

Policy and Procedure for Dealing with Unauthorised Encampment by Gypsies and Travellers

1 Introduction

- 1.1 This policy is one of a number of policies which relate to Gypsies and Travellers (as defined below). There are other policies which focus on housing, planning, authorised permanent traveller site provision and management.
- 1.2 This policy deals primarily with unauthorised camping by Gypsies and Travellers on Council-owned land. It does also refer to unauthorised camping on privately-owned land, and land which may be Council-owned but which has been leased or licensed to a third party.
- 1.3 The policy does not cover the unauthorised development of land owned by Gypsies and Travellers, which will be dealt with as a breach of planning control, and enforcement action will be considered.

2 Background

- 2.1 For the purposes of this policy “Gypsies and Travellers” include:

“Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such”¹
- 2.2 The problem of unauthorised encampment from the point of view of Gypsies and Travellers is the constant threat of eviction and the disruption to their everyday life. The problem from the Council’s point of view is having to deal with a very visible and contentious local issue where public expectations on the speed of removal of the occupants are unrealistic. Although complaints are not always substantiated, unauthorised encampments often lead to complaints relating to increased crime, noise, vehicle and property damage and rubbish, together with the obstruction of rights of way or of recreation land.
- 2.3 When an unauthorised encampment takes place in its district, the Council needs to decide whether it is appropriate to tolerate the encampment, subject to certain criteria and time restraints, or whether it is appropriate to exercise its powers to seek eviction of the Gypsies and Travellers occupying it.

1 (DCLG: Planning Policy for traveler sites (March 2012))

3 Legal Framework and Government Guidance

3.1 Government advice contained in DOE Circular 18/94 and subsequent publications urged local authorities to adopt a policy of toleration to unauthorised encampments where they are not causing a level of nuisance which cannot effectively be controlled. 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'.²

3.2 At the same time, in accordance with the Human Rights Act 1998, the Council must not act in a way that is incompatible with the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms. One relevant Convention Right is set out in Article 8: right to respect for private and family life:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

3.3 Romany Gypsies and Irish Travellers are protected from discrimination in respect of their ethnic origins (a protected characteristic). In accordance with the public sector equality duty introduced by the Equality Act 2010, the Council is required to have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct, the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and the need to foster good relations between persons who share a relevant protected characteristic and those who do not share it. This includes having due regard to the need to tackle prejudice and to promote understanding.

4 Policy Towards Unauthorised Encampment

4.1 Action will not be taken before the Council has ascertained why the Gypsies and Travellers are on the land, how long they are intending to stay and whether there are any welfare issues.

² 'Dealing with Illegal and Unauthorised Encampments: a summary of available powers' (August 2013)

4.2 In deciding whether or not to tolerate the encampment, the Council will balance the needs and wishes of the Gypsies and Travellers and those of the settled community. In the absence of any specific welfare needs, the Council will take the following matters into account:

- the nature, suitability or obtrusiveness of the encampment;
- the location of the encampment (for example, whether in the Green Belt, or the countryside);
- the impact on neighbours and other lawful users of the site of the encampment;
- the size of the group, their behaviour and , if any, the level of nuisance; and
- the number, validity and seriousness of the complaints.

Non-Toleration Criteria

4.3 The Council will proceed with an eviction where an encampment:

- creates a hazard to road safety or otherwise creates a health or safety hazard; or
- creates a nuisance to the general public or to local residents or workers by reason of its size, location, nature or duration; or
- creates an intolerable impact on the employment, use or occupation of adjoining or nearby land or property or interferes with the effective operation of management of that land or property; or
- causes or is likely to cause damage to the Council's land or property or threat or harm to its employees; or
- prejudices or is likely to prejudice the use of land for its intended purpose; or
- is too large for its location or is causing an unacceptable impact on the environment; or
- would for some other reason be detrimental to the interests of the public if allowed to remain for an extended period.

4.4 Where the Council decides that eviction is appropriate, it will also consider whether the Gypsies and Travellers could be allowed to move to another piece of land and be tolerated there for a short period of time instead. While there are very few areas of land within Mole Valley where unauthorised encampments could be satisfactorily accommodated, consideration will be given to this option.

Toleration Criteria

- 4.5 The Council will tolerate an encampment for a specified period provided that each of the following criteria is consistently observed:
- there is no fouling or dumping on the land or elsewhere including the disposal or deposit of human waste;
 - there is no burning of rubbish and all domestic or trade waste to be disposed of;
 - there is no damage to the land, property or the environment;
 - there is no intimidatory or anti-social behaviour;
 - dogs, horses and other animals are not to cause a nuisance or a danger and must be kept under proper control;
 - there is no unlawful activity (any such activity will be reported to the police);
 - groups are small³ and must be positioned away from built up areas;
 - that the tolerated trespasser/s do not move to another site within the Council's ownership and/or control. If this happens the Council will commence possession proceedings immediately;
 - the tolerated trespasser/s do not return to the site within a period of 3 months from the date of the original unlawful encampment.
- 4.6 If any one of the toleration criteria is not observed, the Council shall review its decision to tolerate the encampment in accordance with paragraph 4.2. Subject to the conclusions of the review, if there is a failure to observe one or more of the toleration criteria, the presumption is that the Council will implement the eviction procedure set out in section 8 of this Policy.
- 4.7 If the Council decides to tolerate the encampment, this does prevent the police from exercising its discretionary powers under s.61 CJPOA 1994, as the travellers are no longer trespassing.

5 Procedure for Implementing the Policy

- 5.1 Following notification of an unauthorised encampment, from any source, the Environmental Health Manager/Officer will be notified of the details of the encampment, and will then carry out a preliminary investigation to ascertain whether the land is owned by, leased to, or managed by, the Council or is owned by a third party, or let to a Council tenant.

³ This needs to be determined on a case by case basis in the context of the site of the encampment; the same number of caravans may be tolerable in one location but not tolerable in another location.

6 Occupied Land is owned by the Council

6.1 If the site is owned, leased to, or managed by the Council, the Environmental Health Manager/Officer will visit the site to:

- advise the occupants that they are on land owned or leased or managed by the Council;
- ask them why they are in the area and when they intend leaving.
- ask them whether they have any welfare needs, including but not limited to medical, education, housing or other (see Appendix A: Welfare Assessment Form);
- advise them that the Council will need to consider whether their presence can be tolerated under the Council's policy or whether they should be evicted;
- give them a copy of the toleration criteria (Appendix B).

6.2 If the Gypsies and Travellers occupying the site disclose any welfare issues, the Environmental Health Manager/Officer must liaise with the appropriate County Council department (e.g. Social Services/Education), and the doctor or hospital, as appropriate.

6.3 The Environmental Health Manager/Officer will then advise the team responsible for the land to arrange a meeting of relevant Council Officers to decide whether or not the encampment can be tolerated in all the circumstances. The Officer Group will comprise:

- the Environmental Health Manager/Officer,
- the Planning Policy Manager/Officer,
- the Planning Enforcement Officer,
- a Legal officer,
- the Housing Options Manager/Officer,
- and the manager that is responsible for the land being occupied; or
- or other officer(s) nominated by each of them.

6.4 The meeting will be chaired and minuted by an officer from the team responsible for the land involved. If the Group decides that the encampment can be tolerated, it must also decide for how long it should be tolerated. If the encampment cannot be tolerated, the Group must decide whether it could be tolerated on another site owned by the Council.

6.5 An officer from the team responsible for the land that is being occupied will refer the decision of the Officer Group to the relevant Director for approval. The Director will review the decision of the Officer Group, taking account of all the information that is available at that time. Once informed of the Director's decision, the Environmental Health Manager/Officer will then return to the site and advise the occupants of the Council's decision and the reason for it.

- 6.6 The Environmental Health Manager/Officer when returning to the site will advise the occupants either:
- (a) that their presence will be tolerated until a specified date provided that they comply with the toleration criteria. The occupants of the site will be reminded of the toleration criteria or handed a further copy, together with a notice stating the date by which they must vacate the land. The officer must also advise them (and this can be included in the note) that if they do not vacate the land on that date, then unless any welfare needs have arisen during the toleration period, eviction proceedings will be commenced without further notice. The occupants will be reminded that it is their responsibility to advise the Environmental Health Manager/Officer of any changes in their welfare situation; or
 - (b) that their presence cannot be tolerated on this site, but it could be tolerated on another site, for a limited period, if they move to it immediately. They will be given directions to the alternative site. Once they have moved to the alternative site, the Environmental Health Manager/Officer will advise them of the matters stated in (a) above; or
 - (c) that their presence cannot be tolerated, stating the reasons, that careful consideration has been given to finding them an alternative, temporary site, but there are none or are not appropriate, and that eviction proceedings will now be commenced. The Environmental Health Manager/Officer will need to advise them of the likely time periods for obtaining a court order and for the bailiff to execute it.

7 Procedure for Toleration

- 7.1 If the Gypsies and Travellers are allowed to remain on the land, a leaflet will be given to them stating that the encampment is tolerated provided they comply with each of the toleration criteria as set out at paragraph 4.5 of this policy.
- 7.2 The Council will distribute black plastic sacks to the occupants of the encampment who will be requested to use them for all their domestic rubbish. The Environment Manager will be informed so that arrangements for the collection of the rubbish can be made. The Gypsies and Travellers on the site will also be reminded (in the case where their presence is being tolerated) that failure to comply with this requirement and the other rules will lead to the Council's permission to remain on the land being withdrawn and eviction proceedings being commenced.
- 7.3 The occupants of the encampment are responsible for letting the Council know whether there has been any change in their circumstances during the toleration period. This will be explained to them when they are given the leaflet about the toleration criteria they must comply with to remain on the land. The name and telephone number of the Environmental Health Manager/Officer will be provided to the site occupants who will be advised to contact that Manager/Officer if there are any changes to their circumstances.

- 7.4 Where an encampment has been tolerated and the toleration period has expired, but the occupants have not vacated the land and have not notified the Environmental Health Manager/Officer of any change to their circumstances, the Environmental Health Manager/Officer will instruct the Legal team to commence eviction proceedings immediately. The Environmental Health Manager/Officer will notify the travellers that eviction proceedings have been commenced and of the likely eviction date.
- 7.5 The Environmental Health Manager/Officer will advise the Communications Team that the occupants of the unauthorised encampment have been allowed to remain on the site. The Communications Team will advise Ward Members, consider issuing a press release, including a note on Molly and an item on the Council's web site.

8 Eviction

- 8.1 Where the Officer Group has decided that eviction is appropriate in all the circumstances (and another site has not been identified or is considered to be unsuitable) and that decision has been reviewed by the relevant Director the Environmental Health Manager/Officer shall visit the Gypsies and Travellers and advise them:
- (a) the encampment cannot be tolerated and the reasons for the Council reaching that decision;
 - (b) careful consideration has been given as to whether there are any other appropriate areas of land within the Council's administrative area where their presence could be tolerated, that there are none and, therefore, the police will be called immediately if they attempt to move to another site;
 - (c) if they do move on to another unauthorised site within the Council's administrative area, eviction proceedings will be commenced immediately.
 - (d) of the likely timescale for when a Court hearing will be held and if an order is obtained, when eviction is likely to take place if they do not leave the land voluntarily.
- 8.2 The Council will instruct an independent process server who will be responsible for serving the court papers both before and after the hearing and, unless the bailiff has already done so, advising them of the eviction date. He will also be responsible for giving evidence at the hearing, if required.
- 8.3 If the presence of the encampment is causing problems, by reason of its size or location, or the occupants are causing a nuisance, or are suspected of being involved in anti-social or criminal behaviour, the Environmental Health Manager/Officer will request the police to use their powers under section 61 of the Criminal Justice and Public Order Act 1994.

8.4 If the Police are unable to take action under S61 of the Criminal Justice and Public Order Act 1994 to evict the Gypsies and Travellers, the encampment cannot be tolerated and a suitable alternative site cannot be identified, eviction proceedings will be commenced. The Police will be advised of the situation. Where eviction proceedings are taken, they will either be under Part 55 of the Civil Procedure Rules in the County Court or under section 78 of the Criminal Justice and Public Order Act 1994 in the Magistrates' Court.

9 Procedure Where the Occupied Land is Privately Owned

9.1 If the site is situated on land owned by the Council, but leased to a third party or owned by a third party, the Environmental Health Manager/Officer will:

- (a) visit the Gypsies and Travellers to ascertain their reason for being there and whether they have any welfare needs;
- (b) make contact with the owner/tenant and advise him of the Council's policy;
- (c) advise the owner/tenant that if he/she encounters any problems with the Travellers he/she should contact the Police in the first instance;

9.2 The annexed DCLG document 'Dealing with illegal and unauthorised encampments' sets out the powers available to the Council and to landowners or tenants. In addition, at common law, a private landowner has the right to evict trespassers from his or her property by invoking the remedy of 'self help'. This involves instructing bailiffs approved by the local County Court (also referred to as 'certificated bailiffs') to act on behalf of the private landowner in order to give notice to vacate the land to the trespassers. If the trespassers refuse to leave, the bailiffs can, acting within the strict confines of the law and only using such force as is reasonable, remove them. The use of excessive force is an offence.

9.3 In addition to the common law powers available to a landowner or tenant to evict trespassers, a possession order under Part 55 of the Civil Procedure Rules can be obtained through the County Court.

9.4 Where the Gypsies and Travellers are causing a problem because of the size or location of the encampment, or because of the anti-social or criminal behaviour of the occupants, and neither the owner, Council tenant nor the police is able or willing to act, the Council will decide whether to take action under the Criminal Justice and Public Order Act 1994 or to offer, at its sole discretion and only where it is appropriate in the circumstances, financial assistance⁴ to the owner or Council tenant.

⁴ By way of example only, where the Council determines this is in the Council's and the district's residents' best interests, perhaps because there is an absentee owner or where the tenant/owner demonstrates to the Council's satisfaction that it does not have the means to fund action itself.

- 9.5 If it is decided that it is appropriate for the Council to take action, such decision shall be reviewed by the relevant Director as set out in paragraph 8.1. Subject to the Director's agreement, paragraphs 8.3 and 8.4 shall apply. In the case of a small group of Gypsies and Travellers, the Council will consider whether they could be tolerated for a limited period on an alternative Council-owned site which is not occupied, managed or tenanted by a third party.

Annex A

**Gypsies and Travellers Unauthorised Encampment
Welfare Checklist**

Site Visit / Welfare Check undertaken by:

Date:

Time:

Location:

Service unit responsible for Land:

Date of Arrival	
Anticipated length of stay	
Are all the caravans travelling together?	
Why are the Travellers here/where have they come from?	
Is there a connection to Mole Valley?	
What is the current accommodation situation when not in Mole Valley?	
Number of adults on site	
Number of children on site	
Are any women in the group pregnant? If so, gestation in months?	
Are any adults vulnerable or unwell?	

Names if possible and condition	
Are any children vulnerable or unwell?	
Names if possible and condition	
Are the children attending school?	
If so – where?	
Number of caravans	
Number of cars/lorries/vans	
Total number of vehicles	
Registration nos of vehicles	
Details of any animals on site	
Do any animals need assistance from RSPCA or a Vet?	
If yes – provide details	

<p>Has local health services information been provided? Give reasons if not.</p>	
<p>Have bin bags or wheely bins for refuse been provided? Give reasons if not.</p>	
<p>Have Portloos been provided? Give reasons if not.</p>	

Signed by:

(Lead Officer)

Date:

<p>DECISION (Having taken the above into consideration)</p>	
<p>Allow a period of toleration. No action but review in (timescale)</p>	
<p>Consult and seek further information</p>	
<p>Serve direction to leave</p>	
<p>Seek Order for Removal if necessary</p>	

Request a further site visit report. State reasons:	
Authorising Officers Comments	
The Human Rights Act has been taken into consideration before arriving at this decision Signed..... Authorising Officer Date.....	

Human Rights Act 1998

Record of Incorporation in Decision Making Process

I certify that I have considered the Human Rights of the Travellers presently located at

In approaching the matter, I have sought to have regard to their human rights (balanced with the human rights of others) and, in particular, I have sought:

- i) To act fairly, openly and promptly as possible;
- ii) To explain our procedures and requirements clearly in a language which the Travellers understood;
- iii) To consider all matters raised by the Travellers;
- iv) To consider any representations on behalf of the Travellers;
- v) To explain the reasons for our decisions.

I claim to be entitled to seek restriction of the human rights of the Travellers both on the basis that there is no human right of unlawful trespass and that I am acting in accordance with the law and further in accordance with the following stated qualifications, namely:

- i) Public safety; and / or
- ii) The prevention of disorder or crime; and / or
- iii) The protection of the rights and freedoms of others.

I have approached the question of the discrimination and I am acting on the merits of the matter without discrimination.

On the matter of protection of possessions the action which the council is taking is in the public interest and under, and in accordance with the law.

.....

Authorising Officer

Dated this day of 201

Appendix B

Code of Conduct for Unauthorised Encampments

The Council expects the same standards of behaviour of travelling communities as of settled communities.

We expect you to treat the land you have occupied with respect and that you respect the rights and freedoms of other people who also wish to use the area, including members of the public, and the operations of legitimate businesses.

Whilst you are on this land, please:

- Keep groups small and position your vehicles and homes in a way which takes into account the site and its surrounds.
- Park vehicles and homes safely and so as not to obstruct other people, and avoid parking on roads, footpaths, bridleways or other highways, or immediately next to footpaths or bridleways.
- Respect the land, property and the environment.
- Dispose of all household, human or trade waste appropriately, do not burn tip or dump household, human or trade waste.
- Avoid causing damage to the land, any fixtures, fittings, landscaping or security measures such as gates, fences or earthworks, or to features provided as public amenities.
- Do not drive on footpaths or other highway not specifically designed for road vehicles.
- Do not use the land as a toilet.
- Behave considerately towards other people, including your neighbours, nearby residents, businesses, and members of the public; intimidatory or anti-social behaviour including but not limited to excessive noise will be reported.
- Co-operate with local authority officers, the landowner, and any agent of the landowner.
- Dogs, horses and other animals must be kept under proper control and must not cause a nuisance or a danger.
- Do not interfere with electrical, water, gas or oil supplies.

