

Overview and Scrutiny Commission

Date: 24 April 2019

Subject: Travellers Unauthorised encampment protocol.

Lead officer: Chris Lee, Director of Environment and Regeneration

Lead member: Edith Macauley, Cabinet Member for Community Safety, Engagement and Equalities

Contact officer: Howard Joy, Property Management and Review Manager

Recommendations:

1. Overview and Scrutiny Commission discuss and comment on the contents of this report.
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1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 To advise the Commission on the progress on review of the existing protocol, the response to recent encampments and how the council could respond to the recommendations in the report expected from Government.
- 1.2 To advise the Commission on the use of the injunction the council has obtained to protect its property and that of Mitcham Commons Conservators.

2. DETAILS

- 1.1 The protocol is a joint protocol between the Council and Merton Borough Police and covers action to remove unauthorised occupiers under Sections 61 and 62A of the Criminal Justice and Public Order Act 1994 and Circular 18/94.
- 1.2 The procedure under the protocol to remove unauthorised occupiers requires the carrying out of welfare assessments that include housing need, health needs and the health, wellbeing and education needs for any children followed by a Directions Notice.
- 1.3 If the Directions Notice is not complied with the Council can apply to the magistrates' court under section 78 for an order requiring the removal of the trespassers and their property from the land.
- 1.4 At their meeting on 7th December 2015 Cabinet agreed the draft protocol to replace the one that came into force on 28th May 2010 and recognised that the new protocol would be amended to reflect the partners

- safeguarding responsibilities and delegated any changes required to the Directors of CSF and E&R in consultation with the relevant Cabinet members
- 1.5 The amendments to these assessments needed to reflect the partners safeguarding responsibilities were not concluded. This was largely due to the time taken to ensure that the welfare concerns of vulnerable people within a group were properly considered and the re-organisation within the council and in particular the formation of the Multi Agency Safeguarding Hub (MASH) that altered previous posts that dealt with welfare assessments.
 - 1.6 As can be understood this procedure under the Criminal Justice and Public Order Act 1994 and Circular 18/94 takes time, typically three weeks and involves officers from SLLP, Property Management and Review, Community and Housing, Children Schools and Families and MASH. The delay inherent in this process increases the risk of increased fly tipping and thereby the cost of cleaning the property after the trespassers have gone and increases the reputational damage to the Council.
 - 1.7 Where there are more than six or more vehicles on the land or where the unauthorised occupiers have caused damage to the land or property on the land and/or they have used threatening, abusive or insulting words or behaviour to the occupier, a member of his family or his employee or agent the police can use their powers but they too need to consider the welfare needs of the unauthorised occupiers
 - 1.8 Appendix three contains a summarised history of the encampments during 2018. The schedule gives information regarding the length of time that the sites were occupied and the costs (both direct and officer time) associated with (i) recovering possession (legal and bailiff costs); (ii) clearing up the mess created (iii) the maintenance and restoration costs and (iv) the costs associated with enhance security.
 - 1.9 Diminishing resources for both the Council and the police demand that the use of the procedure under the Criminal Justice and Public Order Act 1994 and Circular 18/94 be reviewed.
 - 1.10 The increasing numbers of incidents of unauthorised occupation of land by the same group of travellers during the past twelve months and the increased volume of fly tipping within the borough gave special impetus to the review.
 - 1.11 Co-incidentally it became known that other local authorities had obtained injunctions to protect their property from unauthorised occupation and the barrister/counsel who had represented the boroughs of Greenwich, Enfield

and Croydon (Croydon obtained their injunction against 217 greenspaces and 11 highways/industrial areas) was invited to give a seminar/presentation on the subject. Invitations were also issued to officers in adjoining boroughs of Sutton, Richmond and Wandsworth

- 1.12 Injunctions had been considered within the report to Cabinet on 7th December 2015 but at that time, informed mainly by the precedent of Harlow Council, it was considered that injunctions were not suitable for this council as the specific circumstances of Harlow did not apply. The scale was much larger than this council had experienced and the resource required to provide evidence (their witness statement and bundle of exhibits in support of their application amounted to 1,900 pages) was not something that this council could resource.
- 1.13 The process is to obtain an injunction from the High Court under the common law (trespass to land) and also under the Council's general power under s.222 Local Government Act 1972 to act for the protection of its residents, as well as the supplementary planning and highways powers under s.187B Town & Country Planning Act 1990 and s.130 Highways Act 1980. This can be obtained at any time as there does not need to be an incident at the date of application. The injunction is granted initially for three months and upon expiry of this period a permanent extension is sought. The normal period of extension is three years. The injunction can cover both freehold and leasehold property but the terms of an individual lease may require the landlord's consent to be obtained.
- 1.14 When granted the order of the court needs to be served on the identified sites to be effective. It will also need to be advertised locally, on the Council's web site and upon the land. Inspections need to be made, it was suggested every three months, to ensure the signs remain in place.
- 1.15 In the barristers view all property owned by the council could be included – parks, open spaces and cemeteries (118), Allotments (20), car parks (10 excluding multi storey), Libraries (7), Corporate accommodation (2), Schools (17) industrial property and highways for example but the logistics of locating signs on all these sites and maintaining them needed to be considered. In addition, the Council would need to provide justification for any chosen site and prove freehold ownership to the court at the time of the permanent injunction. We would also seek to include Mitcham and Wimbledon Commons provided the agreement of their conservators is obtained.
- 1.16 The order/injunction is under trespass and specifically directed against encampments (not only travellers) and fly tipping.

- 1.17 Should there be a breach the trespasser is advised by council officers or bailiffs (private bailiffs employed by the Council or from the High Court) and asked to leave as quickly as is considered reasonable. The council should also obtain from the High Court a writ of assistance that requires the police to come and assist in the event that Council or its appointed bailiffs are not able to persuade the occupiers to leave peacefully. NB This writ only needs to be obtained once on the first occasion that a trespass has occurred and when obtained covers all the properties covered by the order for the duration of the order. The consequence of the breach is that the vehicles and thereby livelihood of the travellers can be seized and in the barrister's experience travellers do not occupy property that is subject to an injunction. This will of course increase pressure on any property that is not owned by the council and subject to the injunction whether privately or publicly owned.
- 1.18 Although the welfare of individual unauthorised occupiers does not need to be considered when obtaining the injunction, the Council the welfare impact is considered by the Court in considering the proportionality of the Injunction in light of the Human Rights Act 1998 and Equality Act 2010, and the Council continues to have a statutory duty to safeguard the wellbeing of children and vulnerable adults in Merton. It is recognised that one reason for families to make an unauthorised encampment can be to seek access to essential wellbeing services. In order to ensure the wellbeing needs of children and vulnerable adults are met it was agreed that should the Council obtain an injunction and the Property Management and Review team become aware of travellers on land that is subject to the injunction the following action is taken.
- 1.19 MASH is notified of the location of the encampment and is provided with details of the numbers and ages of any children in the group, and whether the group have made the Property Management and Review Team aware of any wellbeing needs. If children are present among the group MASH will strive to evaluate those wellbeing needs within 24 hours Monday to Friday inclusive to confirm if there are any issues that should delay enforcement of the injunction.
- 1.20 The Housing Options Manager, the Assistant Director of Adult Social Care and the Interim Safeguarding & DOLS Team Manager are notified of the location of the encampment and is provided with details of the numbers of any adults in the group, and whether the group have made the Property Management and Review Team aware of any wellbeing needs. The Housing Options Manager, the Assistant Director of Adult Social Care and the Interim Safeguarding & DOLS Team Manager will strive to evaluate those wellbeing needs within 24 hours Monday to Friday inclusive to confirm if there are any issues that should delay enforcement of the injunction.

- 1.21 By removing the need for individual proceedings for each occupation the injunction offers major efficiencies in staff time over the existing procedure under the Criminal Justice and Public Order Act 1994 and Circular 18/94. In addition, the deterrent effect of an injunction should lead to a reduction in fly tipping and improvement in the reputation of the council.
- 1.22 On 12th December 2018 the Council obtained an interim injunction for three months and this was followed on 13th March 2019 by the High Court granting a further injunction for three years. This injunction covers corporate accommodation, Merton and Sutton Joint Cemetery Board land, greenspaces, allotments, car parks, industrial sites, public highway, libraries, schools, leisure facilities and the traveller site all in the council's ownership plus Mitcham Common (Wimbledon Commons Conservators had obtained their own injunction). Notice has been served upon all these properties, placed upon the council's web site and the London Gypsy Traveller Group has been notified.
- 1.23 From the 12th December 2018 the only unauthorised occupation of council property has been by one traveller on the Brickfield Road traveller site. When advised there was no space available the person left.
- 1.24 The availability of the injunction has removed the need for a joint protocol with the Metropolitan Police. However, the ability to use the existing procedure under the Criminal Justice and Public Order Act 1994 and Circular 18/94 will not be lost and could be used for any council land or highway whether or not covered by the injunction although it is difficult to see why this would be necessary for property covered by the injunction. It does however provide protection should there be any unauthorised occupation of land that is not covered by an injunction.
- 1.25 An officer of the Basic Command Unit has confirmed that the support the police has provided to remove unauthorised occupations is likely to reduce in Merton from the existing level where police officers serve notice where occupations of six vehicles or more occur (see paragraph 1.7). On sites protected by the injunction the police will support the council and its bailiffs under the writ of assistance (see paragraph 1.17) but the police consider that an injunction would take precedence over the Criminal Justice and Public Order Act 1994 and Circular 18/94. They would only take direct action i.e. serve section 61 notice for more than six vehicles when there is a legal reason for so doing e.g. the injunction is inadequate in the particular circumstances.
- 1.26 The Report of House of Commons Women and Equalities Committee "Tackling inequalities faced by Gypsy, Roma and Traveller communities"

dated 20th March 2019 did not set out to tackle issues relating to traveller sites or encampments but to tackle a wide range of other policy issues often eclipsed by issues of accommodation. The recommendations from this report do not therefore directly affect the protocol or the procedures to be used under the injunction.

3. ALTERNATIVE OPTIONS

3.1 None for the purposes of this report.

4. CONSULTATION UNDERTAKEN OR PROPOSED

4.1 The Metropolitan Police have been consulted.

4.2 The Deputy Leader and Cabinet Member for Finance and the Chair of Overview and Scrutiny Commission have been consulted.

5. TIMETABLE

5.1 None for the purposes of this report.

6. FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

6.1 The fees for counsel in obtaining both the interim and long term injunction was £20,000. In addition, there were court fees through to the final injunction of approximately £1,000. Bailiff costs for service of the Injunction order (by putting signs at all entrances to all sites) was approximately £26,000.

6.2 Should an occupation take place upon a site and a writ of assistance be required to instruct the police to support the injunction (unlike the police action under the Criminal Justice and Public Order Act 1994 and Circular 18/94 the numbers of vehicles present is irrelevant) this is approximately £255 plus the bailiff fee for court attendance.

6.3 If Bailiffs are instructed by the Council to enforce the injunction. The cost will depend on factors such as the size of the encampment. The first contact by a bailiff is estimated to cost £375. If the incursion remained the bailiff would return having obtained the writ of assistance. The number of bailiffs needed upon the return, would depend on: a) the police support available; b) the number of caravans and c) the level of hostility displayed by the group. As an example, one caravan would normally mean one bailiff being sent at £375 per hour and £120 per hour thereafter whereas 10 caravans may require 3 officers at the same costings.

- 6.4 The staff resource in obtaining proof of title and erecting and maintaining signage will reflect the numbers of properties to be included in the injunction.

7. LEGAL AND STATUTORY IMPLICATIONS

- 7.1 Dealing with the removal of travellers under the Criminal Justice and Public Order Act 1994 and Circular 18/94 requires the council to obtain welfare reports. Therefore, in making a decision to seek an injunction it could be argued that the Council is in effect adopting a zero tolerance approach to the traveller's way of life and the needs of the Traveller Community. Therefore, due regard was given to all material considerations in deciding to change from the Council's approach under the Criminal Justice and Public Order Act 1994 and Circular 18/94 to the Injunction that protects its land against Traveller incursions and associated harms that can follow including fly-tipping. The Court considered the proportionality of the Injunction in accordance with the Human Rights Act 1998 and Equality Act 2010.
- 7.2 When the Injunction was granted the Borough served a copy of the Claim upon the London Gypsy and Travellers Group as well as posting details of the injunction on the councils' website.
- 7.3 The London Gypsy Traveller Group is currently seeking to challenge another recent injunction sought by Bromley Council which is currently due to be heard on 17th May 2019. Further legal advice will be provided as to the effect of that judgement, if any, in due course.

8. HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1 The council has provided a traveller site in Brickfield Road, SW19 and this is managed by Clarion Housing but the challenges faced by travellers are recognised and the council will continue to work to support everyone that lives in and visits the borough.
- 8.2 The Council has obligations under the Children Act and paragraphs 1.18 and 1.19 of this report identify how we will ensure these obligations are met.

9. CRIME AND DISORDER IMPLICATIONS

- 9.1 Contained within the body of the report.

10. RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1 An injunction would reduce the risk to staff from violence and aggression through reduced contact.

11. APPENDICES – the following documents are to be published with this report and form part of the report

- Existing process under the Criminal Justice and Public Order Act 1994 and Circular 18/94
- Process under an injunction
- Schedule “Unauthorised traveller encampments – 2018”

12. BACKGROUND PAPERS

- Report to Cabinet 7 December 2015. Subject: Traveller Protocol.
- Report of House of Commons Women and Equalities Committee “Tackling inequalities faced by Gypsy, Roma and Traveller communities” dated 20th March 2019.

Appendix 1

Existing process under the Criminal Justice and Public Order Act 1994 and Circular 18/94. Six vehicles or more.

- (i) Police or council become aware of occupation and notify each other.
- (ii) Council request police to serve notice upon the unauthorised occupiers under section 61 requiring the occupiers to leave within a specified timescale.
- (iii) Council officer representing the landowner attends site with the police and confirms council as landowner requires the occupiers to leave.
- (iv) Police serve section 61 notice upon the unauthorised occupiers.
- (v) Police attend site upon expiry of notice period to check compliance with notice.
- (vi) If notice complied with police notify the council who clear and secure the site.
- (vii) If notice not complied with police assemble resources to enforce the notice. Police notify the council once site clear of occupiers who clear and secure the site.

Existing process under the Criminal Justice and Public Order Act 1994 and Circular 18/94. Six vehicles or less.

- (i) Police or council become aware of occupation and notify each other.
- (ii) Council obtain welfare assessments for occupiers.
- (iii) Subject to outcome of welfare assessments, Council serve Section 77 Directions Notice upon the unauthorised occupiers requiring the occupiers to leave within a specified timescale (normally twenty-four hours).
- (iv) If Directions Notice not complied with the Council applies to the magistrates Court under section 78 for an order requiring the removal of the trespassers and their property.
- (v) Council serve summons upon the unauthorised occupiers notifying them of court hearing.
- (vi) Council attend court and seek order for possession.
- (vii) If order for possession obtained council serve order for possession upon the unauthorised occupiers requiring them to leave within a specified timescale (normally twenty-four hours).
- (viii) Council attend site upon expiry of notice period to check compliance with order.
- (ix) If notice complied with the council clear and secure the site.
- (x) If notice not complied with assemble resources to enforce the notice in liaison with and supported by the police. Once site clear of occupiers the council clear and secure the site.

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