



WOKINGHAM BOROUGH COUNCIL

A Meeting of an **INDIVIDUAL EXECUTIVE MEMBER DECISION** will be held in SF1 - Civic Offices on **FRIDAY 13 JULY 2018 AT 12.30 PM**

A handwritten signature in black ink, appearing to read 'Manjeet Gill'.

Manjeet Gill
Interim Chief Executive
Published on 5 July 2018

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WOKINGHAM BOROUGH COUNCIL

Our Vision

A great place to live, an even better place to do business

Our Priorities

Improve educational attainment and focus on every child achieving their potential

Invest in regenerating towns and villages, support social and economic prosperity, whilst encouraging business growth

Ensure strong sustainable communities that are vibrant and supported by well designed development

Tackle traffic congestion in specific areas of the Borough

Improve the customer experience when accessing Council services

The Underpinning Principles

Offer excellent value for your Council Tax

Provide affordable homes

Look after the vulnerable

Improve health, wellbeing and quality of life

Maintain and improve the waste collection, recycling and fuel efficiency

Deliver quality in all that we do

For consideration by

Simon Weeks, Executive Member for Planning and Enforcement

Officers Present

Jason Varley, Planning Enforcement - Lead Officer

Callum Wernham, Democratic and Electoral Services Specialist

| IMD NO. | WARD | SUBJECT | |
|----------------|---------------|--|---------------|
| IMD 2018/29 | None Specific | RESPONSE TO GOVERNMENT CONSULTATION ON POWERS FOR DEALING WITH UNAUTHORISED DEVELOPMENT AND ENCAMPMENTS | 5 - 20 |

| CONTACT OFFICER | |
|------------------------|---|
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Agenda Item IMD29

INDIVIDUAL EXECUTIVE MEMBER DECISION REFERENCE IMD:

| | |
|--|---|
| TITLE | Response to Government Consultation on Powers for Dealing with Unauthorised Development and Encampments |
| DECISION TO BE MADE BY | Executive Member for Planning and Enforcement - Simon Weeks |
| DATE, MEETING ROOM and TIME | 13 July 2018 SF1 at 12.30 |
| WARD | None Specific; |
| DIRECTOR | Interim Director of Environment - Josie Wragg |

OUTCOME / BENEFITS TO THE COMMUNITY

The effective use of powers to prevent and remove unauthorised development and encampments can improve the perception and confidence in the community that action can and will be taken in dealing with such matters.

RECOMMENDATION

That the Executive Member for Planning and Enforcement:

- 1) Notes the comments made in respect of the Government's consultation regarding 'Powers for dealing with unauthorised development and encampments'
- 2) Approves the Council's response to the consultation sent to the Ministry of Housing, Communities & Local Government (Set out at Appendix 1)

SUMMARY OF REPORT

A consultation exercise has been undertaken by Government to seek views are sought on the range of powers available to local authorities, the police and landowners, for dealing with unauthorised development and encampments.

The report provides Wokingham Borough Council's response to the consultation.

Background

Recent debates in Parliament have addressed the topic of unauthorised traveller encampments, and Members of Parliament have voiced their constituent's concerns regarding the impact on both settled and nomadic populations. There are concerns, particularly by the widespread perception that the rule of law does not apply to those who choose a nomadic lifestyle, and the sense that available enforcement powers do not protect settled communities adequately.

Unauthorised encampments can cause settled communities significant distress, and they perpetuate a negative image of the travelling community, the vast majority of whom are law-abiding citizens. Unauthorised encampments also have a detrimental effect on the life chances of those who live within such encampments, and their children, who may not benefit from the same opportunities as everyone else.

The Government wants to understand more about the nature of the issue, and to hear views on the effectiveness of enforcement powers against unauthorised development and encampments. They would like suggestions as to whether existing measures should be strengthened, and how public authorities can use the powers available to them more effectively.

The aim of the consultation is to seek views on the effectiveness of powers to deal with unauthorised development and encampments.

Analysis of Issues

There have been long-standing concerns about the issue of unauthorised development and encampments. These are that in spite of a range of powers already in place, unauthorised development and encampments remain a significant issue which causes genuine difficulties for communities. These include:

- trespassing on private land
- occupying public land, including playing fields and children's playgrounds
- damage to property
- extensive litter and waste
- the public and private cost of cleaning or protecting unauthorised sites
- noise and antisocial behaviour
- abusive and threatening behaviour
- carrying out development without planning permission

Since 2010, the Government has taken concerted action to address these matters, including issuing revised planning guidance on enforcement and updated policy and reforms to temporary stop notices. In March 2015 the Government issued advice in *Dealing with illegal and unauthorised encampments* to all local authorities, the police and landowners to encourage them to work collaboratively to tackle unauthorised encampments and to remind them of the array of powers which exist for tackling such situations.

The July 2017 Traveller Caravan Count, published by the Ministry of Housing, Communities and Local Government on 16 November 2017, illustrates that the number of traveller caravans on authorised sites has risen from 14,498 in July 2010 to 19,071 in

July 2017 – an increase of 32 per cent between counts. This suggests that the planning process led by local planning authorities is having an impact. However, figures also illustrate that there are still a significant number of unauthorised encampments across England, accounting for 16% of all caravans in July 2017.

The Government is seeking views on the effectiveness of existing powers, and gathering information to inform future policy and legislative proposals.

The Government is aware that unauthorised development and encampments can be a source of real concern and inconvenience to communities, and wishes to hear more evidence about the nature of the issue. Unauthorised development occurs when land is developed, or there has been a material change of use of land, without the appropriate planning approval being secured in advance. Unauthorised encampments occur where trespassers enter and occupy land belonging to private landowners or local authorities.

Summary:

See Appendix 1 attached. It is recommended that its contents are agreed and sent to the Government as the Council’s formal response to the consultation.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces severe financial challenges over the coming years as a result of the austerity measures implemented by the Government and subsequent reductions to public sector funding. It is estimated that Wokingham Borough Council will be required to make budget reductions in excess of £20m over the next three years and all Executive decisions should be made in this context.

| | How much will it Cost/ (Save) | Is there sufficient funding – if not quantify the Shortfall | Revenue or Capital? |
|-----------------------------------|-------------------------------|---|---------------------|
| Current Financial Year (Year 1) | N/A | N/A | N/A |
| Next Financial Year (Year 2) | N/A | N/A | N/A |
| Following Financial Year (Year 3) | N/A | N/A | N/A |

| Other financial information relevant to the Recommendation/Decision |
|--|
| N/A |

| Cross-Council Implications (how does this decision impact on other Council services, including property and priorities?) |
|--|
| All Council departments who deal with helping to prevent and remove unauthorised development and encampments will need to be aware of any new regulations or powers. |

| SUMMARY OF CONSULTATION RESPONSES | |
|--|------|
| Director – Corporate Services | None |
| Monitoring Officer | None |
| Leader of the Council | None |

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| List of Background Papers |
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| <ul style="list-style-type: none">- Ministry of Housing, Communities & Local Government 'Dealing with illegal and unauthorised encampments – March 2015'- Ministry of Housing, Communities & Local Government 'Powers for dealing with unauthorised development and encampments – April 2018' |
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| | |
|-----------------------------------|---|
| Contact Jason Varley | Service Customer and Localities |
| Telephone No 0118 974 6681 | Email jason.varley@wokingham.gov.uk |

Consultation response proforma

If you are responding by email or in writing, please reply using this questionnaire proforma, which should be read alongside the consultation document. You are able to expand the comments box should you need more space

Your Details (Required fields are indicated with an asterix(*))

| | |
|------------------------|-------------------------------|
| Family Name (Surname)* | Varley |
| First Name* | Jason |
| Title | Mr |
| Address | Wokingham Borough Council |
| City/Town* | Wokingham |
| Postal Code* | RG40 1AA |
| Telephone Number | 0118 974 6681 |
| Email Address* | jason.varley@wokingham.gov.uk |

Are the views expressed on this consultation your own personal views or an official response from an organisation you represent?* (please tick as appropriate)

Personal View

Organisational Response

Name of Organisation (if applicable)

Wokingham Borough Council

If you are responding on behalf of an organisation, please tick the box which best describes your organisation.

Local Authority (including National Parks, Broads Authority, the Greater London Authority and London Boroughs)

Neighbourhood Planning Body/Parish or Town Council

Private Sector organisation (including housebuilders, housing associations, businesses, consultants)

Trade Association / Interest Group/Voluntary or Charitable organisation

Other (Please specify)

Unauthorised development 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?

Please enter your comments here

We have an unauthorised encampment database that we use to log unauthorised activity in the Borough. This database is updated on a monthly basis and reported to various stakeholders in the Council.

The main issue raised are environmental issues, mainly the clear up of rubbish after encampments have left.

The presence of encampments causes an issue for residents such as being unable to use car parks and local park areas and open fields that local residents use to walk dogs etc.

There are also resident expectations to move encampments on immediately but this can take up to two weeks if legal action is necessary.

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

Please enter your comments here

In the last two years the Borough has seen 51 unauthorised encampments. Of these encampments, 19 were on private land and 31 on public/Wokingham Borough Council Land.

On average, there have been eight vehicles (caravans and other vehicles) on each encampment.

Of the 31 encampments on public/Wokingham Borough Council Land, twelve were removed using Section 61 Powers and 19 were removed without Section 61 Powers. In many instances, they were encouraged to leave, by the police and council officers working in tandem

In the 16/17 financial year, waste removal costs were £13,699. In the 17/18 financial year waste removal costs were £2,315.

Remedial works and staffing costs are not available.

Streamlining the powers under which local authorities can direct unauthorised campers to leave land

Question 3:

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

Please enter your comments here

The council accepts that there are occasions where legal action is necessary. However, we believe that the process is too long and can be very expensive. We need to be able to obtain a quick hearing, at minimal cost to the council.

Also, once a warrant is obtained, it can be difficult getting a bailiff within a short period of time.

Question 4:

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

Please enter your comments here

Local authorities generally use the existing powers when necessary.

Question 5: What other powers may help local authorities deal with unauthorised encampments?

Please enter your comments here

The council needs to be able to serve an order on travellers and have them removed within 48 hours, with the assistance of the police. We need similar powers to that relating to squatting in residential properties.

Aggravated trespass

Question 6:

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

Please enter your comments here

The Section 61 Powers are an effective tool to remove encampments we have found. If we could use Section 61 Powers all the time it would be of a greater benefit to the Council.

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?

Please enter your comments here

If Section 61 Powers were easier to obtain that would make it easier. Section 61 Powers are the primary tool used to remove encampments. Local Authorities should be able to use Section 61 Powers without giving instructions to the Police.

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?

Please enter your comments here

No they should not be criminalised.

Local authorities should be able to recover their legal cost, and get compensation for damage caused to its property or land.

Aggravated Trespass relies on the intent of the person to commit an offence. This can be subjective and difficult to prove.

Any new offence should make it illegal to occupy land without permission, giving the landowner the ability to get them removed immediately, with police assistance.

If offences are committed, during the occupation of the land, then the police should arrest the perpetrator and ensure that they are charged, where evidence exists.

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?

Please enter your comments here

Staff skills and resources, which could be overcome by training and additional resources.

Level of proof/evidence required to get an injunction is sometimes prohibitive when local intelligence indicates that a breach of planning control is about to occur. Balance of proof should be reduced as injunctions do not remove the lawful rights of a landowner to undertake authorised uses on their land. Some judges are stricter than others who use their discretion.

Injunctions can be costly and time consuming to obtain. A quicker streamlined approach would be beneficial. Providing more County Court time if required by extend closing time if an urgent injunction is required.

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?

Please enter your comments here

Better education of local residents from police would be beneficial. Wokingham Borough Council have a good working relationship with Thames Valley Police but better education on the GRT Community to local residents would be useful.

Wokingham Borough Council and shares information about unauthorised encampments with neighbouring boroughs, thus enabling all parties to put in measures, where appropriate, to deter unauthorised encampments.

When an unauthorised encampment occurs, officers will attend the site, with the police, in a joint response.

The courts can assist local authorities by granting speedy hearings and ensuring that once an order is granted, the bailiffs can respond quickly.

Local authorities, by having a clear, quick and effective process, remove unauthorised encampments and deal with the aftermath.

Local authorities and the police need to manage public expectations by providing information quickly, when unauthorised encampments occur. Providing joint social media updates to avoid misinformation being circulated would be useful.

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?

Please enter your comments here

Once the local authority has served the Notice to Leave they should be able to go to Magistrates Court the next day for the removal order.

Interim possession orders

Question 12:

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

Please enter your comments here

The advantages are that it would significantly speed up the process of removing unauthorised encampments.

It would add another avenue for the local authority to use, particularly where the trespass occurs on school premises, a public health nuisance is being caused or local residents being prevented from using a public amenity.

This would need to be monitored to ensure that the law was not being abused.

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?

Please enter your comments here

The time and resources available required to deal with such matters. Some take too long to come to conclusion (eg due to planning and court appeals).

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?

Please enter your comments here

Additional resources (eg solicitors, specialist planners and planning enforcement officers) would be helpful.

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?

Please enter your comments here

No.

Improving the efficiency of enforcement notice appeals

Question 16:

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

Please enter your comments here

Public confidence in the planning system is eroded due to the amount of time it takes for enforcement notice appeals to be heard.

By giving them priority so that breaches of planning control do not remain for a number of years before the appeal is started, heard, a decision is made and the time for compliance expires. Costs should be awarded more freely against unsuccessful appellants, especially where developments are retrospective.

Government Guidance

Question 17:

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

Please enter your comments here

Make the financial penalties greater for breaches occurring prior to an application being made. It is cost effective for members of an unauthorised encampment to buy a relatively cheap piece of agricultural land and occupy it for the length of time it takes for an appeal to be heard, challenge it in the Court and then wait for the compliance period to expire. All the while not paying a legitimate price for residential land or rent.

Greater efforts should be made to engage with the traveller community, advising them of the law, their rights and responsibilities, also providing temporary sites which they can use for designated periods.

The UK government should look at other countries, particularly in in the EU, to see what lessons can be learnt from them.

Question 18:

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

Please enter your comments here

Yes, as everyone would understand their roles in removing encampments more efficiently.

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?

Please enter your comments here

There is insufficient funding currently available for delivering additional authorised pitches on existing council sites, let alone establishing new council sites in suitable locations. With cuts to funding from central government and associated cuts in staff in local government, there is little resource to provide and maintain the additional provision that is required. If there were greater forward funding for the delivery of such sites in suitable locations, this would have the benefit of off-setting the significant cost that councils bear in defending planning appeals for, and enforcing against incidences of, unauthorised pitches in unacceptable locations. There would be a reduced need for Gypsies and Travellers to rely on acquiring land and developing it unlawfully if there were greater numbers of appropriate council sites on which they could be accommodated.

The government is keen to focus on increased private site provision, and WBC has been proactive in approving private pitches on suitable sites. However, relying on private land owners to deliver small clusters of pitches here and there gives no control to Local Planning Authorities over supply as there is no guarantee permissions will be implemented and appropriately let out to Gypsy and Traveller families who need them. This is particularly true when planning permission for pitches is sometimes seen as a way to establish the principle of development for more profitable land uses such as conventional housing.

There is also no incentive for house builders to provide land for Gypsy and Traveller pitches as part of larger strategic developments. Planning Gypsy pitches into strategic development from the outset would have place-making benefits as it would lead to a diverse provision of housing rather than homogenous schemes of large dwellings. It could also have the added benefit of reducing tensions between Travellers and the settled community if all parties are aware from the outset that pitch and housing provision will form part of the same wider development. In practice however, developers would not sacrifice land that could accommodate dwellings to provide pitches as, unlike through house building, there is limited scope for private landowners/developers to make money from providing pitches. There would need to be greater recognition in national planning policy that such mixed use schemes could have social benefits, and some kind of incentive to landowners, house builders, and housing associations to deliver much needed pitches.

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?

Please enter your comments here

Negligible impact and these matters are considered and would still be required to be considered before taking any decisions or taking action.

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?

Please enter your comments here

No comments.

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?

Please enter your comments here

Greater provision of transit sites which are co-ordinated at a greater than local authority level – that accounts for the wider than local travelling patterns and links of Gypsy and Traveller families – would reduce incidences of unauthorised encampments. However there are no current mechanisms in the planning system, or necessary funding available, to ensure transit provision is provided that serves appropriate geographical areas.

Your opinion is valuable to us. Thank you for taking the time to read the consultation and respond.