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?

Strongly Agree

By extending police powers to remove trespassers from land that forms part of the highway, the gap in existing legislation would be closed. It also provides a viable response to this type of trespassing and the associated traffic disruption that it may cause.

Question

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?

Strongly Agree

Granting the police power to seize property, including vehicles, from trespassers who are on land with the purpose of residing on it would be a much stronger deterrent to such activity than what is available at present. However, in practical terms, using the powers could pose a number of challenges. When applied in the case of the traveller community, the police could only reasonably seize the property if an alternative, legal pitch had been offered but refused. Again, the success of this proposal is reliant on there being adequate numbers of legal pitches available for the traveller community to use. The Government may wish to consider pitch availability as a factor when determining the suitability of this proposal. In addition, consideration would need to be given to the circumstances of the trespassers, particularly if they are travellers, who are typically family groups with dependent children. In traveller communities, vehicles and property are also homes and so confiscating these would leave households destitute, which could put further strain on local authority homeless services who would be required to source suitable, alternative accommodation. This could cause further challenges given the traveller community are ideologically opposed to 'bricks and mortar'. Confiscating vehicles would also only ultimately serve to frustrate the process of allowing the trespassers to move on.

Question

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; **(YES)**
- ii) Anyone they arrest for trespassing on land with the purpose of residing on it; **(YES)** or
- iii) Anyone convicted of trespassing on land with the purpose of residing on it? **(YES)**

The police should be able to seize the property of i), ii) and iii) where alternative legal provision has been offered for occupation but has been refused.

Question

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 encampment?

Strongly Disagree

Amending the Act without undertaking an assessment of the authorised pitches and transit pitches available within the UK will do little to tackle the public order issues associated with unauthorised encampments. The fundamental issues is – does the UK have an adequate number of authorised pitches and transit pitches to meet the needs of the travelling community? At present this does not appear to be the case, as such greater effort should be focused on addressing this matter in the first instance. Once addressed, amendments to S.61 and 62A could have greater validity.

Question

Q.16. 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?

Neither positive nor negative impact

Question

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?

Negative Impact

Whilst no specific intelligence can be offered to support this judgement, it is plausible to assume that criminalising unauthorised encampments could further isolate such communities, making them more likely to suffer poor health and educational outcomes.

Question

Q.18 Do you have any other comments to make on the issue of unauthorised encampments not specifically addressed by any of the questions above?

None.

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Consultation: Powers for dealing with unauthorised development and encampments

Unauthorised developments and encampments

Question 1:

What evidence is there of unauthorised development and encampments in your community, and what issues does this raise for the local community?

Unauthorised development of land by travellers has been an issue for Basildon borough and the region for a number of years. Most notably, for its scale and local impact, was the unauthorised development of land at Dale Farm, Crays Hill and Hovefields, Wickford.

Dale Farm is a six acre plot of land, which included the site of a former scrap yard. Since 2001, travellers have breached planning law by setting up homes in caravans, developing hard standings and road access across the site. There were 51 illegal pitches, involving up to 240 people, on the site prior to the site clearance that began in October 2011. A process then followed to recover the costs of the clearance that took place in October 2011. Charges totaling £4.3m were registered with the Land Registry against the landowners of Dale Farm.

It has been noted, that there has been an increase in the prevalence of encampments in the borough, predominately in the summer months, both on public and private land.

Since 2016, there have been 6 new unauthorised developments on privately owned land. Others have also occurred, however these have been a reoccupation of land rather than fresh sites. Appropriate planning enforcement action has been pursued in all incidences.

At present, there are several High Court Injunctions in place to deal with issues surrounding encampments and unauthorised developments, which have all been granted within the last 3 years. These injunctions cover unauthorised development in the Green Belt (Hovefields Avenue, Wickford) and unauthorised encampments across three industrial estates (Pipps Hill, Cranes and Burnt Mills). The Council provided the Court with evidence of approximately 69 such encampments within the area surrounding these industrial estates over a period of 1 year.

Interestingly, this issue appears to follow a seasonal pattern, with encampments predominantly appearing in the summer months. This raises the question of where do travellers go in the winter months? Are there authorised sites across the country that stand empty whilst the travellers travel elsewhere in the country? The simple fact is there is no data available to answer this question and as such prevents an informed response to an issue that is placing increasing pressure on local authorities and the communities they serve.

Costs incurred by the local authority as a result of unauthorised developments and encampments are a major concern. In 2016/17, a total of £247,855 was spent from a contingency set aside for exceptional enforcement operations, including the remediation of land following direct action, ancillary works and legal expenses. This sum also included expenditure on cleaning up sites after encampments, 'fly-grazing' incidents and the abandonment of horses. Expenditure in these areas rose to £399,712 in 2017/18.

Consultation: Powers for dealing with unauthorised development and encampments

Basildon Council supports the Essex County Traveller Unit (ECTU) who undertake a range of valuable activities promoting fire safety, public health and education as well as addressing unauthorised encampments on partner-owned land. Basildon Council will financially contribute £7,989 to ECTU in 2018/19. This covers all costs for dealing with encampments on Basildon Council land within the financial year, regardless of the number of encampments. Actual costs of managing individual encampments will be dependent on the size – number of caravans, vehicles – the location and impact on adjoining community etc. The only fixed costs are the court fees, for each time ECTU take a group to court for repossession.

Suitably robust and comprehensive physical barriers can achieve a long-term solution – preventing encampments from occurring in the first place and removing the risk of accumulations of waste deposited by travellers, particularly when commercial vehicles are used for fly tipping. However, it is necessary to balance access needs against the purpose of installing barriers and not compromise the amenity value of the land or detract from the beauty of the area. It is also important that the defences do not create a negative perception of the local environment and recognise that “target hardening measures” cannot deter determined trespassers in all circumstances. For instance, installing bollards on all verges etc. in every neighbourhood is generally impractical and can be unsightly. Most of all, such solutions are often unaffordable. Following a Council Motion on the subject last year, the Council's Regeneration and Environment Committee agreed to commission a survey to produce an effective land protection programme in order to inform future decisions. The report will set out the costs of protecting individual plots of Council-owned land and an assessment of the most suitable type of protection for each plot.

From the Council's experience of unauthorised development and encampments, a number of issues are raised for the local community. These include:

- Risk to public health due to the waste (including human waste) that is left behind after encampments move on.
- Destruction and despoiling of public space, fuelling resentment and hostility by the local community.
- Perception that there is one rule for travellers and a different rule for the local community, particularly in respect of development on green belt land.
- Access issues for businesses and local community, where such encampments occur on industrial estates or in car parks across the borough.
- Community tensions between the resident community and those who have set up encampments or have undertaken unauthorised development. This is illustrated by the level of press coverage traveller encampments and/or unauthorised developments receive by local press, spurred on by the level of interest from the local community (see **Enclosure No.1** – summary of Press headlines)
- Fly grazing of horses often believed to be owned by gypsy travellers on both public and private land.
- Where occupation has occurred on private land, land owners have often felt intimidated and unable to remove the travellers from their land. As a result, the issue can then become a planning matter as it constitutes unlawful development.
- Perception of increased levels of anti-social behaviour and public nuisance especially from larger encampments with the police being viewed as being impotent in the face of what can be correspondingly larger, more hostile groups.
- Council resources redirected to deal with encampments and unauthorised development meaning resource, both financial and human, is taken away from other council priorities. In some cases, encampments can interfere with the normal running of income-generating facilities such as leisure centres, so there can be a loss of income in addition to the disruption caused to regular users of the establishments.

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- Local authorities are legally obliged to keep land that is under their control clear of litter and refuse.

Council resources sometimes have to be diverted from street scene services to deal with the clear up of sites. In particular, the encampment on St Nicholas Lane in summer 2017 resulted in 40 tonnes of domestic waste being left on public land. This was costly to remove and upsetting to the local community. In response, the council instigated a 'Crime not to Care' campaign encouraging home owners to take responsibility for the disposal of their waste in order to deter the use of travellers for this service.

- Removal of both human waste and asbestos waste, commonly left behind after encampments move on. This is a costly exercise requiring specialist contractors. Whilst such material is present on the site, there is an increased risk to the health and safety of anyone who may access the site and come into contact with hazardous material.
- Where direct action has been undertaken, it has been done so at a significant expense to the public purse.
- Increased health and safety risk from the storage of LPG gas cylinders used on the encampments within these sites, with empty cylinders occasionally being carelessly discarded when vacating the site.
- Highways issues caused by abandoned caravans, mainly in laybys, which have caused disruption to both the A127 and A130.
- Negativity directed at settled Gypsy and Traveller community due to the illegal actions of others, this tarnishing the good reputation of the majority of travellers in the borough, some of whom have been resident here for generations.
- Perceived increase in burglary and fear of crime in areas within proximity to encampments and unauthorised traveller developments.
- Basildon Council recognise that there are significant implications for both health and education as encampments and unauthorised development are not considerations when calculating school places or health demands. However, the council will default to the County Council to report specific issues as part of their response to the consultation, as the appropriate body.
- Within Crays Hill, the impact of unauthorised developments and encampments was particularly apparent on the local school which had significant challenges maintaining a school roll due to the changing levels of attendance of traveller children.
- Where travellers occupying encampments or unauthorised developments have required medical assistance, this has often resulted in attendance to the Accident and Emergency department at Basildon Hospital, as they are often not signed up to a local GP.

Powers for dealing with unauthorised encampments

Question 2:

We would like to invite evidence of unauthorised encampments which have occurred in the last 2 years, as follows:

a. the number of instances where trespassers have occupied land without authorisation, including the location and scale of the encampment.

The incidents reported below are those that have been recorded by the Essex County Traveller Unit (ECTU) who act on behalf of Basildon Council in respect of traveller incursions. The table below provides

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a summary of the number and type of encampments reported and dealt with by ECTU in 2016/17 and 2017/18.

April 16/17	Number of Encampments
Private	26
ECC	28
Basildon	31
Total	85
April 17/18	Number of Encampments
Private	5
ECC	18
Basildon	29
Unknown Land Owner	1
Total	53
Total No. of Encampments 16/17 & 17/18	138
Section 61 Served in 16/17 & 17/18 reported to ECTU	11*

*This total is based on information provided to ECTU by the Police at that time and may not include Private encampments.

The map attached at **Enclosure No.2** provides a visual overview of the locations of the above encampments for the past 2 years.

Where encampments occurred on the Burnt Mills and Pipp's Hill Industrial Estate, these were typically larger in scale, often involving up to 9 touring caravans and several individuals.

b. whether the land in a) required cleaning or repair once the encampment had left, and if so, what was the cost?

Like most local authorities, there is no specific service with sole responsibility for dealing with encampments and unauthorised developments. A council's response usually requires differing responses from a range of service areas. As such, it is not possible to give specific costings for dealing with such occurrences. The details below have been provided to give an indication of the differing costs recorded across a range of service areas, although this is likely to under represent the true cost.

The land at Pipp's Hill, Cranes and Burnt Mills Industrial estates required cleansing after repeated unauthorised encampments were removed as there was a significant risk posed to public health due to the quantity and type of waste left behind, which included human excrement. In 2017/18, the costs associated with the clear up of encampment activity was £6850.77. However, this figure is mainly derived from costs associated with the employment of specialist contractors that needed to be engaged due to

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the nature of the waste. The figure does not reflect the cost of lost time of the Council's cleansing teams in dealing with such occurrences; it is not possible to separate-out time spent on dealing with clean-ups after encampments from the officers' other duties.

c. how was each unauthorised encampment encouraged to leave, how long did it take, and was the local authority able to move them on; or did the police become involved?

As mentioned above, Basildon Council has in place an arrangement with Essex County Traveller Unit (ECTU), as do many other local authorities in Essex, to act on its behalf, undertaking site visits to encampments, conducting assessments and serving appropriate notices and court orders. The police also routinely attend new encampments to decide whether they need to exercise their powers, liaising with ECTU and the Council. This was especially the case after the interim High Court Injunction was secured covering Basildon's main commercial areas. In the few instances where breaches occurred, such encampments were typically moved on within 1 to 2 days.

Question 3:

Do you think that the existing powers made available to local authorities to remove unauthorised campers from land are effective?

Yes, there are sufficient powers available to local authorities, however the issue is the speed in which such powers can be actively discharged. Local Authorities can use s.77 of the Criminal Justice and Public Order Act 1994 to direct unauthorised campers to leave. If unauthorised campers fail to comply with a s.77 direction to leave, local authorities can use s.78 of the Criminal Justice and Public Order Act 1994 to go to court and obtain an order which allows the removal of campers. The timescales associated with the use of either power can be far too lengthy. In some cases, it would be beneficial for Local Authorities to have, on a discretionary basis, access to an accelerated procedure for the removal of larger encampments where disturbance, criminality and damage to the land is anticipated or indeed experienced since first arrival on site. Whilst this could cause displacement to another sensitive location, it would at least provide rapid relief to communities seriously impacted by nuisance and anti-social behaviour. The absence of immediate action can provide a window of opportunity for a considerable amount of damage to occur, both in terms of physical environment and in community relations. Also, the s77/78 powers do not prevent reoccupation. For example, the encampment can move 100 metres along the road and do the same thing again.

In circumstances where the encampment is on a highway in the borough, the Highway Authority can enforce parking regulations, however experience has demonstrated that this is not often a desirable cause of action for the County Council and as such perpetuates the feeling of *one rule for travellers and a different rule for non-travellers*.

The timeliest powers are those reserved to the police, with s.61 of the Criminal Justice and Public Order Act 1994 being the most expedient in allowing swift action to take place; however these powers can only be exercised in limited circumstances and the police must be satisfied that the criteria are fully met. In addition, s.62 A-E of the Criminal Justice and Public Order Act 1994 can also be utilised by the police, however this is contingent on suitable pitches being available.

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Question 4:

Do you think local authorities could improve their use of existing powers?

Basildon Council currently use ECTU to assist with the discharge of existing powers due to the specialist nature of the work, in particular the serving of notices. This relationship is effective, with the powers available to local authorities used to the maximum of their potential, whilst recognising their constraints. As a result, the ECTU often work closely with the police and local authority to ensure as comprehensive response as is achievable.

Question 5:

What other powers may help local authorities deal with unauthorised encampments?

We would like to see simplified laws that are consistently applied and which can be readily understood by everyone.

There appears to be merit in extending the provisions of s.61 to allow local authorities to utilise this power. Amending the criteria for which s.61 can be applied would also be of benefit, allowing a notice to be served immediately on site without reliance on the police and perhaps also a general power for it to be used on unauthorised encampments where there is likely interference with the use of public or private amenities, or where its continuing presence is prejudicial to health or a nuisance. However, the implications of this suggestion would be to increase pressure on local authorities, who would be viewed as being at the forefront of responding to such incursions, in most cases placed ahead of the police. As such, additional resources, such as having bailiffs on standby, would be needed by local authorities to be able to make effective use of the additional power available to them.

In addition to the above, incorporating amendments to the current s77 and s78 powers to make provision to prevent travellers setting up an encampment within a certain distance of the current encampment could be welcomed.

Aggravated trespass

Question 6:

Do you consider that the current powers for police to direct trespassers to leave land are effective?

The discharge of existing powers can prove a challenge, particularly where existing criteria is prescriptive. For example, proving forced entry to a park can be a challenge if no one saw who actually broke the lock or knocked down the gate. There appears to be an element of interpretation when seeking to discharge s.61, particularly as circumstances are unlikely to precisely mirror the criteria requirements of s.61. In such cases, it is necessary for the police to undertake an assessment of the situation and then determine the best course of action. Quite often, the travelling community are au fait with the criteria that needs to be met to invoke s.61 and thereby proactive in ensuring such criteria is not met. For example, one criterion specifies that 'trespassers have between them six or more vehicles on the land'. It is quite common for the travelling community to enter the borough in convoys of more than 6 vehicles, however these often disperse and set up encampments with smaller groups of vehicles thereby avoiding the risk of a s.61 direction.

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S.62 A-E of the Criminal Justice and Public Order Act 1994 can be utilised by the police, however this is contingent upon suitable pitches being available. As a national assessment of site provision has not been undertaken it would be impossible for the police to direct a traveller encampment to a suitable pitch as this information is not available. This renders s.62 virtually unusable, particularly in Basildon borough. There are no transit sites in the borough, nor are there any in the whole county of Essex.

The existing penalties are not a significant enough deterrent to prevent the offence from occurring in the first instance. In addition, the police do not always have sufficient resource available to implement the necessary action.

Question 7:

Would any new or revised powers that enable police to direct trespassers to leave land make it easier to deal with unauthorised encampments?

Criminalisation of all forms of trespass would be difficult and impractical to operate. Basildon council would support strengthening of s.61 and s.62A to prevent a return to site once directed to leave by the police. An extension beyond the existing 3 month limit would be logical, with an extension to 12 months being preferable.

Question 8:

Do you consider that the Government should consider criminalising unauthorised encampments, in addition to the offence of aggravated trespass? If so, how should a new offence differ, and what actions and circumstances should it apply to?

A motion was agreed at the Council meeting on 14 December 2017 that in part directed the Policy and Resources Committee "to explore in more detail the so-called "Irish Option" and the merit of including this within this consultation response. Specifically, it was resolved:

"That this Council:

1. Notes the recent parliamentary debates on Unauthorised Encampments held in the House of Commons on 9 October and in Westminster Hall on the 12th of that month and welcomes the contributions made by our local MPs, Mark Francois, Stephen Metcalfe and John Baron.
2. Believes that Basildon Borough is a tolerant community but that illegal encampments are blighting the lives of both the settled community and the majority of law-abiding members of our Gypsy and Traveller community, whose collective reputations are unjustly tarnished by the illegal actions of a lawless minority.
3. Welcomes the announcement by the Department for Communities & Local Government that the Government are to consult on the effectiveness of enforcement against unauthorised developments and encampments and resolves to contribute positively to that consultation.
4. Furthermore, wishes for the Policy and Resources Committee to explore in more detail the so-called 'Irish Option' and the merit of including this within the consultation response to Government in the form of a report to the Policy and Resources Committee with a verbal update to be presented to Full Council before the end of the municipal year."

On 21 March 2018, the Policy and Resources Committee considered a report on the so-called 'Irish Option', which is generally understood to be the criminalisation of trespass similar to how it currently exists in the Republic of Ireland. The relevant law in Ireland is Part IIA of the Criminal Justice (Public Order) Act 1994, as inserted by Section 24 of the Housing (Miscellaneous provisions) Act 2002 – "Offences Relating to Entering and Occupying Land Without Consent"

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An offence is created in the circumstances described, but specifically 'entry on and occupation of land or bringing onto or placing an object on land without consent'. These circumstances include where land is likely to be damaged or there is a loss of amenity. An 'object' is defined as including a temporary dwelling – which could be a caravan or trailer – and also includes animals of any type. In the Republic of Ireland, a member of the Garda can direct the trespasser to leave and has powers to arrest without warrant. Furthermore, there are other powers to remove, store and dispose of 'objects'. A maximum penalty for contravention is a fine of up to 3000 Euros or imprisonment for up to a month, or both.

Members of the Policy and Resources Committee resolved:

'That the Committee notes the so-called 'Irish Option' and the merit of including this legal measure within a response to the anticipated Government consultation on the impact of unauthorised encampments on local communities through the establishment of a working group, to begin as soon as possible in the new municipal year, also with the intention of presenting a verbal report on this matter to Full Council in the next municipal year.'

A working Group met on 5th June 2018 to agree the draft response, which was then endorsed by the Policy Oversight and Strategy Committee on 14th June 2018.(subject to agreement)

Implementation of the so-called 'Irish Option' would result in power being given to the police, similar to that currently held by the Garda in Ireland, to arrest those involved in trespassing on land such as encampments. Such powers are clearly stronger than those currently held by the police in England and therefore careful consideration of the human rights implications would need to be undertaken by the Government to determine the impact.

Whilst Basildon Council has indicated its support for the so-called 'Irish Option' in principle, it recognises that the circumstances in the Republic of Ireland that resulted in the so-called 'Irish Option' might differ to those of the UK. It is understood that an assessment of current and future traveller site need was undertaken in the Republic of Ireland. This exercise suggested that need was met through the provision of a sufficient number of traveller sites, thus supporting the argument that local authorities had met their statutory duty and could resist challenge from gypsy traveller families that their rights under the European Convention on Human Rights could be breached. It is believed that the so-called 'Irish Option' was introduced within this context. In the UK, no such assessment has been undertaken and therefore the Government may wish to consider this as a factor when determining the suitability of the so-called 'Irish Option' as an appropriate response to the matter. We recognise that it would be for parliamentary counsel to skilfully translate powers criminalising trespass in certain circumstances available in Ireland into UK law, avoiding loopholes and ensuring that the legislation is *human rights compliant*.

Furthermore, should the Government proceed with an assessment of need, careful consideration of traveller movements should be undertaken as part of this process. Encampments are predominately a summer problem, which raises the question of *where do travellers go in the winter?* Similarly, *are lawful pitches across the country left vacant in the summer months whilst travellers travel?* What is evident is that the transient nature of traveller incursions within Basildon borough, predominately within the summer months, would imply that there is not a consistent need for permanent traveller pitches in the borough year round. The Government are best placed to undertake a national assessment in order to identify whether the patterns of movement experienced by Basildon borough are a local or national phenomena and whether sufficient traveller sites are provided in the UK to make the so-called 'Irish Option' a workable solution.

Consultation: Powers for dealing with unauthorised development and encampments

Use of injunctions to protect land

Question 9:

What barriers are there to the greater use of injunctions by local authorities, where appropriate, and how might they be overcome?

The creation of the planning court has assisted with this in terms of timescales, but this could be further improved. The cost of obtaining these injunctions and supporting evidence could be prohibitive.

Injunctions can be resource-intensive and do not present an immediate solution. In November 2017, Basildon Council was granted a High Court Injunction which gives the council greater powers to deal with unauthorised encampments on the Industrial Areas between Pipp's Hill and Burnt Mills. This represented the culmination of 18 months of work by Council Officers and the Council's expert legal advisers. Such robust action by local authorities is rare but was warranted because of the stress caused to the local businesses and the environment damage caused by frequent unauthorised encampments in the same locations. It was not enough to obtain the injunction, in the first weeks of the 'travelling season' it was vitally important to show an immediate presence when encampments were first reported.

Joint-working between local authorities, communities and the police

Question 10:

Do you have any suggestions or examples of how local authorities, the police, the courts and communities can work together more successfully to improve community relations and address issues raised by unauthorised encampments?

This is a very difficult issue to address and perhaps there needs to be more awareness of the role of each body, the timescales involved and what powers are available within the current legal framework to manage expectations when encampments and/or unauthorised development occurs.

Ongoing communication appears to be a positive response. To better co-ordinate the involvement of Partners on the issues raised by unauthorised encampments, Basildon Council has a 'Traveller Wellbeing' group that includes representation from Essex County Traveller Unit (ECTU), Police, local Priest, health sector representatives, school representatives and representatives from the local Gypsy and Traveller community. The group focuses on how we can strengthen community cohesion and further develop community relations. It should be noted that the settled Gypsy and Traveller community are often tarnished by the actions and behaviour of those occupying unauthorised encampments and this further perpetuates a negative view of the travelling community and is detrimental to improved community relations.

Court Processes

Question 11:

Are there ways in which court processes might be modified in a proportionate way to ensure unauthorised encampments can be addressed more quickly?

The application for an interim ex parte injunction could be considered on the papers rather than at a hearing as this would speed up the process. One of the biggest delays can be as a result of the requirements for service, so perhaps it could be made a requirement that service be achieved by putting one copy of the notice on the site and in a local paper(s), however such matters can already be addressed via a cleverly considered court order. Having shorter periods for compliance with directions and relisting of matters for further hearing may also be beneficial.

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Modification of s.67 could further speed up the process, however it is likely to simply move the problem on faster rather than deal with the problem itself. This could result in more incidences of encampments.

Interim possession orders

Question 12:

In your view, what would the advantages and disadvantages be of extending the IPO process to open land?

It is evident that there are some advantages of dealing with matters in this way as it is quick and straightforward thereby providing an immediate solution. However, the disadvantages would be that it does not allow provision for any claim for damages or to return the land to the condition it was in before the occupation, but in reality the prospects of this being paid or undertaken are marginal. Another advantage would be that it does not require making an application for a warrant for possession, which could delay matters. The fact that damages would need to be paid if the IPO was wrongly granted.

Powers for dealing with unauthorised development

Question 13:

Are you aware of any specific barriers which prevent the effective use of current planning enforcement powers?

On paper, it would appear that sufficient powers exist however there are a number of barriers to their effective use.

Identifying those in occupation and the owners of the land has proved problematic in the past due to the fact that the sale of land has not resulted in this being accurately recorded at the land registry, so tighter controls around this would be useful. In addition, resources within local government and partners involved in such matters are limited, thereby reducing their usage in practical terms.

There is a constant difficulty in establishing the facts of a matter. For example, ownership of vehicles is a challenge as the DVLA are unable to release ownership information to the local planning authority.

When travellers access land, they often simultaneously submit a planning application for retrospective planning approval. This has the effect of curtailing any enforcement action until the planning application has been determined. If the outcome is not in the favour of the traveller, this often results in the submission of an appeal, which can take a significant time period to conclude due to the lack of suitably skilled planning inspectorate available to determine the appeal.

Over the years, it has becoming increasingly apparent that the planning process aids occupiers of unauthorised traveller development simply by the length of time it takes to process applications and subsequent appeals. The ability to submit a retrospective planning application within hours or days of securing land is detrimental to the effective use of planning enforcement powers as it renders them powerless until the planning process has concluded.

At Basildon Council, the relevant Committee has delegated enforcement powers to officers rather than keeping with a Committee. This ensures a speedy enforcement response to all unauthorised development in the borough – not just unauthorised development by travellers. It would seem that

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planning enforcement powers are not a significant deterrent to travellers proceeding with unauthorised development simply because they will not be subjected to them until the planning process has concluded.

Question 14:

If you are aware of any specific barriers to effective enforcement, are there any resourcing or administrative arrangements that can help overcome them?

The creation of the planning court has assisted in reducing some of these barriers but the cost of taking action is considerable, especially in times of limited resources to local authorities. The appeals process for both the enforcement notices and the cost of dealing with this is prohibitive. The courts need to consider taking a more robust approach to breach of planning control in respect of their decisions regarding injunctions under the Town and Country Planning Act (TCPA). This can result in a situation with multiple legal actions in respect of the same enforcement matter. Further financial resources should be made available to the local authorities and courts to deal with these matters.

In order for Basildon Council to undertake effective enforcement in relation to Dale Farm, it required a substantial resource, both financial and human, which ultimately had to be covered from the Council's own finances and staffing.

Question 15:

Are you aware of any specific barriers which prevent the effective use of temporary stop notices? If so, do you have a view on how these barriers can be overcome?

In reality, temporary stop notices are quite often ignored. It would be beneficial to implement tougher penalties for breaches, such as the threat of imprisonment. In addition, providing a means by which to serve a temporary stop notice where it is believed a breach of planning control is going to occur would be beneficial. Increasing the time period the stop notice can remain in force would also be of assistance as would a lengthening of the Stop Notice timescales. Currently this is limited to 28 days which requires a great number of processes to be completed in a limited timeframe.

Improving the efficiency of enforcement notice appeals

Question 16:

How do you think the existing enforcement notice appeals process can be improved or streamlined?

By reducing the time period for representations and replies to be submitted, along with the provision for decisions to be based on papers instead of at a hearing or jury, where appropriate.

In addition, if appeals are to continue to be heard by the planning inspectorate then it needs to be resourced sufficiently to prevent delays. Basildon Council has been subjected to excessive delays in the past caused by the limited number of existing planning inspectors suitably qualified to determine appeals. On occasion, delays of up to a year have been experienced from start date to enquiry date. This is detrimental to all involved.

Question 17: How can Government make existing guidance more effective in informing and changing behaviour?

Local authorities have a public sector duty to consider equalities implications, however a great proportion of equalities legislation is driven by case law. This creates uncertainty, as local authorities are fearful of being judicially reviewed on matters that do not have a clear answer. Local authorities need to consider

Consultation: Powers for dealing with unauthorised development and encampments

each individuals circumstances in terms of the equalities duties and safeguarding responsibilities in parallel to its responsibility to enforce against encampments and unauthorised development. In addition, particularly in the case of unauthorised development, the personal circumstances of individuals are often not disclosed until later in the proceedings which makes it challenging to fully assess the council's equalities duties in respect of each case.

Greater education, promotion and consultation would support local authorities in undertaking the various roles for which they have a responsibility.

The current guidance is not statutory which may result in inconsistencies in its application and use.

Question 18: If future guidance was issued as statutory guidance, would this help in taking action against unauthorised development and encampments?

Yes, as it would mean that there would be more weight to the guidance to encourage agencies to work more closely to resolves issues, however it would not rectify the fundamental limitations of existing legislation.

Planning and traveller site provision

Question 19:

Are there any specific barriers to the provision of more authorised permanent and transit sites? If so, is there any action that the Government could take to help overcome those barriers?

There are a number of barriers to the provision of more authorised permanent and transit sites. These include:

- Funding
- Political will
- Public Opposition
- Planning legislation
- Local Plan process

With regards to the Local Plan process, there have been challenges in identifying suitable sites, given that the borough is made up of either built up areas or greenbelt land – both of which are unsuitable.

Evidence is also required of the migration patterns and needs of the travelling community in order to determine what would be a suitable level of authorised permanent and transit sites across the country.

Impacts on the travelling community

Question 20:

What impact would extending local authority, police or land owner powers have on children and families and other groups with protected characteristics that public authorities must, in the exercise of its functions, have due regard to under their Public Sector Equality Duty?

It is possible that extending current powers would result in those occupying unauthorised encampments being moved on more frequently and quickly. This could result in greater disruption to their lives. This is something the Government would need to consider, particularly as it could give rise to human rights issues and contribute to any existing hardship. In addition, consultation with the Equality and Human

Consultation: Powers for dealing with unauthorised development and encampments

Rights Commission may also be of assistance to the Government in further exploring any potential negative impact.

Question 21:

Do you expect that extending the powers referred to above 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?

It could have a positive impact as it could reduce the number of encampments and as such mean that there would be less disruption in travellers lives by having to be moved on as a result. More settled traveller communities would have greater opportunities to benefit from local support networks. This would be of particular benefit to children and parents who may benefit from the stability of a single education provider and/or local health provider. Further permanent or transit sites may contribute to this scenario arising if a need is identified, however this approach may not receive wide spread support.

A negative impact may still arise, particularly from the view point of the travelling community, who may feel that greater constraints on their ability to travel and set up encampments is contrary to the way of life that they wish to lead.

Other comments

Question 22:

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

- A major issue identified with unauthorised encampments has been fly tipping, however it is acknowledged that this problem is not exclusive to gypsy traveller communities. Greater efforts within communities to take responsibility for how waste is disposed of would be welcome.
- Basildon Council is aware of the 'tolerated stopping' model scheme which has been developed to involve settled travellers in the management of temporary visitors to the area i.e. for weddings, funerals etc. There may be merit in exploring such a scheme as part of solution to the encampment problem.

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BASILDON BOROUGH COUNCIL

Report to: External Affairs, Partnerships and Liaison Committee
27 February 2020

WORK PROGRAMME 2019/20 UPDATE

Report by: Head of Engagement

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Enclosures: None

EXECUTIVE SUMMARY:

This report provides Members with an opportunity to review and identify items for the External Affairs, Partnerships and Liaison Committee's Work Programme for the ensuing municipal year.

CORPORATE PLAN PROMISES:

- A place for everyone to call home
- A place where everyone prospers
- A place to be proud of

WARD(S):

All Wards

RECOMMENDATION:

That the Committee considers and endorses items for inclusion in its Work Programme for the 2019/20 municipal year.

BACKGROUND

It is good practice for committees to develop, agree and maintain a work programme for the ensuing municipal year.

Additional items can be added to agendas in liaison with the Chairman if a report has been identified which has not appeared in the work programme. However, in general, additional items that are not on the work programme should be subject to agreement by the Committee for them to be included and subsequently a report brought forward to ensure that officer resources are directed towards matters that the Committee has agreed it wishes to consider. This approach ensures the Committee has control of its work programme and allows Officers to do the necessary work in preparing reports to Committee.

LEGISLATION/POLICY

The terms of reference of the Committee are set out in the Council's Constitution. It is good practice to include work programming to help the Council manage priorities.

The issues identified by Officers in liaison with the Chairman are listed below:

Committee Date	Report Name	Detail
18 March 2020	C2C Update	Update from Chris Atkinson, Head of Communications, Trenitalia C2C on latest developments on the C2C line that serves Basildon, Laindon and Pitsea stations.
18 March 2020	The Role of the Voluntary Sector in the Borough	To consider the role of the voluntary sector and how it is contributing to improving the lives of residents in the borough.
18 March 2020	Basildon Local Delivery Pilot (LDP) update	An update on the work of the Basildon LDP.
18 March 2020	'Our Place'	A report on the conclusion of Phase 2 of Our Place. Phase 2 will include detailed work with residents, partners and other stakeholders to build on the core themes that emerged through Phase 1.
18 March 2020	Strategic Partnership Review	To consider and discuss partnership opportunities with external partners within the borough.
18 March 2020	Community Governance in the Borough	To receive an update in connection with the community governance arrangements in the borough including the role of Town and Parish councils and the review currently being undertaken.

GENERAL INFORMATION

Corporate Plan Promises

The activity of the Committee should reflect and take account of the core promises and outcomes set out in the Council's Corporate Plan and support achievements of these.

Financial Implications

There are no direct financial implications directly arising from consideration of this report.

Risk Management Implications

The relevant risks and opportunities in connection with this matter have been considered and have been referred to in the body of the report as appropriate.

Diversity and Inclusion Implications

Officers are required to flag up any Inclusion, Diversity and Community Cohesion implications for Members to consider when making decisions regarding each item on the Work Programme. Where relevant, Service Impact Assessments will be undertaken and the findings will be presented to Members for consideration.

Other Relevant Considerations

None

Background Papers

None

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