



## **Durham County Council Gypsy, Roma and Traveller Service**

### **Unauthorised Encampment Procedure**

#### **Definitions:**

##### Unauthorised Encampment

Trespassing by Gypsies and/or Travellers on land which they do not own (e.g. Local Authority Land, or private land, (including Town and Parish Council Land)).

##### Temporary Stop Over Area

Durham County Council have the approach of providing Temporary Stop Over Areas, (TSOAs) for Gypsies and Travellers. These areas help to ensure a managed response to Unauthorised Encampments when they arrive in the county, for those encamped, as well as local residents and businesses. As a public authority, Durham County Council is bound by legislation and case-law to respond to anyone encamping on our land in an appropriate manner, including assessing the welfare needs of those encamped.

TSOAs can be offered as a suitable alternative area to direct people to if they are encamped in an unsuitable location, e.g. a car park, heritage area, recreation area, or too close to local residents or businesses, or in any case where identified welfare needs mean that taking enforcement action is not appropriate.

##### Unauthorised Development

Development of a site on land owned by Gypsies and/or Travellers, but for which they do not have planning permission.

##### Traveller

This is a generic term that we have used to cover those people who live a nomadic way of life. It includes those recognised as groups with defined ethnic statuses under the Race Relations (Amendment) Act 2000, Romany Gypsies, Irish Travellers and Scottish Travellers, as well as those who could come within the definition of a racial group such as Scottish and Welsh Gypsies; and Occupational Travellers including; Show People; Circus Travellers; New Travellers and Bargees.

##### Legislation

The legal background, including the Equality Act 2010 and the Human Rights Act, (1998) provides Local Authorities with a framework within which their actions and decisions should be made.

**What Durham County Council will do:**

When an Unauthorised Encampment occurs on Local Authority land, Durham County Council's Community Protection Service will assume lead responsibility for liaison in relation to the encampment. We will aim to make an initial visit to the encampment will take place within 1 working day of it being notified to the Council.

At the first visit, either the Gypsy, Roma, Traveller Service (GRTS), or Neighbourhood Wardens will visit to attempt to make initial contact with those encamped. Details will be recorded for all Trailers (Caravans), and vehicles on the area, and the exact location logged, as well as trying to establish a proposed length of stay. The Gypsy, Roma, Traveller Service (GRTS) will also initiate a welfare assessment with persons present, with follow-up visits made if required. The welfare assessment can establish if there are any identified welfare needs, (see below) and enables decision-making about any support requirements, e.g. referral to other services, toilet facilities, refuse collection and provision of water, (where appropriate) as required. Those encamped will be provided with a copy of the DCC 'Unauthorised Encampments & Temporary Stop Over Areas – Guidance Booklet', (Appendix A). The booklet will be discussed with those encamped.

On areas that are considered suitable, the presumption will be that the encampment will be accepted for a period, as negotiated with those camping. On areas that are unsuitable, a Temporary Stop Over Area (TSOA) may be offered, if one is available. Any agreed length of stay on any area, will be dependent on campers following the Guidance Booklet. There may be occasions where a length of stay is agreed, where there are no welfare needs identified. An example of this might be Gypsies and/or Travellers requesting a length of stay on a TSOA in County Durham for cultural or family reasons. Following the first visit by the GRTS a decision will be made by the GRT & Interventions Coordinator as to whether it is appropriate to instigate an Encampment Review Group Meeting (ERG), or Virtual ERG, see page 4.

Following the first visit by the GRTS Key partners/agencies will be contacted as required, i.e. DCC Equalities Education Team, DCC Site Management Service, DCC Clean & Green, Humankind, external contractors, and where necessary the Police. The relevant Elected Member(s) will also be notified and given details of the encampment, the likely action to be taken and the expected length of stay.

The encampment will then continue to be visited on a regular basis by the GRTS who will liaise with those encamped. The frequency of visits will be determined by the GRT & Interventions Co-ordinator, based on review and monitoring of the encampment, including on-going assessment of any welfare needs.

**Exceptions:**

There will be exceptions to the presumption that encampments will generally be accepted, and they are as follows:

- A Site of Special Scientific Interest where an encampment endangers a sensitive environment or wildlife
- An AONB (Area of Outstanding Natural Beauty), or 'Heritage' area
- School car park or playing fields
- An urban park
- Car parks, including Park and Ride, supermarket or leisure facility car parks
- An Industrial Estate
- Recreation ground and/or public playing fields
- A site where pollution from vehicles or dumping could damage ground water or watercourses
- A derelict area with toxic waste or other serious ground pollution
- A village green or other open space within a residential area
- The verge of a busy road where fast traffic is a danger to campers' children.
- Areas previously determined as unsuitable including: Issues associated with previous UE(s); Unsuitable location(s); Detrimental impact on local residents, or businesses, might have formal agreement (determined by the Consumer Protection Manager, under delegated powers), to progress to enforcement action without the need for a full ERG process. Such cases will be recorded as a Virtual ERG. Any welfare needs of those encamped would always be considered as part of this process.

The above list is only a guide and there may be other situations and locations when it would not be considered appropriate to allow an encampment. However, in such circumstances an explanation, as to why such a decision has been made, will be given to campers before any alternative action is taken.

**Conduct:**

Anyone on an Unauthorised Encampment or Temporary Stop Over Area is expected to:

- Make sure the area is kept clean and tidy:
  - Pick up and bag all rubbish and use bags and/or bins if provided;
  - Take all green waste, trade waste and gas bottles off the area and use appropriate disposal facilities;
  - Use the toilets if provided, or use appropriate toilet facilities.
- Be responsible for animals:
  - Keep horses securely tethered at all times;
  - Ensure dogs are kept on a lead or are secure;
  - Ensure animals are kept away from roads and footpaths.
- Have consideration for local communities, residents & businesses:
  - Keep noise from people, animals and generators to a minimum;

- Park trailers and vehicles considerately and be respectful of surroundings ensuring gates, footpaths and rights of way and cycle paths are kept clear;
- Keep groups small – no more than six trailers on an Unauthorised Encampment. More than 6 trailers may be allowed on a Temporary Stop Over Area with agreement from DCC;
- Keep fires and smoke under control and never leave them unattended. Do not burn anything toxic or materials that give off acrid black smoke.

Further details are contained in 'Unauthorised Encampments & Temporary Stop Over Areas – Guidance Booklet' (Appendix A, page 8)

### **Local Communities:**

It is acknowledged that Unauthorised Encampments can cause concern to those living and working nearby. Durham County Council, through the Gypsy, Roma, Traveller Service will liaise with the local 'settled' communities, by keeping their representatives (Elected Members/Councillors) informed of our actions, making ourselves available to discuss the concerns of people living close-by, and issuing information to the media as and when necessary.

### **Legislation:**

#### Local Authority Enforcement Powers:

A landowner, (including a Local Authority), can obtain a possession order through the Civil Courts requiring the removal of trespassers from property, including land. Under the Civil Procedures Rules Part 55 the claim must be issued in the County Court in whose jurisdiction the property or land is situated. Exceptionally the claim may be issued in the High Court if there is substantial risk of public disturbance or of serious harm to persons or property, which properly require immediate determination.

The Criminal Justice and Public Order Act 1994 (CJPOA) gives Local Authorities in England and Wales powers to make directions to leave land being used by itinerant groups, (s77). It is an offence to fail to comply with such a direction. If the direction to leave is not complied with, the Local Authority can apply to a Magistrates' Court for an order requiring the removal of vehicles and any occupants from the land, (s78). It is a defence for the accused to show that failure to leave or to remove the vehicle or other property as soon as practicable, or re-entry with a vehicle, was due to illness, mechanical breakdown or another immediate emergency.

Use of either of these powers requires a Local Authority to carry out a number of checks relating to the welfare of those Gypsy, Roma and Travellers illegally encamped. These checks take into account considerations of common humanity, and local authorities must honour the other statutory duties they may have towards the campers. Gypsies, Roma and Travellers can be represented

at the court hearing. Decisions can be similarly challenged by means of judicial review on the grounds that they have been reached improperly.

This procedure, if done properly, can take some time, (as much as two weeks), if there is a large encampment. A Local Authority cannot circumvent these requirements, nor should they be seeking to do so. More importantly, the Government believes that Local Authorities should always follow a route that requires a court order. Local Authorities and other public bodies cannot escape considerations of common humanity or other statutory duties and must ensure that the human rights of campers are safeguarded as well as ensuring they meet their requirements under Public Sector Equality Duty.

### Police Enforcement Powers:

Under s61 of the CJPOA, the Police have discretionary powers to direct trespassers to leave land. The senior Police Officer present can direct trespassers to leave if reasonable steps have been taken by or on behalf of the occupier to ask them to leave and there are two or more people intending to reside on the land. Any one of three further conditions must also be met:

1. If any of those persons has caused damage to the land or to property on the land; or
2. Used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his; or
3. Those persons have between them six or more vehicles on the land. Section 61 cannot be used on land on the highway. S 62A - E (inserted by the Antisocial Behaviour Act 2003) gives the Police powers to direct trespassers to leave land and remove vehicles, to a suitable pitch on a relevant caravan site in the same Local Authority area.

- \* This latter power can only be applied where a suitable pitch is available on a permanent caravan site in the same Local Authority, and the process for pitch allocation is undertaken without prejudice to other applicants currently registered on the sites' waiting lists.

Other legislation that may be used by the Police or Local Authorities includes the following, (if somewhat limited in terms of appropriateness and usefulness), provisions:

- Section 34 Traffic Act, 1988
- Section 2 & 3 Road Traffic Act, 1988
- Section 12 Inclosure Act, 1857
- Section 29 Commons Act, 1876
- Section 59 Police Reform Act, 2002
- Public Nuisance Common Law

### **Encampment Review Group Meetings & Virtual ERGs:**

The ERG is a non-standing body to enable a multi-agency approach to decision-making to advise and decide on the course of action to be taken where any Unauthorised Encampment is a cause for concern.

The decision to hold an ERG will be based on specific criteria being met. Using a criteria-based approach ensures that the decision to hold an ERG is objective, evidence based, transparent and follows a clear decision-making process.

These include:

- Two confirmed breaches of the DCC Unauthorised Encampments & Temporary Stop Over Areas – Guidance Booklet’;
- Confirmed reports received from Police of ASB or criminal activity;
- Environmental Impact, e.g. fly-tipping;
- Proximity to Businesses;
- Proximity to Residents;
- Proximity to the Highway;
- Refusal of those encamped to engage with DCC officers;
- Long-term Unauthorised Encampments, (over 28 days);
- Large encampments, (10+ Caravans);
- TSOA available, but refused without good reason;
- History of any of the above when previously encamped in County Durham.

In addition, the use of criteria also allows a timely response in deciding whether, or not to hold an ERG, or Virtual ERG where there is a likelihood to move directly to enforcement, (when specific criteria have been met - detailed ‘Exceptions’, page 2.)

The ERG will invite representatives including the following key partners:

- Elected Members
- DCC Gypsy, Roma, Traveller Service
- DCC Community Safety Service
- DCC Neighbourhood Warden Service
- DCC Equalities Education Team
- The Police

Other relevant parties may be co-opted onto the ERG, it would be expected that those attending ERGs have an understanding of Gypsy, Roma and Traveller issues.

If a decision is taken to recommend enforcement action this decision must be made with the approval of the ERG. Any decision to recommend enforcement action will take into account the availability of suitable alternative areas - Temporary Stop Over Area, (TSOAs),

### **Unauthorised Encampments on Privately owned land:**

When an Unauthorised Encampment is on private land, (not belonging to DCC), it is presumed it is the responsibility of the landowner to decide how they want to manage the encampment. DCC would only intervene in exceptional circumstances, determined by the Head of Service, (e.g. where an encampment was highly problematic, and a landowner could not be traced).

If Durham County Council receives a report of an Unauthorised Encampment on private land, the Gypsy, Roma, Traveller Service follows the steps, detailed below:

- Attempt to establish who the private landowner is;
- Advise the landowner there is a UE on their land, (the date of arrival and the number of Trailers);
- Advise the private landowner of the Local Authority's position in relation to encampments on private land;
- Advise the private landowner what their responsibilities are and what powers they have, (should they want to use enforcement or issue Directions to Leave);
- The DCC Unauthorised Encampments & Temporary Stop Over Areas – Guidance Booklet' is provided to those encamped where DCC make a visit.

### **Large and/or long-term Unauthorised Encampments:**

Where there is an encampment of ten or more Caravans, or where there is either a stated intention to establish a long-term encampment, or a UE has exceeded the expected or negotiated length of stay, the Local Authority will act as detailed below:

- An urgent Encampment Review Group (ERG) Meeting, or Virtual ERG Meeting, (where specific criteria have been met, e.g. an area previously identified as unsuitable), will be convened within three working days;
  - Although negotiation and dialogue will be the preferred method used to 'manage' the encampment, the ERG will consider either the use of a Temporary Stop Over Area, or taking enforcement action as a first response if considered appropriate;
  - If a Temporary Stop Over Area has been identified and those encamped have relocated there, the use of the area will be monitored by the Gypsy, Roma, Traveller Service (GRTS), including regular visits to the area. In the event there are any confirmed issues, (e.g. deterioration in the condition of the area), a further ERG will be convened within three working days;
  - If there is no Temporary Stop Over Area, but the location of the UE is not suitable then enforcement action will be considered.

In such circumstances, if the Council does take enforcement action and there is the need for repeated Directions to Leave being issued and upheld by the Courts, then the Council will seek an injunction against those encamped, to ensure that they are prevented from remaining within the area. The terms of the injunction sought will be for the ERG to decide.