Mid Devon District Council

Procedure for managing illegal encampments

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Preventing Further illegal encamping.

The Council will manage illegal encampments on land in Mid Devon District in accordance with the procedures set out in this policy document. The Council will:

- Have regard to legal requirements, including those placed under the Human Rights Act 1998, the Equality Act 2010, the Children Act 2004, Education Act 1996, Housing Act 2004, Civil Procedure Rules, Criminal Justice and Public Order Act 1994, Anti-Social behaviour, Crime and Policing Act 2014, planning legislation and national planning policy and any relevant case law.

- Take actions as necessary, following the five stages set out in the procedure.

- Keep relevant agencies/ departments, any individual persons or groups making unauthorised encampment, elected members and members of the settled community informed of action taken in relation to the unauthorised encampment.

- Monitor the implementation of the procedure and keep this under review.

- Work collaboratively with other Local Authorities in Devon and Somerset towards a common strategic approach to managing illegal encampments.

Aim

This procedure has been developed in order:

- To put forward the Council's position in relation to illegal encampments within the District.

- To clarify working arrangements surrounding illegal encampments including the role of the Authorities included.

- To increase awareness of the responsibilities and constraints upon the powers of the Authorities.

- To ensure that illegal encampments are addressed swiftly and effectively.

- To prevent further illegal encampment within the District.

- To ensure that welfare issues arising as a result of illegal encampments are dealt with appropriately.

- To ensure that the correct method of enforcement is used in order to make enforcement action quicker and more cost effective.

- To be able to plan ahead to control problems and to avoid the need

to deal with illegal encampments on a crisis basis.

- To ensure that the needs and legitimate expectations of Landowners and the settled community are considered.

- To put a framework in place within which clear consistent and appropriate decisions can be made on illegal encampments with minimum disruption, whilst recognising the requirements to balance the needs of a range of interested parties.

- To ensure that the procedure reflects human rights of both the settled community and travelling communities and to comply with race relations legislation as set out in the background to this procedure.

- To prevent anti-social behavior and to take effective enforcement action against any perpetrators.

This procedure has been drawn up taking into account guidance provided by the Government in Dealing with illegal and unauthorised encampments: A summary of available powers published in March 2015 by the Department for Communities and Local Government. Reference has also been made to the Association of Chief Police Officer's Guidance on Unauthorised Encampments published in 2011.

It is recognised that this a sensitive subject and that it is important that everyone be treated with respect, giving consideration to the variety of ethnic and racial origins, different lifestyles, needs and welfare issues. It also recognises the rights of the settled community within the District.

Decisions to evict or not must be balanced and must be compliant with the terms of the Human Rights Act demonstrating legality, necessity and proportionality together with the principles of Common Humanity.

The Council will consult and work in partnership with all agencies. Each illegal encampment will be looked at on its own merits.

This procedure will be reviewed annually illegal and monitored by the Group Manager Corporate Property and Commercial Assets, to ensure that it is useful in practice when dealing with illegal encampments and also to ensure that any legislative changes are incorporated.

Upon review if the policy is not working effectively changes will be made in order to address any issues.

Background

There is no specific legislative duty placed on Councils to deal with illegal encampments. The powers available are optional and varied and are set out in detail at pages 9 to 13 of this guidance.

There are however various matters that must be taken into account when Councils are managing illegal encampments.

Equality Act 2010

The Equality Act makes it unlawful to treat someone less favorably because of a range of protected characteristics. These protected characteristics include race, nationality or ethnic or natural origins. The following of a nomadic lifestyle is lawful and is a culture recognised and protected through legislation.

Policies for managing illegal and illegal camping are likely to affect Gypsies and Travellers significantly.

When evicting and enforcing authorities must act in a way which complies with their duties under the Equality Act.

The Equality Act enacts a single general public sector equality duty (PSED) under section 149, which applies to public authorities exercising public functions.

All relevant officers of the council have received training in considering the PSED

In deciding to evict persons with a relevant “protected characteristic” the PSED will be engaged and the decision maker must comply with the PSED and must evidence this is writing.

Race is a protected characteristic.

Romany Gypsies, Scottish Travellers and Irish Travellers have all been declared by the Courts to be protected as “races” under the Equality Act 2010.

Roma are also an “ethnic group” and therefore protected as a “race” under the Equality Act.

Human Rights

The Human Rights Act 1998 contains the Articles and Protocols of the European Convention on Human Rights that are deemed to apply into domestic legislation. It is unlawful for public authorities to act in a way that is incompatible with the Convention (section 6 of the HRA 1998). The main relevant rights that the Council must consider when dealing with members of an illegal encampment are as follows:

Article 8 of the European Convention on Human Rights - Right to respect for private and family life. This says

> "*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.*"

Case law has established that, while neither eviction action against trespassers nor planning enforcement is incompatible with HRA, either could potentially breach Article 8 rights if not properly used. Authorities, and other public bodies covered by the HRA, must be able to demonstrate that all eviction and enforcement decisions are 'proportionate' in weighing individual harm (in the loss of 'home' for the Gypsy or Traveller) against the wider public interest.

Case law also says consideration needs to be given the best interests of the children. Children are protected by art.3(1) of the United Nations Convention on the Rights of the Child ("UNCRC") which states that: " In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. "

In ZH (Tanzania) V Secretary of State Secretary of State for the Home Department [2011] UKSC 4; [2011] 2 A.C. 166 Baroness Hale referred to the UN Guidelines which explain that "best interests" are not just about health and education and she stated that when considering article 8 of the European Convention of Human Rights in any case in which the rights of a child are involved, the best interests of the child must be "a primary consideration".

Accordingly the best interests of any child must be kept at the forefront of the decision-maker's mind as he or she examines all relevant considerations and when considering any decision that might be taken, he or she must assess whether the adverse impact of such a decision on the interests of the child is proportionate

Potential challenge under the HRA means that all decision-making must be fully recorded and evidenced to withstand scrutiny. It should be noted that it is possible to rely upon an alleged breach of art.8 as a defence to a claim for possession action brought by a public body against Gypsies and Travellers or as a ground for seeking judicial review of a decision to evict.

First Protocol, Article 1-Protection of property. This says

"Every natural and legal person is entitled to the peaceful enjoyment of his possessions. No-one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

This Article might be seen as protecting the settled community's right to quiet enjoyment of their possessions, which might be threatened by nuisance, noise or anti-social behavior from a problematic unauthorized encampment. This should be one of the considerations to be borne in mind by local authorities and police when considering eviction action. To date there is no relevant case law.

First Protocol, Article 2-Right to education. This says

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

Education of Gypsy/Traveller children is often raised in cases dealing with eviction proceedings, and particularly with planning enforcement actions against unauthorized development. In such cases the question resolves itself to one of the balance between the individual harm to Gypsy/Traveller children's' educational needs and the public interest harm in allowing unauthorised development to persist. To date there is no specific case law on arguments relying on this Article in this context.

Article 14-Prohibition of discrimination. This says

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property birth or other status."

While Article 14 rights are potentially engaged in any action concerning Gypsies and Travellers (as ethnic groups and national minorities), the Article can only be successfully argued if another Article is found to be breached.
Where a claim under any Article is rejected, it follows that any claim under Article 14 also falls.

Section 11 of the Children Act 2004

Section 11 of the Children Act 2004 requires that local authorities must “make arrangements for ensuring” that their functions are discharged having regard to the need to safeguard and promote the welfare of children.

Welfare Checks/Service Provision for Gypsies and Travellers:

Gypsies and Travellers are entitled to access health, housing, education and welfare services in the same way as members of the settled community.

There is specific recognition to the needs of Traveller children in accessing education under the provisions of the Education Act 1996.

Housing/Site Provision
The Housing Act 2004 placed a duty on Councils to develop and implement strategies to address the needs of Gypsy and Traveller Communities.

Enforcement Powers Available for Dealing with Illegal Encampments:

There are various powers available when dealing with enforcement of illegal encampments. They are detailed as follows:

1. Common Law Powers (Tort of Trespass) – Used by Private Land Owners:

All private land owners can use their common law powers to recover land. This allows the person in possession of the land to evict an individual from their land, to seek damages from that individual and may also seek an injunction to prevent the trespass from reoccurring.

If the trespasser has entered the land peaceably they are entitled to a request to leave the land prior to being forcibly removed. If however a trespasser has entered the land with force and violence they can be removed without a request to leave having been given.

The eviction of the trespasser can be made by the land owner or a private bailiff who can use no more than reasonable force to remove the trespasser. Use of excessive force could give rise to a claim against the land owner by the trespasser.

Where a land owner is considering using this power they should inform the police in order that the police can be present to prevent any breach of the peace that might occur. If the police advise that they feel it is inappropriate to attempt eviction, eviction should be delayed until such time that the police believe it is safe.

The Local Authority should not use common law powers as government guidance states that Local Authorities should not take enforcement action which does not make reference to the court. There is no reference to the court under common law rules and there are similar statutory provisions in Part 55 Civil Procedure Rules which should be used as an alternative.

2. Part 55 Civil Procedure Rules – Used by Private Land Owner or Local

Authorities:

Part 55 of the Civil Procedure Rules allow any land owner to regain possession of their land.

The first step is for the land owner to ask the trespasser to leave the land. If they refuse to do so or ask to be allowed to remain on the land for a period that the land owner feels unacceptable the land owner can then begin action against the illegal campers through the County Court.

If the eviction is required urgently the court should be put on notice as soon as possible. The relevant documentation is completed and submitted to the court manager along with any relevant evidence. A hearing date will then be arranged.

The court will then provide the land owner with a Notice of hearing to serve on the illegal campers. If it is not possible to identify any individuals the Notice can be issued to “persons unknown”. The Court rules state that the illegal campers must be given 2 clear days’ notice of the hearing.

At the hearing evidence will be put before the judge and the judge will have to be satisfied that the illegal campers have been dealt with appropriately before granting a possession order. The Order will then be served on the illegal campers.

In most cases the illegal campers will leave the site within 24 hours of the Order for possession being served upon them. If they fail to do so then it will be necessary to apply to the Court for a warrant for possession of land. The Council will then work with the County Court Bailiff who will carry out the eviction.

After the eviction has taken place the land owner should sign a warrant of possession to acknowledge that the land has been regained.

This is the usual course of action taken by the Council because:

- Occupants of illegal encampment change frequently. It is more effective to use this provision, which relates to the land itself rather than the power available under Section 77 CJPOA1994 (see below) which requires individuals or vehicles on the encampment to be identified.

- A Judge can affirm the decision to evict based on the available evidence.

- It is a relatively quick procedure. . The process will take longer if a warrant proves necessary.

3. Sections 77-78 Criminal Justice and Public Order Act 1994 – Used by Local Authorities:

Where people are residing in vehicles (including caravans) on land section 77 of the Criminal Justice and Public Order Act 1994 gives local authorities the power to direct individuals to leave the land and to remove their vehicles and belongings from land. This power applies only to land forming part of a highway, any other unoccupied land or occupied land on which people are residing without the consent of the occupier. . .

"occupier" means the person entitled to possession of the land by virtue of an estate or interest held by him;

Initially a Direction will be drawn up by the Council which instructs the illegal campers to leave by a particular date and time. The Direction should identify either individuals or vehicles on the illegal encampment.

The Direction should then be served by handing it to one of the individuals or by being affixed prominently to one of the vehicles.

If the campers fail to move and/or remove any of their vehicles and other property by the specified date or return to the same location within three months they will be committing a criminal offence and a prosecution may be brought against them.

In practice however it is probably more effective for local authorities to use the powers available under Section 78 Criminal Justice and Public Order Act 1994. This allows the Council to advise the Magistrates Court that there has been a contravention of a Direction under Section 77 and if the court is satisfied they may grant an Order for Removal of Persons and Vehicles.

Once granted the Order should be served on the illegal campers as soon as possible. Twenty four hours must elapse between the serving of the Order and any action to remove the illegal campers and their vehicles from the land. Police should be present during the removal to ensure that no breach of the peace takes place.

These powers are likely to be used by the Council where:

- The land is owned by the Council or any other Land Owner authorises the Local Authority to use them.

- The owner of the land on which the encampment is situated cannot be identified and the land is not owned by the Council, the Council may use these powers regardless as to who owns the land.

- It is appropriate to evict some but not all of the illegal campers, for example where one of them is ill or heavily pregnant. Or alternatively where certain members of the group are involved in anti-social behavior yet the rest of the group could be allowed for a period of time.

- The group of travellers or gypsies involved keep returning to a specific location as this provision prevents them from returning to that area for three months.

4. Sections 61-62 Criminal Justice and Public Order Act 1994 – Used by Police:

The Powers under this and the following section will be used where behaviour or conduct is considered to be inappropriate, or where the impact of an encampment on others is deemed unacceptable. The Police response will take into account issues of behaviour in combination with the impact on the

Landowner and settled community rather than simply because encampments are present at a specific location. Each case is considered on it individual merits.

The Police are required to follow the guidance issued by the Association of Chief Police Officers that can be found at Appendix 13. Under Section 61 CJPOA1994 the police can direct illegal campers to leave land without reference to the courts. This power is used where a landowner has asked illegal campers to leave land by a certain date and the have failed to do so, and any of the three following conditions have also been met:

1. the illegal campers have caused damage to the land or property on the land

2. they have used threatening, abusive or insulting words or behaviour to the occupier, a member of their family or employee or agent

3. there are six or more vehicles on the land.

The initial step is for the land owner to request the help of the police a senior police officer will then consider whether it is appropriate to use the power based on the following factors:

- whether there are any other activities on the encampment, such as serious breaches of the peace, disorder, criminal activity or anti-social behavior which would necessitate police involvement under their wider powers

- given the impact of the illegal encampment on the environment and the local settled community, is it reasonable and proportionate to use police powers

- whether action by the police legally sustainable

- whether sufficient resources are available.

If a decision is made to use these powers a uniformed officer will attend the illegal encampment and direct the illegal campers to leave by a certain time, he/she will also provide them with a copy of the legislation.

If the illegal campers fail to leave by the specified time or if they return to that location with three months of the direction, they are committing a criminal offence and may be prosecuted. Furthermore if a direction under section 61 is contravened the police can use their powers under Section 62 CJPOA1994 to seize and remove vehicles from the land.

This power should be considered where:

- Speed is important, for example where the presence of the encampment is seriously disrupting the ability of the settled community

to make use of facilities or to conduct their business. This will probably apply to land such as schools during term time and urban parks. This power would be the most appropriate provided all the conditions for its use are met. The police can act without reference to the court and can direct the travellers to leave within a couple of hours. This would be most effective if there is land available within the District which is deemed as a more acceptable illegal site.

- There are serious problems on the site such as anti-social behaviour, public order and criminal activity.

- The group of travellers or gypsies involved keep returning to a specific location as this provision prevents them from returning to that area for three months.

5. Section 62 A-E Criminal Justice and Public Order Act 1994 – Used by Police:

Where a pitch is available on a caravan site within the authority that is managed by a local authority, social landlord or other person or body as specified by the secretary of state Section 62 A CJPOA1994 allows the police to direct illegal campers to remove themselves and their vehicles and property from the land which they are on to the available caravan site.

This power can only be used where the following conditions are met:

- at least two persons are trespassing

- the trespassers have between them at least one vehicle on the land

- the trespassers are present on the land with the common purpose of residing there for any period

- it appears that the trespassers have one or more caravans in their possession and that there is a suitable pitch on a caravan site as stated above for every caravan in their possession

- the occupier of the land has asked the police to remove the trespassers from the land.

In the illegal campers do not leave the land or return within a period of three months they will be committing an offence and the police may use powers under Section 62B to arrest and detain them. Section 62C provides the police with powers to seize and remove vehicles on the land.

6. Anti-Social behaviour, Crime and Policing Act 2014:

This act enables a Local Authority to make a Public Spaces Protection Order if it is satisfied on reasonable grounds that 2 conditions are met;

a) The activities carried on in a public place within the Authority's area have had a detrimental effect on the quality of life of those in the locality; and it is likely that activities will be carried on in a public place within at area and that they will have such an effect.

b) The effect or likely effect, of the activities is, or is likely to be of a persistent or continuing nature, such as to make the activities unreasonable and therefore justifies the restriction imposed by the notice.

In order to get a PSPO in place the behaviour/events would need to be of a persistent or continuing nature, a one-off encampment would not meet the criteria of persistent. The Council would need to go through a period of consultation with our Partners, the community and the Police & Crime Commissioner before being approved.

A PSPO identifies the public place and prohibits specified things being done to the restricted area and/or require specific things to be done by persons carrying on specified activities in the area. The PSPO will result in a fixed penalty notice (of up to £100) to an individual. Failure to pay may result in the Council deciding to take court action which you mean up to a level 3 fine.

A PSPO may not have effect for more than 3 years and the Authority must consult with the Chief Officer of Police before issuing an Order. Failure to comply with the Order is an offence.

Other Issues arising in respect of illegal encampments:

Dealing with Anti-social/Criminal Behaviour on illegal encampments

As stated previously in this policy encampments must adhere to a certain standard of behaviour while they are within the District. If a member or members of the illegal encampment engage in anti-social/criminal activities it will not be allowed.

It will be the decision of the nominated officer whether to exclude the individual responsible for the behaviour from the encampment or where the behaviour is more wide spread whether it is necessary to evict the whole encampment.

Dealing with any criminal behaviour by the illegal encampment will be the responsibility of the police in accordance with their policies and procedures. Other enforcement agencies may become involved such as trading standards if the police detect a crime that is not within their remit. Reporting any such crimes to the relevant authority will be the responsibility of the police. Where the police feel that action is justified they will take appropriate action and will not be deterred from taking action against travellers and gypsies on grounds of expediency.

Where anti-social behaviour issues arise both the Council and the Police will work together in considering the use of the anti-social behaviour escalation process which may result in warning letters and Acceptable Behaviour Contracts. If the behaviour continues and is persistent the process would move onto the use of current legislation under the Anti-social Behaviour & Crime and Policing Act 2014 which includes Community Protection Notices, Civil Injunctions or Criminal Behaviour Orders. It may be possible to apply for some of these sanctions alongside the Local Authority application to court for an order to remove travellers from the land.

Keeping People Informed throughout the process

Illegal encampments can be a sensitive issue within the District and it is therefore important to keep people informed. Communications and publicity arrangements are an important element when managing illegal encampments.

It is important to ensure that all agencies/departments, Gypsies and Travellers, elected members and members of the settled community are kept informed about what is happening and what can be expected to happen with encampments within the District .

The Council has a Frequently asked Questions page on its website. This gives details of all illegal encampments of which the Council is aware. It is regularly updated. A copy of the Frequently Asked Questions can be found at Appendix T7.

The webpage also gives details of how to report any illegal encampment and

contact numbers.

There is also information on the page for private landowners and contact numbers if they need advice or assistance.

Gypsies and travellers will be provided with a code of conduct which contains details on who to contact should they have any queries. The Council intends to be proactive in working with travelling groups in Mid Devon and work towards positive outcomes and that this is articulated by the Council in its media articles

Most encampments will be of concern to the settled community and businesses within the area. The Single Point of Contact for the Council (SPOC) will brief elected members for the area in which the encampment is situated in order that the members can pass information onto their constituents. In addition contact email addresses should be taken from any complainants in order that they can be emailed directly by the SPOC where appropriate.

Where the encampment is large or high profile it may be necessary to regularly brief the local media in addition to taking the steps above. The SPOC will liaise with the Council's Media team to provide the regular updates in order to demonstrate that the authorities are taking a proactive approach.

The aim in providing such information is that by providing as much information as possible upfront and keeping people informed should keep the number of calls from complainants to a minimum. Also by being proactive the scope for rumour and misinformation should be reduced. It will also provide opportunity to manage the information released and keep negative media coverage to a minimum in turn reducing inter-community tension.

The Local Authority's Procedure for dealing with Illegal Encampments

The procedure comprises of 5 stages as follows:

Stage 1 – Identification of Land Ownership
Stage 2 – Action by the Council – Welfare
Stage 3 – Action by the Council – Decision Making
Stage 4 – Action by the Council – Enforcement Stage
Stage 5 – Action by the Council – Site Clean-up

The stages are simplified in a flowchart at Appendix T1 of this document.

STAGE 1 – IDENTIFICATION OF LAND OWNERSHIP

The relevant course of action will be determined depending on whether the land is privately owned land or land owned by the Council. Another factor which may need to be considered is what action should be taken where the land is owned by the Gypsies or Travellers themselves. The SPOC will liaise with the appropriate departments to determine Land Ownership.

Privately owned land:

The Council will not take action to evict where there is an illegal encampment on privately owned land. It will be the responsibility of the land owner to arrange for evictions, where necessary with the support of the police.

The Council will notify the landowner of the encampment where they are not already aware and will give advice on how to effectively manage the illegal encampment and the powers available to recover possession of the land. In order to formulate a consistent approach to advice a hand out to be issued to landowners is contained at Appendix T4.

If the landowner has given the encampment permission to use the land and the encampment are not causing disruption to the settled community the matter should be referred to the Local Authority's Planning Department to look at taking enforcement action for an illegal development.

Where the owner does not take action to recover the land or the land owner cannot be found and the encampment is causing serious disruption or a nuisance to the settled community action should be taken by the authorities following the procedure for if the land was Council owned land. Initially by proceeding to stage 2 of this procedure.

Land owned by Gypsies or Travellers (Unauthorised Developments):

STAGE1- IDENTIFCATION OF LAND OWNERSHIP:

Where Gypsies and Travellers (or anyone else) buy land and develop it as a caravan site without planning consent, any enforcement action must be taken through the planning system.

Enforcement in this regard will be a matter for the Council Planning Department in accordance with their enforcement policy.

Local Authority Owned Land:
Where the land is identified as land which is owned by the Council then proceed to Stage 2.

Devon County Council Land:

The County Council has overall management for the two gypsy and traveller Local Authority sites: Sowton and Broadclyst.

Sowton, which has been in existence for over 30 years, consists of 11 pitches, offering permanent residential accommodation.

Broadclyst consists of five permanent residential pitches and is slightly different in that the land is owned by The National trust.

Although there are a number of authorised private sites in Devon there is still a serious shortage of sites for gypsies and travellers both here in the county and across the country as a whole. This has led to gypsies and travellers camping on land that they do not own (unauthorised encampments), and also a growing tendency to buy land and develop it without planning permission (unauthorised developments). At present, approximately one in five traveller caravans in England are on unauthorised sites. 90% of planning applications that gypsies and travellers submit fail, which often forces them back onto the road with no fixed abode.

When gypsies/travellers camp on land that they do not own, without the permission of the owner, they are trespassing. If a negotiated solution is not possible, then private landowners, local authorities and the police all have powers of enforcement to evict. However, a negotiated solution that avoids confrontation is often the most appropriate way of dealing with a situation.

Unauthorised encampments **on Devon County Land** fall into 2 main categories: those on land owned by local authorities (highways, schools, public parks and car-parks etc), and those on privately owned land.

Residents on both sites pay rent and are responsible for paying council tax and utility costs.

The County Council Gypsy Traveller Liaison Service (GTLS) is the first point of contact for responding to new Unauthorised Encampments (UEs) and monitoring Areas of Temporary Acceptance (ATAs) **on Devon County Council land**. The details of any UE on Devon County Council (DCC) land should be referred to the GTLS as soon as possible.

- Referrals to the GTLS are usually through:
- MyDevon Customer Contact Centre
- The local County Councillor
- Devon County Council Highways department
- Another Public Sector organisation (3rd party notification).

Referrals may be made by anyone including members of the public, businesses, public service staff or Councillors.

Contact details for MyDevon
Telephone 0845 155 1015.

Email customer@devon.gov.uk

SMS text 80011 (please start all messages with the word Devon)
Fax 0845 155 1003 Textphone 0845 155 1020

Write to Devon County Council, County Hall, Topsham Road Exeter EX2 4QD

STAGE 2 – ACTION BY THE COUNCIL – WELFARE

Property Services will be responsible for managing this stage of the procedure and will monitor progress and report back to the nominated officer accordingly.

As soon as it is agreed that the Council will take action a representative from the Council will attend the site to carry out an initial welfare assessment to identify relevant welfare issues. This person will also distribute refuse sacks to be used by members of the encampment in order that the duties regarding refuse under the code of conduct can be adhered to. This person will have regard to the Council's risk assessment. This person will then report back to the Property Services who will then contact the relevant person should any welfare issues have been identified.

If any welfare concerns are raised welfare support will be provided by the following:

Potential Issue	Support
Education	Ethnic Minority Achievement Service
Homelessness	Strategic Housing Service
Health	Public Health – Health Protection & Civil Contingencies
Animal Welfare	RSPCA RSPCA
Child Care	Safe Guarding Procedure , MASH, DCC Care Direct.
Adult Care	Safe Guarding Procedure , MASH, DCC Care Direct.

Full contact details of the above services/agencies are at Appendix T5.

Where possible welfare support should be provided within 2 working days.

STAGE 3 – ACTION BY THE COUNCIL – DECISION MAKING

A decision will be made by the Group Manager for Corporate Property and Commercial Assets on the best course of action. The decision will be recorded.

If serious or urgent welfare issues need addressing the removal of the encampment should be delayed where possible unless the site is particularly hazardous or sensitive, in which case the illegal campers should be asked to relocate to a more appropriate location in the vicinity.

Where there are serious or urgent welfare issues the Deputy Chief Executive (S151), in discussion with Elected Members will need to make a decision on whether to enforce or allow the campers to stay until the welfare issues are resolved. This decision will be based on a number of factors including, type of land, number of campers, behaviour of campers and the effect that the encampment is having on the settled community within the vicinity of the site.

Before making a decision to evict the decision maker must:-

- Consider the relevant human rights of the persons involved. Public bodies must take account of the relevant human rights when deciding whether or not to evict persons from an illegal encampment and must act proportionately.
- Consider and ensure the Council complies with other relevant public duties such as the Public Sector Equality Duty or the duty under section 11 of the Children Act 2004

Generally the following also should be considered:

The decision to evict and the full reasons for it should be recorded including considerations of human rights and the other public duties (Public Sector Equality duty and the duty under s.11 of the Children Act 2004). Such a written decision will be particularly helpful if the decision comes under judicial scrutiny.

Where an encampment cannot be allowed to remain eviction action may have to be taken:

There are various methods of enforcement action available to remove illegal campers. Although many encampments can be dealt with through negotiation there will be times when eviction is the only option. The Government believe that local authorities should always follow a route which requires a court order and this should be taken into consideration by the authorities when making any decisions. Different cases will require different courses of action and when making its decision the Council should take into account the factors. In the majority of cases the Council will use the services of the external service.

STAGE 4 – ACTION BY THE COUNCIL - ENFORCEMENT

Once the decision to evict has taken place the procedure taken to secure eviction will differ depending on the decided course of action.

The most likely course of action to be taken by the Council will be by private Bailiffs or through the County Court.

Step by step approach – Civil Procedure Rule 55 County Court:

NOTE: These steps will only be taken once the Council has carried out its initial welfare assessments and a member of the Leadership team has approved this course of action.

- Legal Services will draw up the relevant documentation which includes a witness statement detailing the action taken by a Member of the Property Services team.

- Legal Services will attend Court, usually accompanied by the Enforcement Officer to issue the papers and obtain a hearing date.

- The Group Manager for Corporate Property and Commercial Assets will arrange for the service of the Notice of Hearing and accompanying documentation.

- If the illegal campers fail to leave the site Legal Services will attend Court with the Enforcement Officer to obtain an Order for possession.

- A Member of the Property Services team will serve the Order for possession and keep the necessary stakeholders informed.

- If the illegal campers fail to leave the site Legal Services will apply for a warrant for possession of land.

- A member of the Property Services Team will work with the County Court/Bailiffs who will carry out the eviction.

STAGE 5 – ACTION BY THE COUNCIL – SITE CLEANUP

Although the Council provides illegal encampments with refuse sacks and arranges collection there will still be some circumstances where cleaning up will be required.

The Street Scene service should be notified by The Enforcement Officer as soon as the illegal encampment has left the site.

The Council will then attend as soon as reasonably practicable.

Preventing further illegal encamping

Injunctions– may be used to prevent unauthorised persons from returning to an area where they have caused problems in the past or are taking up unauthorised camping throughout the District.

Site protection measures – could be further considered in locations where they are vulnerable to illegal encamping. Some measures are listed below that is not an exhaustive list:

a. Substantive steel gate with anti-tamper locks
b. Substantial height barriers
c. Width restrictions (that allow cars to pass but not caravans) installed with substantial posts or large concrete blocks/ boulders
d. Fencing/ ditching
e. Closing off seldom used accesses – under highways act if there are more commodious routes available.
f. CCTV surveillance to be installed on particularly vulnerable sites and or officer patrols to be carried out in the local authority area to ensure sites are secure and any follow up steps to make sites secure is undertaken.

Referral to the Police – where trespass has taken place upon Council owned land and security fencing/ locks/ any type of security measure has been breached by way of removal or cutting should be referred to the Police who will make a decision whether to further investigate a crime based upon, and balancing, the following principles:

- Being victim focussed.
- Protecting the public.

Appendices:

Appendix T1 – Flowchart Appendix
Appendix T2 – Time Chart
Appendix T3 – Handout advice
Appendix T4 – Code of Conduct for persons on an illegal encampment
Appendix T5 – Contact List
Appendix T6 – Definitions
Appendix T7 – Frequently Asked Questions
Appendix T8 – Communications strategy

Form T1 – Flow Chart: Attached as an appendice

T2 – Time Chart

1. Identification of Land Ownership will be undertaken immediately following notification and/ or complaint of illegal encampment to Local Authority.

2. Where land is privately owned dialogue will ensue with private landowner and either private landowner will take necessary action or discuss assistance required from Local Authority and arrangement agreed.

3. Where land owned by Local Authority the following time periods apply (response times may vary):

    a. Day 1 – Health and welfare assessment to be undertaken and reported back to Public Health and Regulatory Service as to whether or not any reasons why illegal encampment to be allowed.

    b. If no reason to allow illegal encampment the matter will be referred to the external service or proceedings will be commenced in the County Court.

    c. Day 4 –
        i. Hearing at County Court (if unauthorised persons still remain on land) for Order of possession.
        ii. Order then served upon illegal encampment giving 24 hours to leave the site. Or
        iii. External service bailiffs evict.

    d. Day 5 – If unauthorised remain on land application made for warrant for possession.

Form T3 –Advice on illegal encampments on privately owned land:

Does the Council have a duty to move travellers when they are camped without the landowner's permission?

The Council has no specific legislative duty to move travellers from land which is not Council owned. It is the responsibility of the land owner to do so.

If Travellers are on my land without permission what should I do?

There are powers available to private landowners under common law and under Part 55 Civil Procedure Rules to enable you to be able to remove the travellers from your land. Advice should be sought from your own solicitor as to the best course of action. Landowners may also contact Legal Services on 01884 255255 for advice.

You should also contact the Council to put them on notice that there is an illegal encampment within the District. Please use the Council's website or telephone 01884 255255.

What could I do to deter travellers from camping on my land?

There are a number of preventative measures to prevent travellers from gaining access to your land as follows:

- Make earth barriers.
- Plough the land so that vehicles sink in.
- Reduce access width and/or headroom with the use of barriers.
- Place locked gates across the entrance.

You may need to consult your solicitors or insurers prior to making such changes.

Do the police have a duty to help private landowners in the eviction process?

The police have a duty to preserve peace and prevent crime. This applies to the community as a whole including travellers. Trespass on land alone is therefore not a matter for the police.

You should however inform the police that the encampment has arrived within the District in order that they are aware. Also if the travellers have caused damage to your property or have used threatening or abusive behaviour towards you, a member of your family or an employee or agent the police may be able to assist under Section 61 Criminal Justice and Public Order Act 1994.

There are certain factors that will need to be taken into consideration which can only be determined by a senior police officer. Each case will be considered on its own merits. The Senior Police Officer must have regard to guidance issued by the Association of Chief Police Officers.

What should I do once I have a date for eviction?

You should notify the police that you are to carry out an eviction in order that they can assess whether or not their attendance will be required to avoid any breach of the peace that may occur.

Useful Contacts/Sources of information:

Council Contact:	Planning Enforcement Team	01884 255255
	Legal Section	01884 255255
Police Contact:	Tel: 101	

REMEMBER – PROTECTION OF YOUR PROPERTY IS YOUR RESPONSIBILITY

Form T4

Code of Conduct for persons on illegal campsites

To ensure those members of both the settled and travelling communities can live together in a peaceful and unprejudiced way we expect you to comply with this Code of Conduct. 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.

Behaviour that may result in you eviction from a site includes the following:

- Camping upon any land designated as a public amenity, such as parks, recreation areas, school fields and similar locations (not an exhaustive list).
- Interfering with the rights and freedoms of other members of the public, including interrupting the operation of legitimate businesses.
- Forcing entry to land, by causing damage to any fixtures, fittings or landscaping (including planted areas). This includes digging away of earthwork defences, which have been placed at landowner's expense to prevent trespass.
- Causing any other damage to the land itself, or property on it. Particular care should be taken not to cause damage to those features provided as public amenities.
- Driving vehicles along any footpath, or other highway not specifically designed for road vehicles. This practice is not only unlawful but is also highly dangerous.
- Parking vehicles or caravans on any road, footpath or other highway that causes an obstruction to other people wanting to pass by. This includes parking immediately next to footpaths.
- Dumping or tipping rubbish, waste materials or trade waste such as tree cuttings, rubble, etc. It is your responsibility to keep the site clean and tidy. Council Traveller Council Officers can direct you to Civic Amenity Sites (Council tips) where you will be able to pay to dispose of trade waste.
- Use the area as a toilet. You must not deposit or leave human waste openly in public areas.
- Abuse, intimidation or harassment of any person who is lawfully using the area.
- Excessive noise or other forms of anti-social behaviour.
- Animals that are not kept under control or that attack persons lawfully on the land, or nearby.
- Interference with electrical, water or gas supplies. Any person(s) found abstracting electricity, or wasting quantities of water may be subject of criminal proceedings.

These codes are the same standards of behaviour that are expected of the settled community. The police are committed to ensuring that all policing issues that affect you are balances; however behaviour that is deemed unacceptable within society will not be tolerated.

Please note that if you are considering moving to another unauthorised location, be aware that encampments on certain land will not be allowed and eviction will be sought immediately. Such sites include school grounds, playgrounds, public car parks, industrial estates/leisure centres and polluted land.

USEFUL CONTACTS

LEGAL ADVICE

If you need general legal advice please contact the Citizens Advice Bureau on 0300 3301153.

HOUSING

Some Gypsy/Traveller families have expressed an interest in moving in to Local Authority Housing. Tel Housing Services 01884 255255.

EDUCATION

If you want help with your children(s) education please contact Devon County Council on 08451551007.

SOCIAL WELFARE

Should you have any worries about aspects of your welfare or your children or relatives welfare please contact Devon County Council on 08451551007.

HEALTH

If you want advice on any health issues there is a 24 hour NHS helpline you can call '111'. .

T5 – Contacts List

Officer	Role	Contact No.
Group Manager for Corporate Property and Commercial Assets	Single Point of Contact for MDDC to log and disseminate actions following notification/ complaint of an illegal encampment	Tel:- 01884 255255 Email:- propertyservices@middevon.gov.uk
Customer First	MDDC customer contact centre will take details of any complaints relating to illegal encampments and will communicate the information to the Single Point Of Contact 'SPOC'.	Tel:-01884 255255 Website: https://www.middevon.gov.uk/
Standby	Out of hours contact - Appointed contact centre for the Council to take details of all complaints to communicate to the appropriate officers, and in relation to illegal encampments.	Tel:- 01884 255255
Police	In case of all emergencies.	Tel:- 101 for a non-emergency incident
Fire and Rescue Service	In case of fire and rescue situations.	Tel:- 999
NHS Health Outreach and Inclusion	For medical health support.	Tel:-111.
RSPCA	For incidents relating to neglect or cruelty towards animals.	0300 123 4999

Adult & Childcare	For any immediate adult and child welfare concerns.	0345 6000388 or 0845 6000388.
Animal Welfare, petrol and explosives	For concerns about animal welfare, use of petrol or explosives.	01392 499499

T6

Definitions

'Authorities'
Devon & Cornwall Police, Devon County Council and Mid Devon District Council.

'Local Authority'
Mid Devon District Council.

'Police'
Devon & Cornwall Police.

'Unauthorised Encampment(s)'
Trespassing on land by persons which do not own or have a legal right to occupy the land.

'Gypsies and Travellers'
Persons with a cultural tradition of nomadism or of living in a caravan and all other persons of a nomadic habit of life, whatever their race or origin.

'Enforcement'
Taking legal steps to remove illegal Encampments from land.

'**SPOC'**
Single Point of Contact for the Council in relation to illegal encampments.

Mid Devon
DISTRICT COUNCIL

T7

Frequently Asked Questions

What we will do

Log the report or call.

Aim to visit the site within 4 hours of receiving a report in order to ascertain the number of caravans involved and to plot the exact location.

Should the illegal encampment be on land that is under the ownership of Mid Devon District Council we will work within our legal framework to address the situation.

In the majority of cases we utilise a specialised provider to liaise with members of any illegal encampments this usually results in the illegal encampment vacating the site within a 2 to 3 day period.

In a small number of cases the Council will need to take into consideration specific issues relating to health and wellbeing etc. in such cases this will result in extended stay periods.

Once the site is vacated, we will ensure that any waste material is removed as soon as possible.

Please note - private landowners are responsible for the removal of waste from land under their control.

What the Police will do:

All incidents of criminal activities should be reported directly to the Police.

The Police will only intervene in the removal of illegal encampments in exceptional circumstances such as issues of major public order offences.

Illegal encampments - frequently asked questions:

The Council recognises and accepts the rights of travellers/gypsies and also those people on whose land illegal camping takes place.

Gypsies and travellers are protected from discrimination by the Equality Act 2010 and the Human Rights Act 1998, together with all ethnic groups who have a particular culture, language or values.

These FAQ explain how the Council and other official agencies will work to try to balance the rights of all those involved.

Why do gypsies/travellers pursue a travelling lifestyle?

There is a past history and tradition for some people to live in caravans or move around the country. However, encamping on someone's land without their consent is unlawful and in certain circumstances, it is not just a breach of civil law, but also criminal law.

Does the Council or Police have a duty to move gypsies/travellers when they are camped without the landowner's permission?

No.

The powers given to local authorities and the police are discretionary and can only be used when certain conditions exist. Failure to comply with both civil and criminal procedures would render the Council and Police liable to successful challenge in the Courts.

What about trespass?

The duty of the Police is to preserve the peace and prevent crime. Trespass on land itself is not a crime - it is a civil matter. Prevention of trespass is the responsibility of the landowner, neither the Council nor the Police.

What about criminal activity associated with some authorised encampments?

Most gypsies and travellers are law-abiding citizens. The Police will deal with crime committed by gypsies/travellers when there is a complaint and evidence to support it, just as they would when committed by anyone else.

When can the Police move them on?

The Police may activate their powers under section 61 of the Criminal Justice and Public Order Act 1994 to require gypsies/travellers to leave.

The Police are able to activate these powers where they are satisfied that two or more people are trespassing on the land, and the landowner has taken reasonable steps to make them leave (and they have failed to do so). In addition, one of the following also has to apply:

- damage has been caused to the land or property, or
- threatening / abusive / insulting behaviour has been used against the occupier, his family or agent, or
- the trespassers have six or more vehicles.

Any enforcement of section 61 requires considerable resourcing and consideration has to be given to having sufficient police officers available etc., which may in itself take some time to arrange.

When can the Council move them on?

If gypsies/travellers are camped on Council land, the Council can recover possession of their land if their land is occupied without their consent.

If the gypsies/travellers are on Council land and are causing problems they will be moved on as soon as is possible and reasonable. The Council will consider each case on its merits. In all cases the site is visited and every effort made to make sure that the gypsies/travellers keep the site tidy and do not cause public health problems.

If they are on private land, it is usually the landowner's responsibility.

Can the Council remove gypsies/travellers from their land immediately?

No, the Council must:

- show that the Gypsies/Travellers are on the land without consent.
- make enquiries regarding the general health, welfare and children's education.
- ensure that the Human Rights Acts 1998 has been fully complied with.
- establish ownership of land.

How long will it take for the gypsies/travellers to be removed?

This will depend upon the circumstances of each individual case. The Council will need to take account of the issues outlined above however in normal cases we look to serve notice within 5 days of notification and would expect them to move on within a further 24 hours.

What can I do if illegal encampments occur on my land?

Firstly talk to them to see if a leaving date can be agreed.

If you are not willing to tolerate the encampment any longer, you or your solicitor can go to a County Court and obtain an Order granting you possession of your land.

Do we have any authorised sites in the District?

YES/NO?

Who do I complain to about illegal encampments?

The Council’s Contact Centre is the first point of contact for complaints about illegal encampments. Instances occurring on Council owned land will be directed to the service responsible for its management who will investigate the complaint and instigate action as appropriate.

T8

Illegal encampments communications strategy

Background

This document supports Mid Devon District Council's procedure for managing illegal encampments and sets out how communications will support the procedure.

Illegal encampments can be a sensitive issue in the District and can generate a high number of enquiries from elected members and members of the public, putting a strain on resources and staff. If not dealt with appropriately and swiftly they can also generate negative media coverage for the council.

It is important that all stakeholders are kept informed about what is happening and what can be expected to happen with encampments in the District.

The strategy is to take a more proactive approach to communicating with residents when the council and its partners are dealing with an illegal encampment.

It is important that appropriate language is used when communicating with stakeholders about any encampments.

This document shows the activity involved, along with budget details, objectives, and stakeholders.

Objectives

The objectives of this plan are to:

- Improve the way residents can report an encampment to the Council.
- Mitigate negative media coverage of the council and its partners when there is an encampment in the District.

Key messages

It has been agreed that Mid Devon District Council will use a proactive approach with external communications. The council has a new policy to act swiftly and efficiently when dealing with an illegal encampment.

Audiences

A members briefing session will be planned with elected members to ensure they know the process and what to expect when there are travellers in the District.

Other stakeholders who may need to be kept regularly informed:

- Residents.
- Cabinet member, Chief Executive and Directors.
- Mid Devon District Council Officers.
- Devon and Cornwall Police
- Local and regional media.
- Local businesses.
- Other partner agencies.
- Work collaboratively with other Local Authorities in Devon and Somerset.

Budget

There is no formal budget allocated for dealing with illegal encampments.

Activity plan

External Website

A dedicated webpage will be set up on Mid Devon District Council's website which residents can be signposted to when there is an illegal encampment in the District. This will not include the status of current encampments as there is the potential to draw attention to where such encampments are and with the potential risk for these to become targets for hate crime and intimidation.

There will be FAQs on the webpage and will be regularly updated with information about the latest encampment to keep residents fully informed.

There will also be information for private landowners and contact numbers if they need advice of assistance.

Internal

Elected members:
As set out in the illegal encampment procedure, the Single Point of Contact for the Council (SPOC) will brief elected members for the area in which the encampment is situated in order that the members can pass information onto their constituents.

In addition, contact email addresses should be taken from any complainants in order that they can be emailed directly by the SPOC where appropriate.

Officers:
A script will be agreed for contact centre staff to follow when the council becomes aware of an encampment so they can keep residents fully informed. This will reduce calls being put through to the planning enforcement team and improve the reputation of the council.

Internal communications protocol:

SPOC is alerted to encampment
↓
SPOC brief elected members, Chief Executive, Deputy Chief Executive, Directors
↓
SPOC liaises with planning enforcement
↓
Relevant partners are informed

Planning enforcement officers are alerted to encampment and begin process
↓
Planning enforcement alert via Communications

Monitoring and evaluation

Monitoring and evaluation systems will be put in place to ensure that each of the project's objectives is regularly checked to ensure they are on track to be met.

At the end of the project, an overall evaluation report for the project will be completed.

Objective	Monitoring method	Evaluation method
Improve the way residents can report an encampment to the Council.	Website views.	Number of calls to planning team/ feedback from officers on call.
Mitigate negative media coverage.	Media and social media coverage.	Coverage marked as positive, negative or factual.