

	<b>REPORT TO CABINET TO BE HELD ON 20 OCTOBER 2015</b>
	<b>Key Decision</b> <b>YES</b> <b>Forward Plan Ref No</b> <b>PHH001</b>
<b>Corporate Priority</b>  <b>Aim 3 – Creating Healthy and Vibrant Communities</b>	<b>Cabinet Portfolio Holder</b> <b>Cllr Bill Chatt</b>  Cabinet Member for Public Health and Housing

**REPORT OF: DIRECTOR (TW) – 15/280**

**WARDS AFFECTED: ALL**

**SUBJECT: POLICY FOR MANAGING UNAUTHORISED ENCAMPMENTS ON BOROUGH COUNCIL LAND**

**RECOMMENDATION (S):**

Cabinet is recommended to:

- 1) Approve the proposed policy and procedure for responding to unauthorised encampments.
- 2) Give delegated authority for the Director (TW) to amend the procedure as required, for example in light of experience and any changes in legislation.

**REASON FOR RECOMMENDATION:**

Having a clear policy and procedure for responding to unauthorised encampments will help ensure that the Council adopts a consistent and proportionate response. It shall also ensure that the Council acts lawfully and that the needs of the Council and community are balanced with the rights of the individuals concerned.

**HIGHLIGHTED RISKS:**

See attached risk matrix.

## **1. INTRODUCTION**

- 1.1 This report seeks Cabinet approval for the adoption of a corporate policy and procedure for responding to unauthorised encampments on land owned by the Borough Council. Where the land is not owned by the Council the relevant land owner (where known) shall be notified and general advice provided as required.

## **2.0 CORPORATE AIMS/PRIORITIES AND THE COMMUNITY PLAN**

- 2.1 The effective management of unauthorised encampments on Council owned land supports a wide variety of corporate objectives with the community plan including Aim 1 Healthy and Safer Communities and Aim 4 Quality Environments.

## **3. BACKGROUND AND ISSUES**

- 3.1 Unauthorised encampments occur on Borough Council land for a variety of reasons. They sometimes happen because of the traditional nomadic lifestyle of Gypsies and Travellers and because of the seasonal transit of these groups at around the time of the Seamer Fair/ Whitby Regatta.
- 3.2 Whilst the number of such encampments in the Borough is generally low, they generally cause concern to nearby residents and are often costly for the Council to deal with, both in terms of staffing resources and potential clean-up costs.
- 3.3 Historically the task of tackling these encampments has fallen between various departments of the Council. The Council has very much relied on the expertise of one or two officers to deal with everything concerning Gypsies and Travellers. Whilst this approach has been generally effective it is not sustainable in the long run and a more formalised and corporate approach now needs to be adopted.
- 3.4 The Council does not currently have an agreed policy or procedure in respect of how it responds to these encampments. A policy is however needed in order to ensure that:
- Officers, Members and the community more generally have clarity in terms of the actions that the Council can take and under what circumstances it shall take them.
  - Action to tackle unauthorised encampments is undertaken promptly and effectively.
  - The Council adopts a proportionate and justified response to tackling unauthorised encampments and avoids the cost of unnecessary or legal action to gain possession of occupied land.
  - The Council engages effectively with key partners, particularly North Yorkshire County Council and the Police.

- The need to take possession action promptly is balanced with the rights (and potential welfare needs) of the individuals concerned.

3.5 Whilst the focus of this policy is directed at dealing with unauthorised encampments by gypsies and travellers, it is acknowledged that from time to time the Council does also receive reports of ad-hoc camping on Council land more generally by, for example, young people or the homeless. Currently such instances are investigated in partnership between the Community Safety team, Housing and the Police. Existing protocols (such as the “No Second Night Out” Policy) have already been adopted by the Council to deal with these kind of issues.

## 4. CONSULTATION

4.1 The principles of this policy accord with those already adopted countywide by North Yorkshire County Council in respect of their land. NYCC have thus been consulted on this policy, as have the Police.

4.2 Internal consultation has been undertaken with the Council’s estates, community safety and legal teams.

## 5. ASSESSMENT

5.1 A copy of the proposed policy/procedure can be found in the **Appendix** to this report.

5.2 The proposed policy contains the following key points:

- Housing/Environmental Health shall take the lead in dealing with unauthorised encampments on Borough Council land.
- All unauthorised encampments shall be moved on as quickly as is practicably possible.
- In all cases a proportionate approach shall be taken with respect of the use of legal proceedings to secure possession. In order to avoid unnecessary legal costs or abortive proceedings a negotiated solution would generally be sought prior to the commencement of any legal action.
- The period given prior to the commencement of eviction proceedings will generally be between 24 hours to 14 days depending on the location and the impact of the encampment and the circumstances and stated intentions of the trespassers themselves.
- Where an encampment presents an immediate health and safety risk to either the public or the trespassers themselves **immediate** possession shall be sought.
- In the majority of other cases, for example in relation to unauthorised encampments on public open space located within a residential area, parkland or carparks, possession action would generally be sought by the Council within **24 hours**.

- In other instances, where for example the location of the unauthorised encampment has a relatively low impact or where the circumstances of the trespassers themselves require flexibility, then at the discretion of the relevant Director a grace period of up to a maximum of **14 days** may be given.
  - As part of its procedures, the Council will seek to identify and appropriately meet any relevant welfare needs through a standardised 'welfare assessment'. This welfare assessment is required both to help inform the Council's decision regarding the use of enforcement powers and where required to signpost to other relevant agencies.
- 5.3 The Council has a variety of powers at its disposal to regain possession of its land. These include powers to seek injunctions to prohibit trespass under *Section 222 of The Local Government Act 1972* as well as the power to seek possession of land under the *Civil Procedure Rules Part 55*.
- 5.4 Generally the most appropriate power in relation to unauthorised encampments is *Sections 61, 62 and 77 of the Criminal Justice and Public Order Act 1994*. Section 77 of that Act gives LAs the power to give a *direction to leave* land to people residing in vehicles, including caravans on land on which they are residing without the Council's consent. Failure to comply with such a direction means the local authority can apply to the magistrates court for an order requiring the removal of vehicles and occupants.
- 5.5 In addition under certain circumstances, the Police have a discretionary power to take action in accordance with Sections 61 and 62 of the same Act. This gives the Police powers to direct trespassers to leave and remove any property or vehicles where the landowners has given a direction for the trespassers to leave and they have failed to do so. Trespassers must also have either:
- damaged land or property; or
  - used threatening, abusive or insulting words or behaviours or
  - have six or more vehicles.
- 5.6 Under these sections of the Act, failure to comply with the direction by leaving the land as soon as is reasonably practicable is an offence.
- 5.7 Decisions regarding the length of any verbal notice period or decisions to commence legal action to move trespassers on shall be made by the relevant Director (delegated to the relevant service unit manager) and considered in the context of the findings from the site inspection and the outcomes of the welfare needs assessment. The decision shall also be made in consultation with North Yorkshire Police and the Community Safety team.
- 5.8 Where trespassers do not move on at the end of any given verbal notice period the Council's legal services team shall advise on the most appropriate legal steps to be taken and where required draft the notice/direction. The service of any notice shall be undertaken by the Council's Private Sector

Housing team and supported as required by the Police/ Community Safety team through existing partnership arrangements.

- 5.9 It is acknowledged that any unauthorised encampment often generates numerous enquiries from the public, directed both toward Customer First and toward local Ward Members. To mitigate against this it will be the responsibility of the Council's Private Sector Housing team to keep both local ward members and Customer First staff updated with regard to any action being taken with regard to unauthorised encampments.
- 5.10 The completion of a welfare assessment is an important element of the process and required to both ensure that the needs of the gypsies and travellers are met and to ensure that the Council is able to demonstrate that it is acting both reasonably and lawfully. A welfare needs assessment is normally required prior to legal action to evict.
- 5.11 The policy covers instances of unauthorised encampments on Borough Council owned land. Many encampments occur on land that is not owned by the Council, for example land owned by NYCC on the verges of highways or on private land. In these instances, whilst the procedure does highlight that the Council shall advise the relevant landowner and provide advice and assistance as required, it is the responsibility of that land owner to take any necessary action they deem to be necessary to recover possession of their land.

## **6. IMPLICATIONS**

### **6.1 Policy**

This report recommends that the Council adopts a policy and procedure to help determine its approach to tackling unauthorised encampments.

### **6.2 Financial**

There is no existing budget for responding to unauthorised encampments. Any costs associated with managing such encampments shall continue to be absorbed by the relevant directorate.

### **6.3 Legal**

The range of legal powers that are available to the Council to tackle unauthorised encampments are highlighted within the policy.

The policy seeks to engage with unauthorised encampments to remove them as quickly as possible from unacceptable locations.

The Council does however need to ensure that it acts proportionately and avoids the use of unnecessary legal action/ cost where a negotiated solution would be more effective. Unless such an approach is taken the Council faces the risk of legal challenge or unsuccessful possession applications.

Officers considered this proposed policy within the context of the Government publications “**Dealing with Illegal and Unauthorised Encampments. A Summary of Available Powers (2015)**”

#### **6.4 Equalities and Diversity**

People with the protected characteristic of race, specifically Romany gypsies and Irish travellers are likely to be impacted by this policy and procedure.

The policy seeks to balance their rights with the needs of the Council and the wider community.

Through the use of this policy outcomes for these groups should improve more generally through the use of welfare assessments.

In addition the identification of clear officer roles and responsibilities should enable a quicker and more consistent response and reduce the risk of tension between gypsies and travellers and the settled community.

#### **6.5 Staffing Issues**

This policy relies on the use of existing staffing resources with the Council’s Housing/Environmental Health teams to take the lead in dealing with unauthorised encampments on Council land.

#### **6.6 Environmental Issues**

The draft policy identifies locations where unauthorised encampments are unacceptable for environmental reasons to ensure that these encampments are moved on quickly to avoid environmental damage occurring.



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#### **Background Papers:**

None

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT ANDREW ROWE ON 01723 383598 OR E-MAIL [andrew.rowe@scarborough.gov.uk](mailto:andrew.rowe@scarborough.gov.uk)



*A great place to live, work & play*

**SCARBOROUGH BOROUGH COUNCIL**

**Unauthorised Encampments on Borough Council Land**

**22 October 2015**

## Scarborough Borough Council

### Corporate policy for responding to unauthorised encampments on Borough Council owned land.

#### 1.0 Introduction

- 1.1 This policy sets out how the Borough Council will respond to unauthorised encampments on Borough Council owned land. The policy seeks to ensure that its approach to responding to unauthorised encampments is consistent, lawful and proportionate.
- 1.2 The policy has been developed within the context of the Government publication “**Dealing with Illegal and Unauthorised Encampments. A Summary of Available Powers (2015)**”.

#### 2.0 What is an unauthorised encampment?

- 2.1 An unauthorised encampment exists when an individual or group of individuals move onto a piece of land they do not own, without the permission or consent of the landowner or occupier of the land. Within the context of this policy an encampment may consist of caravans and or other vehicles.

#### 3.0 What is the Council’s approach?

- 3.1 The Council will act to remove an unauthorised encampment as quickly as is practicably and reasonably possible in accordance with relevant legislation.
- 3.2 Where the Council receives a report of an unauthorised encampment, this should be passed on to the Council’s Private Sector Housing team who shall initially log the timing and location of the encampment on its database.
- 3.3 Officers from this team shall check the Council’s land records.
- 3.4 Where the land is not owned by the Council, the relevant land owner (where known) shall be notified and general advice provided as required. In addition the Police, Community Safety and local Ward Members shall also be notified.
- 3.5 Where it is confirmed that the unauthorised encampment is located on Council Land, the officers from the Private Sector Housing team shall visit the encampment as soon as is practicably possible (generally that same day) and complete a site inspection and welfare assessment. Generally two officers will undertake such an assessment. A copy of a standard inspection/ welfare assessment form is included within the protocol. Again the Police, Community Safety and local Ward Members shall be notified.
- 3.6 Further to the completion of the welfare assessment, officers will seek to identify any relevant welfare needs of the site occupiers. This welfare assessment should have particular regard to the welfare needs of children, the elderly or other people who may be vulnerable. Where support or welfare



needs are identified the Council will try to assist or refer the matter to the relevant agency. Where significant needs are identified the case will be assessed on its own merits and any appropriate occupation period negotiated.

- 3.7 In instances where the location of the unauthorised encampment presents a serious and imminent health and safety risk to either the general public or the trespassers themselves, immediate action shall be taken to secure possession without any prior notice being given.
- 3.8 In the majority of other instances, for example in relation to unauthorised encampments on Public Open Space in residential areas, or encampments on car parks or on parkland, then verbal notice giving 24 hours to leave the site shall generally be issued. Where the trespassers do not move on within 24 hours then legal proceeding shall be commenced.
- 3.9 In other circumstances, where for example the location of the unauthorised encampment has a relatively low impact or where the circumstances of the trespassers themselves require a degree of flexibility, then at the discretion of the relevant Director a grace period of up to a maximum of **14 days** may be given. In essence this means that the Council will treat the individuals as 'tolerated trespassers' for this period. If they have not vacated at the end of this period then legal action to gain possession shall be commenced.
- 3.10 Decisions regarding the length of any verbal notice period or decisions to commence legal action to move trespassers on shall be made by the relevant Director (delegated to the relevant service unit manager) and considered in the context of the findings from the site inspection and the outcomes of the welfare needs assessment. The decision shall also be made in consultation with North Yorkshire Police and the Community Safety team.
- 3.11 Where trespassers do not move on at the end of any given verbal notice period the Council's legal services team shall advise on the most appropriate legal steps to be taken and, where required, draft the notice/direction. The service of any notice shall be done by the Council's Private sector Housing team and supported as required by the Police/ Community Safety team through existing partnership arrangements. At the end of the notice period, if the trespassers have not moved on, due legal process would normally be followed to seek possession through the Courts.
- 3.12 Unauthorised encampments often generate numerous enquiries from the public, directed both toward Customer First and toward local Ward Members. To mitigate against this it will be the responsibility of the Council's Private Sector Housing team to keep both Ward Members and Customer First staff updated with any action being taken with regard to unauthorised encampments.

#### **4.0 Action when a group of Gypsies or Travellers has moved on.**

- 4.1 The encamped group will be required to clear up the site before leaving. Where a site requires a clean-up this shall be undertaken by the Councils

Environmental Services team. The Council reserves the right to recharge for any costs associated with site clearance. In addition the Council will take any necessary action to secure locations which are subject to serial encampments.

## Risk Matrix

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer
1	2012	The Council does not adopt a policy/ procedure in respect of Unauthorised Encampments	<p>The Council does not effectively deal with such encampments.</p> <p>There is confusion amongst staff, members and the Public with respect to what action should be taken.</p> <p>The Council risks abortive legal costs, challenges and the risk of unsuccessful possession proceedings if the correct legal process is not adopted.</p>	Adoption of these proposals	B3	A4	Housing Manager

### Glossary of Terms

Risk	An event which may prevent the Council achieving its objectives
Consequences	The outcome if the risk materialised
Mitigation	The processes and procedures that are in place to reduce the risk
Current Risk Score	The likelihood and impact score with the current mitigation measures in place
Corporate Objectives	An assessment of the Corporate Objectives that are affected by the risk identified.

Target Risk Score  
 Service Unit Manager  
 Action Plan  
**Risk Scoring**

The likelihood and impact score that the Council is aiming to achieve  
 The Service Unit or Officer responsible for managing the risk  
 The proposed actions to be implemented in order to reduce the risk to the target score

Impact	5					
	4					
	3					
	2					
	1					
		A	B	C	D	E
	Likelihood					

<u>Likelihood:</u>	<u>Impact</u>
A = Very Low	1 = Low
B = Not Likely	2 = Minor
C = Likely	3 = Medium
D = Very Likely	4 = Major
E = Almost Certain	5 = Disaster