

Consultation:

Powers for dealing with unauthorised development and encampments

Ministry of Communities and Local Government – April 2018

Q. No:	Consultation question	Borough of Poole response
Unauthorised development and encampments		
1.	What evidence is there of unauthorised development and encampments in your Community, and what issues does this raise for the local community?	<p data-bbox="748 729 1420 762">Borough of Poole Unauthorised Encampments:</p> <p data-bbox="748 802 2119 1054">Whilst some encampments are small and cause little direct impact on local communities, most encampments number more than 6 vehicles, often greatly impacting local residents. The impacts include denial of legitimate use of recreational land or car parks, littering, noise nuisance, dangerous vehicular movement (sometimes involving cars driven by children), anti-social behaviour and regular reports of criminal activity. Council staff regularly bear witness to such activity and use this as evidence in Court hearings. Residents also report instances of criminal damage, intimidating behaviour and theft by travellers.</p> <p data-bbox="748 1098 2136 1315">It can be challenging for the Council to discharge its responsibilities towards Gypsies and Travellers with regards human rights and equalities laws, in the face of understandable demands from affected residents to act quickly to remove an encampment. Additionally, attempts to communicate Borough-wide policy, e.g. our duty to show a degree of toleration where possible, or the benefits of designating a transit site, are poorly received by those residents who regularly experience unauthorised encampments near their homes.</p>

Powers for dealing with unauthorised encampments		
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.	<p>A summary of some of the details in a spreadsheet maintained by the Borough reveals:</p> <ul style="list-style-type: none"> ▪ 58 unauthorised encampments from 1st June 2016 to 31st May 2018 (2 years) ▪ 55 occurred on Council-owned land, with just 3 being recorded on privately owned land. ▪ The size of the encampments varied from 1 to 24 caravans / motorhomes, averaging 6 to 7 vehicles. <p>Note: one site (Kingland Road Car Park) experienced 17 unauthorised encampments over this period (additional security measures are now being installed at this site). Another 3 sites (Turlin Moor Recreation Ground Car Park, Copse Close Car Park, land adjacent to the Park & Ride Car Park) each experienced 6 encampments (<i>see notes later in this consultation response regarding the displacement effect of target-hardening measures</i>).</p>
b.	whether the land in a) required cleaning or repair once the encampment had left, and if so, what was the cost?	<p>Approximately half of the encampments involve damage to security (target-hardening) measures in order to gain access, together with significant littering and damage to the grassed areas (due to vehicular movements).</p> <ul style="list-style-type: none"> ▪ Portable toilets were provided on 46 occasions, and of these skips were additionally provided on 24 occasions (<i>see notes later in this consultation on the rationale for this Council policy</i>). When provided, portable toilets are not always used and sometimes suffer vandalism or are tipped over. ▪ Very large fly-tips occurred on 6 of these encampments.

		<ul style="list-style-type: none"> ▪ Car parks, which are mostly unprotected, were the most common target for unauthorised encampments (<i>see notes later for the rationale behind the policy of leaving car parks unprotected</i>), followed by parks and other public open spaces. <p>The costs of rectifying the damage and repair include the costs of providing toilets / skips, as these are instrumental in reducing subsequent costs of cleansing and remedying environmental damage. A typical encampment, requiring provision of toilets, a skip, repairs to locks / gates, remedying related damage (e.g. lawns), and a litter pick, would equate to a cost to the Council of approximately £1,200.</p> <p>In addition, there would be the costs of preparing Direction Notices, Court Summons, attending Court hearings, serving Court Orders, and engaging bailiffs (where required). These costs can equate to £200 for simple service of notices & health / welfare checks (a legal requirement), up to £2,000 where Court Orders and bailiffs have been required.</p> <p>It is estimated that the total cost to the Council, over the two year period, equates to approximately £90,000 (the majority of which relates to in-house staff resources).</p> <p>There are also considerable resources allocated to communications and responding to numerous customer enquiries, the costs for which are difficult to estimate.</p>
c.	<p>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?</p>	<p>The Council uses powers available under the Criminal Justice and Public Order Act 1994 (CJPOA).</p> <p>A summary of some of the details of the spreadsheet reveals:</p> <ul style="list-style-type: none"> ▪ 33 departed without the need for formal notices / Court hearings by the Council, albeit health & welfare checks (a legal requirement) were carried out on these. ▪ 4 departed following the service of Direction Notices by the Council under S.77 CJPOA by the Council ▪ 12 departed following court action and service of Court Orders by the Council under S. 78

		<p>CJPOA</p> <ul style="list-style-type: none"> ▪ 7 required employment of bailiffs by the Council to enforce eviction in accordance with the Court Orders (<i>4 of which required police support</i>) ▪ 2 were evicted by the police using powers under S.61 CJPOA ▪ The number of night's duration of each encampment varied from 1 to 19, averaging 6 to 7 nights. <p>Notes:</p> <ul style="list-style-type: none"> ▪ 15 of these encampments were by travellers who had relocated from another site within the Council's boundary ▪ In recent years the Council has had to engage the services of bailiffs to enforce Court orders, which was previously rarely required (<i>see notes later in this consultation regarding the effects on traveller attitudes following the unavailability of sites through increased target-hardening</i>).
Streamlining the powers under which local authorities can direct unauthorised campers to leave land		
3.	Do you think that the existing powers made available to local authorities to remove unauthorised campers from land are effective?	<p>No. We consider existing powers are broadly effective for encampments that cause little detriment to local communities, but less effective when needing to act quickly against encampments that are having serious detrimental effect on local residents. It is notable also that we now have to make greater use of bailiffs to action Court Orders.</p> <p>We have concerns over future resourcing for addressing unauthorised encampments, in view of previous and planned cuts to local authority resources. The traveller 'season' (now from March to October) is very resource intensive, and further cuts would reduce the Borough's capacity to manage unauthorised encampments.</p>
4.	Do you think local authorities could improve	<p>No. We have examined the possibility of using Court injunctions (see note in the relevant section). The Criminal Justice and Public Order Act 1994 is quite prescriptive, and leaves little discretion to</p>

	their use of existing powers?	<p>change or improve procedures.</p> <p>We feel however that local authorities and the Police would benefit from a local or national intelligence-sharing database.</p>
5.	What other powers may help local authorities deal with unauthorised encampments?	<ul style="list-style-type: none"> ▪ A change of law (CJPOA) such that breach of security / target hardening measures on public open spaces (where there is clear signage prohibiting overnight camping) could be justifiable grounds to avoid the need for service of Direction notices, and move straight to Court summonses. The rationale is that the presence of such target-hardening measures, together with signage, should be sufficient indication to travelling groups that they are not permitted to camp on the land, and hence will be required to depart. Under this scenario travellers would be served court summonses, and would still have the right of appeal to the Courts. ▪ A change of law (CJPOA) so that all vehicles present on the land are included in the Court Orders, not just those present at the time the Directions were served. Currently, if more vehicles arrive between Directions being serviced and the Court hearing, the procedure must be repeated for those new vehicles. ▪ More relaxed guidance on the defined geographical area used when presenting the Court papers, e.g. an entire park + car parks should be permissible for the defined area, rather than just the immediate vicinity of the encampment. ▪ A change of law (CJPOA) so that a certain size of encampment (e.g. 6 vehicles) should become a reason to immediately seek a court order without the need to service of Directions ▪ Tents should now be included in the definition of 'vehicles', as there are more encampments where tents make up part or the whole of an unauthorised encampment. ▪ A change in law (CJPOA) and associated guidance to relax the need always to demonstrate serious detriment and / or anti-social behaviour to local communities. A reasonable duration test should be included as a reason to seek a Court Order; otherwise, technically, an unauthorised encampment that was not seriously decrementing the local community could remain ad-indefinitum.

		<ul style="list-style-type: none"> ▪ Unauthorised encampments should be added to the list of reasons that DVLA permit local authorities to obtain vehicle registered keeper details.
Aggravated trespass		
6.	Do you consider that the current powers for police to direct trespassers to leave land are effective?	<p>We are not aware of any instances where Dorset Police has considered applying this particular legislation to unauthorised encampments.</p> <p>However, in relation to sections 61 or 62A CJPOA, we have the following observations:</p> <p>The timescale relating to section 61 or 62A of the legislation has not previously caused an issue in the Borough.</p> <p>However, we believe that the use of S.61 by the Police should preclude any return to the local authority area (not just the affected site), as is the case with the use of S.62A. Also, the size of an encampment for S.61 purposes should include all vehicles, not just caravans.</p> <p>We believe there may be some disparity in the interpretation of ACPO guidance in relation to the use of S.61 powers, and would call for more clarity in this guidance (or indeed other related guidance) to ensure improved consistency. Section 61 powers have been used twice by the police in the past 3 years in Poole, with colleagues from nearby local authorities reporting far greater uses of S.61 powers in those their local areas. We believe that, where a landowner has requested police to use section 61 CJPOA there should be a presumption towards evoking such powers if any of the relevant conditions are met, with any refusal being reported to the landowner together with the rational for that decision.</p> <p>In terms of S.62A, we believe there should be the ability for urban authorities that can demonstrate the unavailability and impracticality of establishing a transit site (i.e. if constrained by urban development, SSSI sites, coastline etc.), to share a transit site that may be available in a</p>

		nearby authority (subject to availability, agreement and recompense). The Borough attempted to establish two transit sites four years ago, but each failed at the planning application stage due to various constraints around site location, including safety.
7.	Would any new or revised powers that enable police to direct trespassers to leave land make it easier to deal with unauthorised encampments?	The application of dispersal orders for public order offences may be applicable to some types of unauthorised encampments in certain circumstances. The Council however has no experience or remit to use this particular legislation so cannot comment further.
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?	Yes. We believe unauthorised encampments should be criminalised for certain types of designated land (e.g. public open spaces, school playing fields, sports pitches), without being linked to the necessity to provide a transit site. The rationale is that unauthorised occupation of such land invariably denies legitimate use by the community, and is land specifically provided for community use. The offence should be included in Schedule 1A Police and Criminal Evidence Act 1984, as amended (i.e. arrestable), and enforcement should be available to the Police and to bailiffs engaged by the Council. There could be a legal procedure introduced to designate such land and its use in order to guard against overzealous designation of all publicly owned land (albeit with a presumption of designation for public open spaces / parks, playing fields and sports grounds).
Use of injunctions to protect land		
9.	What barriers are there to the greater use of injunctions by local authorities, where appropriate, and how might	The possible use of High Court injunctions was explored by the Council's legal team a few years ago, following publicity around a local authority that had successfully applied for such an order. It was clarified however that this local authority did so in very different circumstances to those experienced in Poole (i.e. the same set of travellers repeatedly camping on the same site many times in a year, for many years).

	they be overcome?	<p>The use of High Court injunctions was rejected because:</p> <ul style="list-style-type: none"> ▪ There is a requirement to first identify and name the people in the caravans ▪ The hearing would be in the High Court in London ▪ The burden of evidence is very high, and would require confirmation of the same group repeatedly visiting the same location – something that Poole does not currently experience ▪ In the event of a breach of the order, there would be a requirement to hold another Court hearing in London in order to effect an eviction by bailiffs ▪ It would only apply to the same group of travellers camping at or near the same location ▪ It would be a very expensive procedure, costing maybe thousands of pounds, for a process that would be slower and no more effective than the CJPOA

Joint-working between local authorities, communities and the police

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?	<ul style="list-style-type: none"> ▪ There was previously a Dorset Traveller Liaison Group, comprising local authorities and the police, which shared information and practice. We believe this is a good example of joint working that should be resurrected and opened up to other stakeholders. ▪ A procedure has been agreed across Dorset to evoke 'Gold – Strategic' command at Police Force Command to agree strategy for larger encampments. This we believe is good practice, albeit the necessity for Council staff to contact Force Command via the 101 number acts as a barrier to operational effectiveness. ▪ The Council held a series of residents' and committee meetings six years ago to hear concerns from local residents and ward members who were regularly affected by unauthorised encampments. This prompted a programme of target-hardening measures on certain key sites, together with a revised policy of hastening legal action on certain high-profile sites. The presenters attempted to address the local authority duties around human rights, equalities, reasonable tolerance, health & welfare checks, as well as the rights of Gypsies and Travellers to continue living their nomadic lifestyle as enshrined in case-law. These aspects were not (and continue not to be) well received. ▪ Council staff tasked with managing unauthorised encampments sometimes receive verbal
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		<p>abuse and intimidation from members of the public and visitors to amenities, who are understandably frustrated at the often repeated incursions by travellers onto nearby public open land together with the convoluted legal processes required to evict them. Those same staff will then often receive verbal abuse and intimidation from the travellers, making this this is a particularly unrewarding and stressful aspect of their jobs.</p> <ul style="list-style-type: none"> ▪ Police support during eviction processes is much welcomed, but in recent years the strain on police resources has been evidenced by a reduction in the availability of police officers able to attend challenging circumstances at short notice. There have been occasions where police have been unavailable to support Council staff attending a challenging encampment. Relations between the Council and Dorset Police are considered to be very positive and cordial, but we are mindful of the resource constraints placed upon the police in recent times.
Court Processes		
11.	Are there ways in which court processes might be modified in a proportionate way to ensure unauthorised encampments can be addressed more quickly?	<ul style="list-style-type: none"> ▪ Borough solicitors have a good working relationship with the Magistrate Court clerks, meaning that we can often access the Court for early hearings. We are concerned that the continued reduction in the numbers of magistrates' courts may in future impede our ability to secure quick and effective action through the courts. ▪ An ability to seek the services of a magistrate at weekends on urgent occasions would be beneficial. Whilst magistrates do work weekends, there is no accepted protocol in Poole that would enable access for the purposes of unauthorised encampments.
Interim possession orders		
12.	In your view, what would the advantages and disadvantages be of extending the IPO process	We would support the application of IPOs to land, for the purposes of unauthorised encampments, in particular in cases where security measures had been breached and there is clear signage prohibiting camping. This would in effect match our suggestion in the first bullet point of Q.5.

	to open land?	
Powers for dealing with unauthorised development		
13.	Are you aware of any specific barriers which prevent the effective use of current planning enforcement powers?	No comments
14.	If you are aware of any specific barriers to effective enforcement, are there any resourcing or administrative arrangements that can help overcome them?	No comments
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?	No comments
Improving the efficiency of enforcement notice appeals		
16.	How do you think the existing enforcement notice	No comments

	appeals process can be improved or streamlined?	
Government Guidance		
17.	How can Government make existing guidance more effective in informing and changing behaviour?	We consider that much of this guidance is immaterial (e.g. the use of the public health acts, which is impractical for the purposes of eviction). We believe there should be greater emphasis given to the rights and needs of local residents with respect the use of public open spaces, car parks, school playing fields etc. The guidance could describe what an acceptable encampment should look like that would warrant some degree of toleration, together with an idea of a maximum expected duration and number of travellers, even where demonstrating reasonable behaviour.
18.	If future guidance was issued as statutory guidance, would this help in taking action against unauthorised development and encampments?	We do not believe that this would have any discernible affect on the way local authorities manage unauthorised encampments. We believe the legislation requires amendment, as per comments elsewhere in this consultation response.
Planning and traveller site provision		
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	<ul style="list-style-type: none"> ▪ There are significant geographical constraints in predominantly urban areas such as Poole. ▪ Opposition from residents and businesses local to any proposed transit site is significant and understandable. The Borough's attempts to create two transit sites four years ago were subject to a great deal of local opposition, and reported at length in local media. The planning application hearings needed to be held in the main arts theatre / concert hall, in order to accommodate the numbers of people who wished to attend. The challenge of developing a transit site near to local communities should not be underestimated.

	overcome those barriers?	<ul style="list-style-type: none"> If the provision of transit sites were ever to be mandatory (which we do not support), it would be preferable for an independent representative appointed by the Secretary of State to make the judgement of location. Placing an expectation on locally elected members to identify transit sites will divide opinion and undermine community relations and loyalties, and will result in no decision on location actually being agreed.
Impacts on the travelling community		
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?	<p>If the legislation were amended to apply to designated public open spaces, there would be little impact on the public sector duty (but note the response under 'other comments').</p> <p>We note that objectionable comments often openly made by some people appear to be accepted in a way that would not be acceptable if made against other groups with protected characteristics. This is evident in the comments section of the local newspaper as well as on social networking sites.</p>
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	We do when requested make provision for children to attend school, but the evidence is that the children do not subsequently attend the schools where places have been reserved. When children form part of travelling groups during term times, we believe there are likely to be issues with regards the quality of their education. We do not have any understanding of whether school attendance is monitored by their local authority or home nation, or if they have agreed to elective home education.

	<p>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?</p>	
<p>Other comments</p>		
<p>22.</p>	<p>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?</p>	<ul style="list-style-type: none"> ▪ As previously stated, we believe that there is an imbalance between the recognised rights of Gypsies & Travellers to continue with their rights to a nomadic lifestyle, and the rights of our local communities to continue with the peaceful enjoyment of their homes and community facilities funded by local taxes. ▪ We would challenge the notion that protecting a long established right to lead a nomadic lifestyle for economic reasons should extend to travelling groups who wish to visit an area by virtue of being on holiday. Increasingly in Poole, Gypsies and Travellers openly admit to being on holiday with little or no intent of working, and occupying waterside locations and parks popular with tourists and residents and thereby denying legitimate use of such facilities. ▪ There is no currently accepted definition of a Gypsy or Traveller, with only limited case-law to make judgement. At present, anyone who declares themselves to be a Gypsy or Traveller would be afforded rights associated with protected characteristics. Many travellers report owning houses in their home county or country, choosing to travel solely in the school summer holiday period. 'Settled traveller' is a term in regular use, which implies an ethnic origin rather than an activity. More clarity is required over definitions that are to be used for legal proceedings. ▪ A new practice experienced by the Council during an enforced eviction was for parents to lock

		<p>their children inside the caravans and walk off the site, in the knowledge that the bailiffs would not tow away vehicles whilst children are still inside. After a lengthy stand-off, Council staff and police officers managed to persuade the travellers to depart. This has happened on just one occasion, but indicates the determination of some travellers to remain on site. We are concerned that this practice might escalate, and would welcome guidance on dealing with such scenarios.</p> <ul style="list-style-type: none">▪ Five years ago the Council agreed to provide portable toilets and skips, where likely to be required, in order to reduce the environmental impacts and costs of cleansing. This policy has been successful in achieving these aims, but has been subject to considerable criticism from many residents who, understandably, view this as waste of public money and an encouragement for travellers to come to Poole. Nevertheless the evidence is that this policy reduces environmental impact (e.g. defecating in bushes, large fly-tips in inaccessible places) and cleansing costs, but does not completely remove such detriment.▪ A very disruptive encampment took place over the August Bank Holiday of 2016 at Sandbanks Car Park, with an unusually aggressive and anti-social group of travellers. Adults and children openly removed belongings from beach visitors, raided local shops and took goods without paying, and intimidated beach staff, workers in local businesses, and visitors, and in the evening initiated altercations with visitors in some local pubs. Being a bank Holiday, police resources were very stretched, albeit they managed to persuade the group to depart after two days. The matter was not helped when Council staff were unable to receive a response through the 101 phone line, but were then advised by operators on the 999 phone line that this matter does not constitute an emergency. There has since been a joint meeting between senior officers of Dorset Police and the Council to review operational effectiveness and communications.▪ Residents and staff regularly witness ASB and criminal activity, including under-age drivers in cars driving at speed across open spaces, quad bikes continually being used on open spaces, fly-tipping / littering and damage to public property. The difficulty of enforcing laws against
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travelling groups (often from other countries) together with the immense resources required to collect evidence and clarify identities and addresses, results in little by way of prosecution in the courts. It is this aspect that prompts local residents to suggest that travellers are 'above the law'.

- Five years ago the Council embarked on a programme of target-hardening certain key community open spaces, following demands from many local residents. Whilst successful at those sites, other sites that previously did not receive encampments then begun to experience them. Following further target-hardening of these sites, still other locations that had not previously experienced incursions then begun to experience them. It became apparent that securing certain high profile sites just had the effect of displacing encampments to other locations. The total number of unauthorised encampments within the Borough has in fact increased slightly over the last 5 years.
- In recognition of the significant amount of time dedicated by Council staff in responding to customer enquiries about encampments, the Council now communicates via an email with links to a 'Current Encampments' area of the web page:

<https://selfservice.boroughofpoole.com/popup.aspx/RenderForm/?F.Name=TvboXnB7vhD>

<http://www.boroughofpoole.com/communities-and-people/community-advice-and-grants/unauthorised-encampments/unauthorised-encampments-faq/>

This is communicated widely to staff across the Council as well as the Police. We will shortly be placing this information on the Council's social media sites. The policy has reduced the amount of resource required to address customer concerns over encampments.

- The vast majority of car parks in Poole are not provided with height or narrow width barriers, in

		<p>recognition of the frequent visits by people in motorhomes, cars with roof loads, or certain types of tall disability vehicles. This inevitably leaves these car parks accessible to unauthorised encampments, and the Council receives regular demands to target-harden such car parks. There is one car park at a leisure centre that receives numerous unauthorised encampments but where access is required by school buses and commercial vehicles. The Council has designed an innovative scheme (that we believe is a first in England) whereby electric remotely controlled rising bollards permit access and egress to authorised high sided vehicles only, whilst an adjacent height barrier permits access and egress to cars.</p>