

**12 November 2014**

**Environment Committee**

**Protocol For Managing Unauthorised Encampments**

**Report of:** *David Carter, Borough Health Safety and Localism*

**Wards Affected:** *All*

**This report is:** *Public*

**1. Executive Summary**

- 1.1 This report provides a protocol which outlines Brentwood Borough Council's approach to dealing with unauthorised encampments on land within the Borough, where persons trespass onto land (public or private) not owned by themselves with an intention to reside on a temporary or permanent basis.
- 1.2 The protocol details the powers and actions available to the Council and will inform decisions on appropriate enforcement.
- 1.3 The Council will consider its use of powers to deal with unauthorised encampments within the Borough in a proportionate way, which will recognise the rights of minority groups but will also seek to protect the interests and amenity of residents and provide a transparent outline of the powers and actions that the Council will consider in such cases

**2. Recommendation(s)**

- 2.1 Approve and adopt the Protocol as set out in Appendix A and B to the report.**
- 2.2 Agree to continue to work in liaison with Essex Police, Parish Councils, other land owners and stakeholders to ensure an effective response to unauthorised encampments in the Borough, aiming to minimise the impact on residents, the use of public and private land and environmental damage.**

### **3. Introduction and Background**

- 3.1 Brentwood Borough, in common with other areas of Essex and the country has several unauthorised encampments each year, often on Council owned land. Dealing with these encampments involves expense including legal and court fees, officer time and costs to remove waste and improve site security, together with impacts on the amenity of residents and effects on the use of the site whilst the encampment is present.
- 3.2 The number and size of unauthorised encampments in the Borough is relatively small when compared to the rest of Essex. There are approximately 5 unauthorised encampments each year, which is less than most of the other authorities, with the exception of Maldon, Castle Point and Rochford.
- 3.3 Police protocols on the use of their power to issue a direction to occupiers to leave land have been updated recently (see Appendix A of the Protocol). They are more prescriptive and selective in the criteria that have to be met, which has resulted in a reduction in the use of Essex Police powers to direct occupiers to leave land.
- 3.4 The Council will always liaise with the Police who do have more immediate powers available if the circumstances are correct and where they choose to exercise them.
- 3.5 It is however more likely, particularly in cases where unauthorised encampments are on Council land, that direct legal action will need to be taken by the Council to deal with the encampment.
- 3.6 The Council is investigating the establishment of a transit site (or sites) within the Borough. These sites could provide short term accommodation for a small number of vehicles. The Police have power under the Criminal Justice & Public Order Act to direct an unauthorised encampment from occupied land to that site.
- 3.7 All unlawful unauthorised encampments will be treated fairly, respectfully and openly in accordance with the Council's duties, 'values and behaviours' and protocol procedures.
- 3.8 The protocol attached at Appendix A outlines the powers and actions available to the Council in the event of an unauthorised encampment in the Borough.

- 3.9 The powers available to the Council in enforcement against unauthorised encampments are set out in legislation which will result in unavoidable time constraints as a result of the legal process which need to be taken into account when determining our response and will impact the use of land whilst the actions are being taken.
- 3.10 The principal actions which the Council can take are contained within the Criminal Justice and Public Order Act 1994 (s. 77 power of local authority to direct unauthorised campers to leave land) and the Civil Procedures Rules 1998 Part 55 (possession claim for recovery of possession of land).
- 3.11 The use of either of these powers requires service of documents giving a period of notice to the occupiers of the land; as a result of these processes and having regard to the availability of Court hearings to decide on each case it is likely that the time from occupation of the site to the Court decision will take up to a week.
- 3.12 If the case is successfully defended or if bailiffs are needed to enforce the Court Orders to remove the encampment there will be additional time required, although in most cases sites have been vacated following Court action. The legal process is outside the Council's control and will be dependent on the availability of Court hearing dates and Bailiffs.

#### **4. Issue, Options and Analysis of Options**

- 4.1 Options available to the Council are to consider the effective and efficient use of powers available in dealing with unauthorised encampments, whilst ensuring that legal requirements set out in the Human Rights Act 1998 and Equality Act 2010 as well as the Council's 'values and behaviours' are met.
- 4.2 Following an assessment of the site, officers will determine the most appropriate action, which will need to be determined on a case-by-case basis. This will be an operational decision dependent on the circumstances of each case, having liaised with the Legal team, senior officers and Members and taking into consideration any welfare issues which have been identified as a result of discussions with the site occupiers.
- 4.3 If Police decide to issue a direction for the occupiers to leave the land this will reduce the impact of the encampment on the land with minimal delay.

4.4 In most cases where the Council takes action a possession order claim under Part 55 may be the most cost-effective and expedient procedure, however use of the Criminal Justice and Public Order Act provisions will also be considered when:

- Land is not owned by the Council (action can be taken on any land),  
or
- Access to the Courts is not possible in order to seek a hearing date,  
e.g. over weekends and/or public holidays.

4.5 Where an unauthorised encampment occurs on land that is not owned or managed by the Council, we will liaise with the landowner where possible to provide advice and offer assistance. The Council is able to assist certain public bodies including Parish Councils and also local charitable organisations in taking action on their behalf however we are unable to provide legal assistance to private landowners.

4.6 Current Council policy has provided assistance to Parish Councils in dealing with unauthorised encampments on land that they own or manage at no cost to the Parish. This has included legal assistance, Court costs, site visits, issue of documents and clearance of waste from sites. This assistance could also be extended to charitable trusts with land within the Borough at no cost.

4.7 The value of legal assistance provided to Parish Councils is dependent on the type of action undertaken and Court costs, but is approximately £1250 (including officer time) to obtain an order on Parish Council land. In recent years this has only been necessary on three sites within Mountnessing, Doddinghurst, Herongate and Parish Council areas. The average costs to clean and remove waste from encampment sites is approximately £1000

## **5. Reasons for Recommendation**

5.1 In order to improve transparency, effectiveness and expectations of the Council's approach to dealing with all unauthorised encampments in the Borough.

## **6. References to Corporate Plan**

### 6.1 Street Scene & Environment

6.2 We will seek to control the occurrence of unauthorised encampments in the Borough which affect the amenity and use of land in the Borough resulting in impact on the local community and to take efficient action to deal with unauthorised encampments working with our partners.

## **7. Implications**

### **Financial Implications**

**Name & Title: Jo-Anne Ireland, Acting Chief Executive**

**Tel & Email 01277 312712 / jo-anne.ireland@brentwood.gov.uk**

7.1 Financial implications include the costs of legal actions undertaken to deal with unauthorised encampments, costs of officers and equipment to carry out actions, attend Court hearings, remove waste from land, reinstate and protect sites from unauthorised encampments and to recover costs where possible. To date, the Council has been able to contain any such costs within existing budgets.

### **Legal Implications**

**Name & Title: Christopher Potter, Monitoring Officer and Head of Support Services**

**Tel & Email: 01277 312860 / christopher.potter@brentwood.gov.uk**

7.2 The legal implications are included with the report.

**Other Implications** (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

7.3 Asset Management, Equality and Diversity, Crime & Disorder

7.4 Asset Management – the report and protocol seeks to reduce the number, length of occupation and impact of unauthorised encampments on Council land in order to protect its assets.

7.5 Equality and Diversity – all occupiers will be treated with respect and in accordance with Human Rights legislation.

**8. Background Papers** (include their location and identify whether any are exempt or protected by copyright)

- 8.1 Department for Communities and Local Government; Dealing with illegal and unauthorised encampments; a summary of available powers August 2013 Crown copyright
- 8.2 Essex Police Procedure D 0706 – Unauthorised Encampments

**9. Appendices to this report**

Appendix A - Protocol for Unauthorised Encampments  
Appendix B - Protocol flowchart

**Report Author Contact Details:**

**Name:** David Carter, Senior EHO (Team Leader)  
**Telephone:** 01277 312509  
**E-mail:** david.carter@brentwood.gov.uk