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| TITLE | Unauthorised Encampment Protocol and Policy Update for Wokingham Borough Council |
| FOR CONSIDERATION BY | The Executive on 29 th March 2018 |
| WARD | None specific |
| LEAD OFFICER | Graham Ebers Director Corporate Services |
| LEAD MEMBER | Simon Weeks Executive Member Planning and Enforcement |

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| OUTCOME/BENEFITS TO THE COMMUNITY |
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To improve the operational delivery of the removal of unauthorised encampments in the Borough of Wokingham by closer working with the Thames Valley Police and to extend the options available to Wokingham Borough Council to legally remove unauthorised encampments.

By signing up to the Thames Valley Police protocol Wokingham Borough Council will collectively and consistently deal with unauthorised encampments using all legal remedies available.

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| RECOMMENDATIONS |
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That the Executive agree:

- 1) to delegate signing of the joint protocol with the Thames Valley Police for dealing with unauthorised encampments across the Thames Valley Police operating area to the Director of Corporate Services;
- 2) to authorise the use of additional legal options available to Wokingham Borough Council for dealing with unauthorised encampments.

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| SUMMARY OF REPORT |
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An unauthorised encampment is where any person camps (in vans, trailers, tents or any other moveable accommodation) on land that they do not own, and where they do not have permission to reside. Unauthorised encampments are currently managed by the Housing Service at Wokingham Borough Council.

Wokingham Borough Council and the Thames Valley Police have an excellent working relationship in the management and removal of unauthorised encampments. As part of this partnership working Wokingham Borough Council operational and strategic officers are working with the Thames Valley Police and 15 other local authorities to draft a new protocol for unauthorised encampments.

It is proposed that the 16 local authorities within the Thames Valley Police operating area sign up to the protocol.

Within the draft protocol local authorities are encouraged to use all legal powers available to them including the use of common law powers, these powers are not detailed in the guidance and have not historically been utilised by Wokingham Borough Council. However common law powers are used as a matter of course by Bracknell Forest Council, developers and landowners.

The additional options for removal being proposed are outlined below and are contained in the draft Thames Valley Police protocol.

It is difficult to understand financial implications on introducing additional powers due to a lack of data available, it is proposed that the service operates within its current budget.

Detailed Consideration

When dealing with unauthorised encampments Wokingham Borough Council must comply with, and ensure that we act in a fair, objective and transparent way. Each encampment is considered on an individual basis. Any action must comply with Human Rights Act 1998, the Equality Act 2010, and the Public Sector Equality Duty.

Wokingham Borough Council has the duty for managing unauthorised encampments within its borough boundaries, like many other authorities, is subjected to unauthorised encampments and they usually occur in the spring/summer months.

Appendix 1 details unauthorised encampment activity in the borough for last three years. In financial year 17/18 it currently takes an average of 4.5 days to remove each encampment.

Wokingham Borough Council Current Practice

Wokingham Borough Council currently uses powers under Sections 77 – 78 of the Criminal Justice and Public Order Act (CJPO Act) 1994 to remove unauthorised encampments. These provisions are discretionary and can be used by the council on any land where anyone is present without consent. We currently only exercise this power on council owned land and with recourse to the County Court.

Sections 77 – 78 of the Criminal Justice and Public Order Act (CJPO Act) 1994,

- Can only be used by Local Authority
- Can be used on any land irrespective of ownership
- Used to remove identified individuals from land
- Only require involvement of Courts when unauthorised campers do not leave when directed
- Enforced by Local Authority Officers or private bailiffs employed by them
- Return to location within three months carries criminal sanctions

Wokingham Borough Council liaises with landowners and they are provided with advice and assistance on how they can deal with unauthorised encampment. It does not fall to the local authority to take action on private land, doing so would lead to additional costs and resource allocation.

Thames Valley Police Powers

Thames Valley Police can exercise the use of Section 61 of the Criminal Justice and Public Order Act 1994 (CJPO Act) and where applied can lead to eviction in a much shorter timescale.

The Thames Valley Police draft protocol involves Wokingham Borough Council, and 15 other local authorities, to produce a protocol to detail how we will all deal with unauthorised encampments using all the legal tools available.

Often the expectation of the local community and land owners is that the Police will perform the eviction using Section 61 powers. The mere presence of an encampment

without any aggravating factors should not normally create an expectation that Police will use these eviction powers.

The council has an injunction in place at Cantley Park, this was given by the court due to the unique circumstances at Cantley Park, it is designated as additional mortuary space in the event of a major incident in Berkshire. Injunctions are generally used to protect vulnerable sites and where disruption may be caused in a defined area, it is a pre-emptive power.

Going Forward

The Thames Valley Police Draft protocol outlines the powers available to Local Authorities and it is recommended that Wokingham Borough Council signs up to use the additional powers. This will give the council the ability to use these additional criminal and common law powers when dealing with unauthorised encampments.

The decision on which power to use to remove an unauthorised encampment will be an operational decision. It will be made in consultation with the Thames Valley Police, ensuring compliance with legislation and Wokingham Borough Councils updated operational policy and procedure.

The Thames Valley Police are working with the 16 local authorities in their operating area to produce a uniform protocol. In discussions with partners they acknowledge and understand that some authorities will have local nuances to meet operational and political requirements. Appendix 3 details 2015 guidance from the Department of Communities and Local Government, now known as the Ministry of Housing, Communities & Local Government.

Section 77 - 78 Criminal Justice and Public Order Act

This act orders the removal of persons their vehicles unlawfully on land. An Authority can make a complaint to a Magistrates Court that persons and vehicles in which they are residing are present on land within the Borough, in contravention of a direction given under section 77. Where a complaint is made under this section a summons will be issued by the court requiring the persons to whom it is directed to appear before the court to answer to the complaint. The summons may be directed to the occupant of a particular vehicle on the land in question or to all occupants of vehicles on the land in question, without naming them.

The court if then satisfied can make an order requiring the removal of any persons, vehicles or other property on the land. The order may authorise the local authority to enter upon the land specified in the order and to take steps to enable the removal of any vehicle or property in pursuance of the order.

The current Wokingham Borough Council practice is to take action using the County Court in all cases. The use of this power more fully, by having recourse to the magistrates court as an alternative may speed up the removal of unauthorised encampments.

Common Law Powers

When an unauthorised encampment cannot be tolerated and police have no grounds to use their powers, other bodies including some local authorities use the common law route.

In practice common law powers can only be used by the landowner and they do not require the involvement of the courts. They are enforced by the landowner, generally using private bailiffs, however there is no sanction if the trespasser returns. This is unlike the current process whereby the council can apply for an order at the county court to remove if they return within three months.

In operation the trespasser should be asked to leave and given the opportunity to leave prior to reasonable force being used. As with any power chosen by the council, the police should be consulted/informed. The police can be present to prevent a breach of the peace and can advise on the timing and the appropriateness of the action.

Neighbouring authorities have used this power successfully over the last few years, there is also an option to seize property and where necessary dispose of goods to cover the costs of dealing with unauthorised encampments.

Again the ability to use this power may speed up the removal of unauthorised encampments.

Part 55 Civil Procedure Rules

This remedy allows the landowner to apply to the county court to regain possession of land. It is enforced by County Court bailiffs. This is very similar to our current practice under Sections 77 – 78 of the Criminal Justice and Public Order Act (CJPO Act) 1994, but with no sanction if trespassers return.

Timescales

The Thames Valley Police protocol for dealing with encampments is due for completion by Spring 2018. Once this is agreed, Wokingham Borough Councils operational procedures will be updated to reflect the changes and improvements within the protocol.

The target date for this work is the start of financial year 2018/19.

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) | 0 | 0 | Revenue |
| Next Financial Year (Year 2) | 0 | 0 | Revenue |
| Following Financial Year (Year 3) | 0 | 0 | |

Other financial information relevant to the Recommendation/Decision

Wokingham Borough is not expected to see an increase in costs in dealing with unauthorised encampments with the implementation of the Thames Valley Police Unauthorised Encampment protocol and Wokingham Borough Councils updated policy and procedure. The impact of the use of additional powers will need to be regularly reviewed.

Cross-Council Implications

Corporate Property and Assets, Shared Legal Solutions, Community Safety and Cleaner and Greener services will be consulted on the implementation of the new Unauthorised Encampment policy and procedure.

List of Background Papers

Appendix 1 Summary of Unauthorised Encampments
Appendix 2 Equality Impact Assessment

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