



## Cabinet 10 September 2013

### Recommendation of the informal Gypsy and Traveller Working Party: Unauthorised Gypsy and Traveller Encampments (Sep13/13)

#### 1. Summary and reasons for recommendation

- 1.1 In order to provide an appropriate response to unauthorised Gypsy and Traveller encampments, particularly on sensitive sites and on repeat occasions, the Gypsy and Traveller Working Party has considered proposals to put in place pre-emptive injunctions. The injunctions will mean that an order is in place to prevent occupation of the land *before* there is an encampment and will assist in suitable cases in striking the balance between the different communities in the Borough.
- 1.2 The Suffolk Protocol for dealing with unauthorised encampments *after* they are in place remains applicable and there is no need to amend this. For this reason Cabinet is asked to confirm that the Protocol will continue to be observed.

#### 2. Recommendation

- 2.1 It is **RECOMMENDED** to Cabinet that, while the Council will continue to observe the Suffolk Protocol in relation to removing unauthorised Gypsy and Traveller encampments, a more proactive approach to protecting vulnerable sites be adopted through the selective use of pre-emptive injunctions, on the basis set out in Section 4 of Report E106.

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### **3. Corporate priorities**

3.1 The recommendation meets the following, as contained within the Corporate Plan:

- (a) Corporate priority 2: *'Working together for a prosperous and environmentally-responsible communities'*

### **4. Key issues**

- 4.1 During the last 12 months, the Borough Council has been trying to manage equitably and proportionately a series of unauthorised encampments on Council land by Gypsies and Travellers. This has led to a cycle of occupation of certain sites and localities, causing operational disruption and some loss of amenity to nearby local residents. This situation has caused a review of current procedures, and this report.
- 4.2 The existing Suffolk Protocol for Unauthorised Encampments (see <http://www.suffolk.gov.uk/assets/suffolk.gov.uk/Your%20Community/Working%20in%20Partnership/Community%20Support/finalprotocol2011.pdf>), adopted by all Suffolk councils including the Borough Council, covers the process to be followed *after* land has been occupied by Gypsy and Traveller (G&T) families or groups. As adopted Council policy, the Borough Council will still observe that protocol in such circumstances, and continue to take very seriously its duty to balance fairly and equitably the welfare of the settled community and that of the Gypsy and Traveller community.
- 4.3 However, the Protocol does not cover the circumstances *leading up to* occupation of land, or any actions which might be taken to prevent land being unreasonably occupied in the first place. The Borough Council has taken practical steps in the past (and recently) to prevent the unauthorised occupation of sensitive sites through means such as fencing, gates, landscaping and planting. However, these costly measures are not a guarantee of success. On some sites, it is simply impossible to physically prevent illegal occupation by determined third parties. Implicitly, attractive open spaces need to be easily accessible and inviting to users, as well as being practical to maintain with heavy machinery. Car parks are also inherently vulnerable.
- 4.4 In August 2013, the Government re-issued guidance to councils on preventing and managing the unauthorised occupation of land by travellers and protesters (see [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/227492/130807\\_Dealing\\_with\\_illegal\\_encampments\\_format\\_and\\_ISBN.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/227492/130807_Dealing_with_illegal_encampments_format_and_ISBN.pdf)). Your officers have reviewed the guidance and are satisfied that, in terms of managing occupations which have already occurred, the Borough Council already follows the relevant advice, and meets the standards expected of it. In particular, the guidance advocates the use of Notices and Orders obtained under sections 77 and 78 the Criminal Justice and Public Order (CJPO) Act 1994, which is the approach followed under the Suffolk Protocol when an occupation is not tolerated.

4.5 While the Council is taking the most effective legal steps to managing occupations once they have occurred, the Government's recent guidance does contain a legal measure which the Council could take to protect vulnerable sites from occupation or re-occupation in the first place. Namely, the use of pre-emptive injunctions. The effect of this type of injunction, if granted, would be to put in place a court order prohibiting the sites from being occupied in the future. Of course, the order would still need to be brought to the attention of any transgressors and enforcement action taken if they did not comply. Failure to comply would be a contempt of court.

4.6 The CJPO Act powers only prevent reoccupation for a period of three months. An injunction would offer indefinite protection. As part of exploring options, the Council took initial legal advice on injunctions in late July 2013, ahead of the Government's advice. The advice received is, however, consistent with the reference in the Government guidance.

4.7 The Government advice on injunctions is as follows:

*'If a local site is particularly vulnerable and intelligence suggests it is going to be targeted for unauthorised camping, causing disruption to others going about their day-to-day lives, local authorities could consider applying to the courts for a pre-emptive injunction preventing unauthorised camping (and/or protests) in a defined geographical area.*

*The local authority will be required to point to an underlying claim on which the injunction application is based. The following are examples of possible bases:*

- 1. the relief from trespass or public nuisance;*
- 2. the prevention of obstruction of the highway;*
- 3. the prevention of a breach of planning control (section 187B, Town and Country Planning Act 1990); and*
- 4. the prevention of environmental damage.'*

4.8 To try and secure a balanced approach which weighs up the needs of the settled community and taxpayer, with the Gypsy and Traveller community, it is now clear that the Council could consider seeking pre-emptive injunctions, for sites which have a pattern of evictions and/or are particularly sensitive. The applications would be made under the relevant local government and/or planning legislation as appropriate to the case.

4.9 The Council's legal advice suggests that such injunctions would have to be sought appropriately for them to be granted in St Edmundsbury. The purpose is not to make the Borough a no-go area for the Gypsy and Traveller community, or to target a particular family, but simply to manage the impact of unauthorised encampments in inappropriate locations. To do this the Council would have to demonstrate a high risk of both occupation and disruption. This approach would also need to ensure that the spirit of the Suffolk Protocol is observed. Implicit in the Suffolk Protocol is the principle that unauthorised camping *could* be tolerated for defined periods in some locations, and that each site is taken on its merits.

- 4.10 Initially, such injunctions would be most appropriate (and likely to succeed) for sites in the Borough where:
- (a) there is a pattern of evictions such that the Council has *already established* that it will not tolerate occupation in accordance with the criteria in the Suffolk Protocol, (as with the recent cases);
  - (b) the location is of a particularly sensitive nature; and
  - (c) there is a significant risk of occupation reoccurring.
- 4.11 In due course, in addition to these circumstances, the Council would not rule out seeking injunctions in exceptional circumstances for sites expected to be at threat of occupation for the first time. In these cases the potential impact would have to be severe, by reason of safety, nuisance or environmental impact. Also, there could be operational reasons, for instance, if delivery of the Council's services would be threatened or curtailed as a result of a potential encampment.
- 4.12 Connected sites in the same locality can be covered by a single injunction, even if some of them have yet to be occupied e.g. where a predictable pattern of occupation is emerging in one place, as happened at Moreton Hall recently.
- 4.13 While this approach would not result in any change to the Suffolk protocol, it would result in a different legal process being followed by the Council if a site covered by an injunction was nevertheless occupied despite the injunction. The Council would need to pursue Contempt of Court proceedings for which the penalty could be imprisonment.
- 4.14 There is no guarantee that an injunction would be awarded by the court on any site. Courts will require the Council to justify the grant of the order which may include showing what the Council, as planning authority, is doing to meet the identified need for Gypsy and Traveller pitches in the Borough. The Council is already pursuing a number of options for sites, both through Vision 2031 and work being undertaken by officers across the countywide group.
- 4.15 The direct cost of seeking each injunction is likely to be in the region of £2,000 to £3,000 (irrespective of the outcome), plus officer time to prepare statements, etc. although making several applications at once may lead to a reduction. It should therefore be used sparingly as a tactic for this reason as well.

## **5. Other options considered**

- 5.1 The options considered by the Working Party were to continue as before or to pursue the recommendation detailed in Section 2 of this report.
- 5.2 In light of the issues arising from the recent experience of unauthorised encampments it was not considered possible to take no action.

## **6. Community impact**

- 6.1 **Crime and disorder impact** (*including Section 17 of the Crime and Disorder Act 1998*)

6.1.1 It can be anticipated that the control of unauthorised encampments, which can in itself lead to the commission of a criminal offence under the provisions of the Criminal Justice Act will lead to a potential reduction in crime and disorder.

6.2 **Diversity and equality impact** (*including the findings of the Equality Impact Assessment*)

6.2.1 A full assessment of diversity and equality was made for the introduction of the Suffolk Protocol and underpins its provisions. The action proposed in this report, amounting to a pre-emptive prohibition on unauthorised use of land, will not affect the operation of the Protocol.

6.3 **Sustainability impact** (*including completing a Sustainability Impact Assessment*)

6.3.1 Not applicable.

6.4 **Other impact** (*any other impacts affecting this report*)

6.4.1 Not applicable.

**7. Consultation** (*what consultation has been undertaken, and what were the outcomes?*)

7.1 Consultation has been undertaken through the Gypsy and Traveller Working Party which includes a representative of the Norfolk and Suffolk Gypsy, Traveller and Roma Service. Ward Members and residents affected by the most recent encampments have also been advised of the Council's intention to consider these proposals.

**8. Financial and resource implications** (*including asset management implications*)

8.1 These are set out in Section 4.15 of the report. Although there is a cost in obtaining the injunctions this can be set against the costs that may be saved in dealing with the clear up of unauthorised sites.

**9. Risk/opportunity assessment** (potential hazards or opportunities affecting corporate, service or project objectives)

<b>Risk area</b>	<b>Inherent level of risk</b> (before controls)	<b>Controls</b>	<b>Residual risk</b> (after controls)
Council owned public open spaces become regularly used by the Gypsy and Traveller community causing disruption to local neighbours.	High	Measured use of pre-emptive injunctions on key sites	Low
Pre-emptive injunctions are not granted	Medium	Advice will be sought from barrister prior to any applications for injunctions	Low
Gypsy and Traveller community are unable to find any sites and the council is challenged in its treatment of this minority group	Medium	Officers are working across the county to provide alternative sites; Vision 2031 makes reference to sites being developed alongside the strategic developments.	Low

**10. Legal and policy implications**

10.1 The powers to obtain these injunctions are set out in the Local Government Act 1972 and other legislation including the Town and Country Planning Act 1990.

**11. Wards affected**

11.1 All

**12. Background papers**

12.1 see hyperlinks on page 2 of this report.

**13. Documents attached**

13.1 None.

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