CABINET

DATE: 10 OCTOBER 2017

MANAGEMENT OF UNAUTHORISED ENCAMPMENTS

Report of the Director of Local Services & Housing - Paul Jones

Cabinet Member: Councillor John Riddle, Planning, Housing and Resilience

Purpose of report

To provide members with the details of the powers available to the Council to manage unauthorised encampments and to set out proposals for the development of temporary stopping places in Northumberland for Gypsies and Travellers, to reduce the community impact arising from some unauthorised encampments.

To approve the Protocol for Managing Unauthorised Encampments in Northumberland.

Recommendations

It is recommended that members:

1. Note the content of the report and agree the proposals for the future use of temporary negotiated stopping places to assist with the management of unauthorised encampments.


Link to Corporate Plan

This report is relevant to the Places and Environment priority included in the Northumberland County Council Corporate Plan 2013-2017

Key issues

- During 2016/17 there were 96 encampments across the county with the largest number in the south east.
- The Gypsy Roma Traveller (GRT) Liaison Officer (GRTLO) is responsible for managing and enforcing on unauthorised encampments. At present there are no options available to the Officer to direct and manage such encampments to more appropriate location.
• The Council and those stopping unlawfully would benefit from the use of more appropriate short term stopping locations where it was appropriate to “tolerate” an unauthorised encampment.
• The need to take enforcement action by the Local Authority or the Police would be greatly reduced through an agreed toleration policy. If legal action were required then should an authorised camp site have been offered and declined then the action would be less likely to be challenged by the Court.
• Use of Section 62 A-E (Criminal Justice and Public Order Act 1994) would become available to the police; this section is dependent upon an alternative authorised location owned or privately managed on behalf of Local Authority or Registered Social Landlord.
• With the correct assessment, consultation and consideration of each proposed location it is envisaged that complaints and tension from the settled communities and businesses that arise due to the impact of unauthorised encampments would reduce.

Background

1. Unauthorised encampments are an issue faced by Local Authorities throughout the country. Many can cause concerns within settled communities and can cause both a social and environmental impact on an area. Northumberland has a particularly high number of unauthorised encampments each year. During 2016/17 there were 96 encampments across the county.

2. The Government and the local authority are under a general obligation to facilitate the gypsy way of life for ethnic Gypsies and Travellers so as to be consistent with the principles of Human Rights law. This does not however confer an immunity from the general law to safeguard the assets of the community as a whole (such as any legal restrictions which may safeguard against unauthorised encampments).

3. To that end, the manner in which the Council enforces the law and responds to unauthorised encampments, especially those where the level of nuisance can be effectively controlled, may require some special consideration of the needs of the GRT community and their way of life, often referred to as a “policy of toleration”. However, as part of the Government’s commitment to protecting the nation’s green spaces, in particular the Green Belt and the countryside, the Department for Communities and Local Government (DCLG) encourages local authorities to be ready to take ‘swift enforcement action’ to ‘tackle rogue encampments and sites’.

4. Accordingly, there is a need to strike a balance between toleration and enforcement, which in part includes the need to ensure adequate provision and number of suitable pitches, which has been identified as a potential issue within Northumberland. To assist officers of the council, partner organisations and the travelling community, a proposed “toleration policy” - Protocol for Managing Unauthorised Encampments in Northumberland (Appendix 1) has been developed.
Statutory powers available to the Council

5. The principal powers/remedies available to the Council are;

Direction to Leave
(Criminal Justice and Public Order Act 1994 - section 77)

6. This gives the Council the power to control unauthorised encampments by issuing a Direction to persons residing in vehicles on highway land, other unoccupied land, or
occupied land without the consent of the occupier, to leave such land and to
remove their vehicles and any other property from it.

It is an offence for a person so directed to fail to comply as soon as practicable with
the direction, or to enter the land again with a vehicle within 3 months of the date of
the Direction.

7. Prior to any enforcement action under this power the Council must:
   a. carry out an objective assessment of the encampment and its effect on the
      locality;
   b. carry out, health, educational, welfare and safety assessments of the
      encampment and its inhabitants;
   c. give equal consideration to the rights of the Travellers and the settled
      community;
   d. exercise proportionality in any action taken.

8. In the event that the section 77 notice is not complied with the Council may apply to
   the Court under section 78 of the Act for an Order requiring the removal of any
   vehicle or other property which is so present on the land and any person residing in
   it.

9. Section 77 is generally used by the Council in respect of its own land rather than
   encampments on private land and the current protocol is to establish ownership of
   any such private land affected with a view to offering advice and support to the
   landowner or his agent but will not ordinarily include formal enforcement action.

10. A chargeable service by the Council to use this power upon a request by a private
    landowner or their agent has been developed and is currently applied - Appendix 2.

Injunctions

11. There are various different legislative options available to deal with the conduct of
    persons and/or the protection of land, including section 1 of the Anti-social

12. Further statutory powers are also available (such as provisions under the Highways
    Act 1980 to deal with obstructions and under the Town and Country Planning Act
    1990 relating to unauthorised use of land etc.) subject to whatever the particular
    circumstances of the problem is, but only those most relevant to the expedient
enforcement of unauthorised encampments have been described above in any detail.

**Statutory powers available to the Police**

13. Power to remove trespassers on land
(The Criminal Justice and Public Order Act 1994, Part V)

The Police have various powers under this Part of the 1994 Act, including:

**Section 61:**

14. If the senior police officer present at the scene reasonably believes:
- that **two** or more persons are trespassing on land with the common purpose of residing there for any period;
- that reasonable steps have been taken by or on behalf of the occupier to ask them to leave and **either**:
  - (a) that any of those persons has caused:
    - damage to the land or to property on the land; or
    - used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his;
  - and/or
  - (b) that those persons have between them **six or more** vehicles on the land then the officer may direct such persons to leave the land and to remove any vehicles or other property they have with them.

Failure to comply with such Direction is an offence for which an offender is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 4 on the standard scale (£2,500), or both

**Section 62A:**

15. This power is broadly similar in scope to that given in section 61 but applies to cases where a person accompanied by one or more other persons are trespassing on land with at least **one** vehicle **but** that the Police have first consulted with the Council as to whether there is an alternative site available on a relevant site for that caravan, or each of the caravans forming the encampment.

**Transit Sites and Negotiated Stopping Locations**

16. A number of Local Authorities, including Durham & Cumbria have tried to address this issue by creating transit sites. A transit site is very similar to a permanent site in that fixed facilities are provided and the cost of operating and managing them are similar. The key difference is the period of time that a traveller can remain on the site.

17. Where transit sites are not supported or deemed suitable, some local authorities use an alternative approach, identifying Negotiated Stopping Places. A stopping
place in this context would be a site set aside for short term stays by the Gypsy Roma Traveller community, giving groups and families an option to stay in an authorised manner on land rather than commit an offence by trespassing and subsequently living on a third party’s land in an unauthorised and unlawful manner. A negotiated stopping place could be particularly beneficial in an area affected by very high numbers of unauthorised encampments.

18. A negotiated stopping location differs to a transit site in that there is no provision of permanent facilities and has less reliance on close management by council officers.

19. A negotiated stopping place is far more flexible in use than other types of sites. The land can be returned to its previous use at short notice if required and they may be selected having regard to the size of encampments and the location within the county as necessary.

20. A typical stopping place comprises of a suitable piece of land, usually a field or piece of hard-standing, with the addition of toilet facilities (commonly portaloos) and waste storage (typically a large skip or bins). Water may also be provided, ensuring a clean water supply. A fence or other method of securing the stopping place can be considered depending upon the location chosen.

21. Negotiated stopping places do not provide the modern conveniences of a transit site or permanent site, making it more suited to stays of a shorter duration. More settled living conditions are available at NCC’s two permanent GRT Sites in Hartford Bridge and Lynemouth, catering for different needs and requirements.

22. Those staying at negotiated stopping places are not generally liable to pay rent. The facilities are such that the minimal expenditure does not require this. This would be considered should NCC choose to pursue this option and any payments deemed necessary would be proportionate to the number and nature of facilities provided.

23. Payment for services such as waste disposal could be considered but charging may result in the services not being used, leading to fly tipping and general nuisance from litter and waste. Gas and electricity are seldom required; groups using the facilities will almost always have their own supply via canisters and generators and would be unlikely to wish to pay for this to be provided.

24. Upon speaking to Travellers in Northumberland, it was found that Durham County Council’s stopping places were highly regarded. The principle reasons were that the site was free to stay on; occupants could come and go as they pleased so long as a set time limit was not breached (commonly this is 13 weeks). In turn, the experience of Council and partner organisations, including the police, was that less resources were required to manage such locations.

25. The recommendations and proposals within this report are supported by a recent report published on 13th December 2016:

**Managing and delivering Gypsy & Traveller sites: Negotiating Conflict.**
The report was a joint collaboration between the Chartered Institute of Housing, Joseph Rowntree Foundation and De Montfort University, Leicester.
The report focused on the overall housing issues faced by local authorities relating to the G.R.T. community.

As part of the report’s recommendations it states;

**Where sites are not already in existence, consider ‘negotiated stopping’, rather than eviction, as a more resource-efficient and humane approach to unauthorised encampments**

A number of progressive approaches are being adopted across the country to negotiate with Gypsies and Travellers and to identify appropriate areas where they might stop temporarily by agreement. The savings per year for authorities who do this are shown to be in the hundreds of thousands of pounds.

**PROPOSAL**

1. Locations for Negotiated Stopping Places across the county will be assessed against a set of criteria which will include known seasonal migration routes and trends. This criteria will include:

   - The number of caravans / trailers to be accommodated
   - The locations of any occupied housing within 200 metres of the site
   - the provision of facilities and services within 2 miles of the site
   - Easy access to an A Class Road
   - Land ownership
   - Accessibility of site by emergency services and council vehicles
   - The location of any Special Scientific Interest / Historic Conservation Areas
   - If the area is gated or able to be secured outside of seasonal need
   - The level of flood risk on site

2. Sites would be identified and assessed on an individual basis having regard to the nature and size of the encampments.

3. Approval for the allocation of a site as a Negotiated Stopping Place, following enquiries with internal services and partners, would be sought from the **Head of Housing** and the **Policy Board Member for Planning, Housing and Resilience in advance** of a group being directed to an identified location.

4. Tolerance at these sites would be for a period of up to **Four Weeks** with a s77 notice issued to the group when directed to the Negotiated Stopping Place confirming in advance the day of expected departure.

5. The site will be provided with bins and portaloo s. Whilst there is an initial outlay and cost this would minimise any subsequent clean up costs to the council.
6. The sites will be managed in line with the **Protocol for Managing Unauthorised Encampments in Northumberland** (draft updated August 2017), copy attached at Appendix 1.

**Background papers**

http://www.cih.org/publication-free/display/vpathDCR/templatedata/cih/publication-free/data/Managing_Gypsy_and_Traveller_sites_negotiating_conflict

**Appendices**

Appendix 1 - Protocol for Managing Unauthorised Encampments in Northumberland

Appendix 2 - Unauthorised Encampments Charging Policy

**Implications**

<table>
<thead>
<tr>
<th>Policy</th>
<th>This proposal supports the delivery of the Council’s Corporate Plan, the Housing Strategy 2013-2018 and chapter six of the draft Core Strategy.</th>
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<tbody>
<tr>
<td>Finance and value for money</td>
<td>By ensuring that encampments are located in agreed stopping places, and minimal waste facilities are provided then reduced, management and clean-up costs will be achieved.</td>
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<tr>
<td>Legal</td>
<td>The identification of agreed stopping places will support any subsequent Legal action that is taken.</td>
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<tr>
<td>Procurement</td>
<td>The location of proposed stopping places will be on council-owned land therefore there are no procurement implications</td>
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<tr>
<td>Human Resources</td>
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<tr>
<td>Property</td>
<td>The proposals relates to Council-owned land.</td>
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<tr>
<td>Equalities (Impact Assessment attached)</td>
<td>This proposals relates to members of the Gypsy Roma Traveller community. The <strong>Equality Act 2010</strong> defines <strong>Romany Gypsies</strong> and <strong>Irish Travellers</strong> as ethnic groups, meaning they're legally protected against race discrimination. Legally, race discrimination is defined as unfair treatment because of one of the following things: colour, nationality, national origin or ethnic origin.</td>
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<tr>
<td>Risk Assessment</td>
<td>If the proposals are agreed risk assessments will be completed for the each of the sites identified</td>
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<tr>
<td>Crime &amp; Disorder</td>
<td>As part of the development of the sites consultation will be completed with Neighbourhood Policing Teams and the Council’s Community Safety team.</td>
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<tr>
<td>Customer</td>
<td>Any potential impact upon local communities has been</td>
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Consideration considered as part of the site assessments.

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<td>Carbon reduction</td>
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**Report sign off.**

*Authors must ensure that relevant officers and members have agreed the content of the report:*

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<td>Executive Director</td>
<td>PJ</td>
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<td>Portfolio Holder(s)</td>
<td>JR</td>
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Protocol for Managing Unauthorised Encampments in Northumberland

Why a Protocol?

The Local Government Association has highlighted that the lack of appropriate accommodation (long-term accommodation, transit sites etc...) means that unauthorised encampments are inevitable. This leads into the ‘vicious cycle’ identified by the Commission for Racial Equality - unauthorised encampments lead to heightened community tension and negative reporting, pressure not to grant planning permission resulting in a shortage of authorised sites and continued and increased unauthorised encampments.

It is to address these issues, and ensure that the welfare of both Travellers and the settled community are protected and that all parties are clear what their responsibilities are; that the Protocol has been developed.

Gypsies and Travellers have been part of the community in Northumberland for hundreds of years and for the purposes of this Protocol the definition for Gypsies and Travellers includes those recognised as a racial group under the Equality Act 2010. These are Romany Gypsies and Irish Travellers and other Gypsies and Travellers who are ethnic or national in origin who would come in the definition of a racial group such as Scottish Travellers. Throughout this strategy, the term ‘Travellers’ has been used to include all of these groups.

The Government recommends the use of joint protocols between the local authority, the police and other relevant agencies. This means that each partner is clear on their roles and responsibilities and how they work together. Northumberland County Council and Northumbria Police have taken advice and guidance from the Dealing with illegal and unauthorised encampments: a summary of available powers issued by the Home
Office in March 2015 and Guidance on Managing Unauthorised Camping published by the DCLG in 2006

The guiding principles of the Protocol are:
- Balanced consideration of all encampments on their own merits
- Equal consideration to the rights of Travellers and the settled community
- Proportionality of all actions.

Duties of Protocol Partners

All partners involved in the Protocol are concerned with the need to build trust and confidence in local communities and therefore the need to evict will be balanced against the need of those involved in, and affected by an encampment.

Northumberland County Council (NCC)

NCC must respond to reports of unauthorised encampments in a timely manner, with the Gypsy and Traveller Liaison Officer (GRTLO) visiting within 24 hours during normal working hours (Monday to Friday). The Council also has an obligation to carry out welfare assessments on unauthorised encampments, ensuring that where need is identified the appropriate department and agencies are alerted. NCC will identify need through an information sharing process, with the GRTLO informing partner agencies of all encampments and their constituents.

NCC will ensure that a copy of the Protocol is available to the Travelling community in written format along with the Code of Respect and other appropriate material, and both are clearly explained to the community by the GRTLO.

Northumbria Police

On most occasions the police would be the first agency called when a new unauthorised encampment is found. The police do have a duty to uphold the law, but must take into account humanitarian considerations when deciding on appropriate action. Where there are reports of violence, threats of intimidation or criminal damage the police will risk assess the situation, whether the threats emanate from the Travellers or the settled community.

Children’s Services

Northumberland’s Traveller Education Service (NTES) works to ensure that children and young people from Traveller communities have equal access to education, training and learning opportunities where they feel safe and are able to enjoy learning, to achieve and to succeed.

NTES will be notified as soon as encampments arrive so that children can receive continuity in their educational experience and NCC records of missing children can be updated.

Health Services
Health professionals within Northumberland have a remit that includes working with Traveller families. It is expected that the GRTLO will contact Health Visitors where unauthorised encampments are identified and support is required for the families.

**Provision in Northumberland**

Two local authority Gypsy and Traveller sites have been established in Northumberland, at Lynemouth and Hartford Bridge. There has been significant recent investment in both sites to upgrade the facilities for residents. There is also a privately owned site in Berwick-upon-Tweed, a Showman’s Guild Site at Bomarsund and a yard in Ashington, plus access for approximately 19 travelling fairs a year in Northumberland. GRT families are also resident in private sector housing, lay-ups on farms and on holiday caravan camps.

Government guidance states that local authorities should try to identify possible emergency stopping places where Gypsy families and others would be allowed to camp for short periods.

Northumberland County Council recognises the important role that site provision plays as an essential corollary to tackling unauthorised camping. It is the policy of the County Council to retain the two local authority Gypsy and Traveller sites and to ensure that they are managed effectively. Development plans include policies against which proposals for new Gypsy sites will be considered. Northumberland County Council will endeavour to seek and identify acceptable temporary stopping places.

**Local Authority Procedures for Managing Unauthorised Encampments**

**The Decision to Tolerate**

The County Council recognises that there are opportunities in Northumberland for temporary encampments for Travellers and others who have a genuine reason for staying on a site, for example for welfare reasons, in locations which can cause minimum disruption to other communities.

In line with Government advice the local authority will tolerate for an agreed period unauthorised camping where there are no problems and no nuisance is being caused. Negotiations with the Travellers and others will take place to agree a departure date beyond which eviction action may result.

Encampments will be kept under review and regularly visited by local authority officers, the frequency of which will depend on the location and circumstances of the encampment. If a camp is remotely sited the Police may visit in place of the GRTLO after the initial assessments, otherwise visits will occur no more than daily but no less than weekly. Changed and deteriorating circumstances such as nuisance or environmental damage, justified complaints from the local community or unacceptable increase in the size of the encampment are likely to precipitate eviction action.
There are locations where immediate action to move on Travellers must be taken, either because the site is likely to endanger the health and safety of the group or because the encampment seriously disrupts the ability of the settled community to go about their business.

**Negotiated Stopping Places**

The Council may direct an encampment to a Negotiated Stopping Place. These locations will be assessed against a set of criteria which will include known seasonal migration routes and trends. This criteria will include:

- The number of caravans / trailers to be accommodated
- The locations of any occupied housing within 200 metres of the site
- the provision of facilities and services within 2 miles of the site
- Easy access to an A Class Road
- Land ownership
- Accessibility of site by emergency services and council vehicles
- The location of any Special Scientific Interest / Historic Conservation Areas
- If the area is gated or able to be secured outside of seasonal need
- The level of flood risk on site

Sites would be identified and assessed on an individual basis having regard to the nature and size of the encampments.

Approval for the allocation of a site as a Negotiated Stopping Place would be sought from the **Head of Housing** and the **Policy Board Member for Planning, Housing and Resilience in advance** of a group being directed to an identified location.

Tolerance at these sites would be for a period of up to **Four Weeks** with a s77 notice issued to the group when directed to the Negotiated Stopping Place confirming in advance the day of expected departure.

**The Decision Not to Tolerate**

An encampment on local authority or highway land (including encampments on any designated temporary stopping places) will not be tolerated and eviction action will be taken where the encampment:-

- Has caused damage to the land or property on the land, where necessary involving public protection officers to ensure that all risks to both the Travellers themselves and to the wider community are minimised

- Causes, or is likely to cause, a serious Health and Safety risk, where necessary involving public protection officers to ensure that all risks to both the travellers themselves and to the wider community are minimised

- Or unauthorised campers have used threatening, abusive or insulting words or behaviour to the occupier, a member of his family or his employee or his agent
• Is causing an obstruction

• Has more than six trailers on the land

• Where Travellers or others have moved from one site to another within the same locality having caused nuisance or environmental damage at any previous site without exceptional reasons for doing so.

The Council will monitor sites where there are particular nuisance problems resulting from recurring unauthorised encampments and take appropriate action in respect of these sites.

The County Council will not tolerate unauthorised encampments which result in criminal or anti-social activity. In such circumstances the Council will immediately issue a Direction to Leave, giving the Travellers or others a reasonable time to be off the property. If the Travellers or others fail to move off the property when requested to do so, a request will be made to the police to use their powers to evict the Travellers. The police will liaise with the County Council in respect of the use of their powers.

Encampments on Local Authority Land

Where an illegal encampment is on land owned by the local authority, it is the Council’s responsibility to lead in determining a course of action. Unauthorised encampments will be visited by the GRTLO as soon as practicable (normally within 24 hours Monday to Friday) who will collect basic information on the numbers of vehicles and families involved, past and intended future movement, anticipated length of stay, and reasons for stay on a proforma. The GRTLO will give Travellers the opportunity to identify any particular health, educational or other welfare needs. The tone of the initial visit will be, in keeping with the ethos of community cohesion, conducted in a cordial and respectful manner.

The information from the visit will be shared with partners including the Police, Traveller Education Service and Health Visitors where all unauthorised encampments are found. Health, education and welfare assessments will be carried out by the relevant professionals and the information will be shared with the GRTLO and Police. A list of contacts in the County Council, Northumbria Police and all other relevant agencies and organisations, will be prepared and kept up to date in order to assist collaborative working. Each department or organisation will take responsibility for updating their records and ensuring that this information is disseminated to all partners.

To ensure the best outcomes for the Travellers and the settled community and to support community cohesion the encampment will be closely monitored and visited regularly by local authority officers.

Prior to any decision to evict being taken the welfare assessments carried out up to that date and further information provided by the Travellers will be taken into account in the decision on whether to evict. Where Traveller children gain access to schools, this will be taken into consideration before a decision is reached. The health and welfare assessments that have taken place will be shared via case conference, electronic mail or telephone calls as appropriate to ensure all parties have sufficient and timely information on which to base their judgements.
**Encampments on Privately Owned Land**

In other cases for encampments on privately owned land the County Council will expect the landowners to decide on the appropriate action, including seeking eviction if appropriate. The Council will assist a private landowner if requested acting on their behalf and has developed an Unauthorised Encampment Charging Policy to support the delivery of this service.

For encampments on land registered as common land or village green and where the public has a lawful right of access the County Council (including Parish Councils) may request the police to use their powers to evict the Travellers.

**Government Guidance**

Advice on managing unauthorised encampments is contained in the Guide to Effective Use of Enforcement Powers, Part 1: Unauthorised Encampments issued by the Home Office on February 2006. This document stresses that criminal or anti-social activity that might be associated with an unauthorised encampment should not be tolerated in any circumstances. By contrast toleration may be appropriate where an encampment is not causing a level of nuisance which cannot be effectively controlled and in such cases local authorities should consider providing basic services such as toilets, a refuse skip and a supply of drinking water.

The guidance states that local authorities should not use their powers to evict Travellers or others needlessly but they should act in a humane and compassionate way; taking into account the rights and needs of the Travellers and others, the landowners and the wider community whose lives may be affected by the situation.

In all cases local authorities are required to take careful account of their statutory obligations under other legislation e.g. to make appropriate educational provision, to provide support for children and their families, and in relation to housing the homeless. Local authorities should also liaise with other relevant authorities e.g. health authorities. As a consequence in every case where eviction is being considered local authorities must consider welfare issues when deciding whether to proceed and therefore they are advised to undertake welfare assessments.