

## Sandwell Metropolitan Borough Council

4 April 2017

The following summary reports relate to those minutes of the Cabinet which contain a recommendation to the Council.

Meeting Date	Subject
22 March	Revised Unauthorised Encampments Corporate Policy

## Report to Cabinet

22 March 2017

<b>Subject:</b>	<b>Revised Unauthorised Encampments Corporate Policy</b>
<b>Presenting Cabinet Member:</b>	<b>Regeneration and Economic Investment</b>

### 1. Summary Statement

- 1.1 The Council is requested to approve a revised Unauthorised Encampments policy which is being put in place in order to safeguard the council and its assets against the potential adverse impact of unauthorised encampments. In addition to this, the policy will also help protect the council against third party claims if action to seek repossession of its land is challenged through the Court process.
- 1.2 The council is required by law to satisfy the Courts that the welfare needs of the transgressors have been investigated and that proper procedures have been followed to secure possession of the land that is the subject to unauthorised occupation.
- 1.3 This policy should be read alongside the joint protocols document between Sandwell Council and West Midlands Police. The protocols document, which was approved at Cabinet on 11<sup>th</sup> January 2017, allows the council to demonstrate to partner agencies, our settled community and the travelling community that officers are acting in line with procedure. This should address calls for action to remove mobile groups as soon as they form on council owned land within the borough until the council has discharged its duties. Similarly, by following the proposed processes, issues that can arise from such mobile groups such as noise, fly tipping or damage to the site can, subject to police support, be resolved more efficiently to the benefit of residents.

Further details are attached for your information

## **2. Recommendations**

- 2.1 That the Council be recommended to approve the revised Unauthorised Encampments Corporate Policy, as set out in Appendix 1.
- 2.2 That the Chief Executive, in consultation with the Cabinet Member for Regeneration and Economic Investment, be authorised to make any minor amendments deemed necessary to the revised Unauthorised Encampments Policy.

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**Chief Executive**

**Nick Bubalo**  
**Director – Regeneration and Economy**

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## **3. Strategic Resource Implications**

- 3.1 The costs of preparing the revised Unauthorised Encampments policy have been met from existing budgets.
- 3.2 The council's corporate risk management strategy has been complied with in order to identify and assess the risks associated with this decision/ recommendations. This has identified that there are no significant risks that need to be reported.
- 3.3 In terms of the risks themselves, we have considered the following;
  - Failure to deal with inappropriate unauthorised encampments in a timely and lawful manner can lead to escalating costs in tidying up sites once the council reclaim possession.

- There is a need to demonstrate that the council has undertaken action to regain possession of its land in an appropriate and lawful manner in order to withstand legal challenge.
- Budget/ financial risks regarding staff resources, legal costs and taking measures to secure land where possible.

#### **4. Legal and Statutory Implications**

4.1 The publication of the Government's "Good Practice Guide – Managing Unauthorised Camping" (originally published 2004) advocated that local authorities should have in place a written policy (and protocols document developed with local police) that has been debated by elected members. The existing documents are in need of revision to keep them in line with changes to working practices and updated Government guidance.

4.2 The council has to take into account relevant legislation when dealing with transgressors:

- Human Rights Act 1998 (Article 8 – The right to respect for private and family life, home and correspondence, Article 9 – Freedom of Belief, Article 14 – The prohibition of discrimination in the enjoyment of the convention rights, Protocol 1, Article 1 – Property and Protocol 1, Article 2 -The right to education)
- Children's Act 1989 and 2004 (as amended)
- Education Act 2002 (and amendments)
- Race Relations (amendment) Act 2000 and 2010; and
- Equalities Act 2010

#### **5. Implications for the Council's Scorecard Priorities**

5.1 The policy will enable Members and officers to inform all parties as to how the council will address unauthorised encampments on its land and the reason for any decisions made.

#### **6 Background Details**

6.1 The council needs a Corporate Policy in order to protect itself and its officers against claims brought about by those who transgress onto council owned land for the purpose of setting up an unauthorised encampment and also to demonstrate that the council is able to discharge its general duties in an appropriate and lawful manner.

6.2 The council is also required by law to satisfy the Courts that the welfare needs of the transgressors have been investigated and that proper procedures have been followed to secure possession of the land that is the subject to unauthorised occupation. (The council is also required to consider identifying 'acceptable' temporary stopping places for those wishing to camp.)

6.3 The review of the proposed policy has been instigated by Councillor Moore and is part of a wider range of measures currently being progressed to deal with unauthorised encampments. The policy should be read alongside the joint protocols document between Sandwell Council and West Midlands Police. The protocols document, which was approved at Cabinet on 11<sup>th</sup> January 2017, will allow the council to demonstrate to partner agencies, our settled community and the travelling community that officers are acting in line with procedure. This should address calls for action to remove mobile groups as soon as they form on local authority owned land within the borough until the council has discharged its duties. Similarly, by following the proposed processes, issues that can arise from such mobile groups such as noise, fly tipping or damage to the site can be, subject to police support, be resolved more efficiently to the benefit of nearby residents. The main changes within the protocols document are to allow the use of bailiffs using common law powers and for consideration of Injunctions to be served where appropriate.

6.4 Using the council's adopted Statement of Community Involvement document as a basis, there was a requirement for a **six weeks** minimum period for consultation on both the policy and joint protocols document. The consultation process included the following;

Local Press; In conjunction with the press office an article was written to publicise the consultation process.

Written Consultation; We wrote to groups with an interest in traveller matters, enclosing a copy of the document and asking for a response by the end of the six weeks consultation period. These groups were both internal and external to the Council and included West Midlands Police; Local Councillors; Sandwell MPs; National Gypsy and Traveller Federation; Serco; Rights Equality Sandwell; Legal; Education; Housing; Parks; Adults and Children Services; ASB team; and adjoining Local Authorities.

Internet: E-government; In accordance with government regulations the document was made available on the council's website. An email contact address was also provided where comments could be made direct to the council.

- 6.5 The consultation process ended on Friday 11<sup>th</sup> November 2016 and a total of 17 responses had been received, all of which related to the protocols document. The majority of the responses were from Sandwell residents, which included a local councillor, as well as a representative of the Warley Woods Community Trust and the director of a company in West Bromwich. Several comments made welcome the protocols document in that it clarifies the process of dealing with unauthorised encampments as well as highlighting the powers available to both the local authority and the police. However, whilst welcoming the use of bailiffs, some have still called for speedier action overall in removing travellers. It was also stated that the council should look to charge travellers for any damage and for the clean-up operation that inevitably has to be undertaken once a site is vacated as well as the fact the council should take out pre-emptive injunctions to prevent unauthorised encampments. Greater site security in the first instance is also called for by a number of the people who responded. The final main theme of the responses received was regarding 'out of hours' cover to deal with travellers and how the actions of the council and the police are communicated to affected residents. One response did raise concerns about the negative approach to travellers and restricting their lifestyle and that the council should be looking to provide bespoke sites for them.
- 6.6 Many of the points raised by the consultation process are already being addressed. An Injunction is being progressed against one particular problematic family; a programme of identifying the most frequently transgressed sites has been undertaken with a series of new/ additional security measures already carried out; and a proposal for a possible transit site for travellers is being explored.

## **Source Documents**

Revised Unauthorised Encampments Corporate Policy.

# **Sandwell Council: Unauthorised Encampments – Corporate Policy**

## **Statement of Policy**

The purpose of this policy is to safeguard the community and its assets against the potential adverse impact of unauthorised encampments. It should be read alongside the joint protocol between Sandwell Council (the “Council”) and West Midlands Police (the “Police”).

Unauthorised encampments often arouse strong feelings in communities when residents feel they cannot use community facilities such as parks, open spaces, local nature reserves or public car parks. Often, it also costs significant sums of money to move unauthorised encampments on and restore the land to its previous condition so it can be safely used by the community.

Many travellers can have traditions, cultures, norms and aspirations which are not the same as those of the settled community. However, the general approach of the law towards travellers has been to apply principles and processes that reflect the norms and values of the settled community - for example in dealing with trespass, nuisance and planning regulations. In the case of travellers, applying these principles often involves balancing competing rights and demands.

The protocol between the Council and Police sets out the criteria for deciding who will be responsible for taking action when an unauthorised encampment occurs on Council land. Both the Police and Council as public bodies have rights and obligations imposed on them through legislation which includes the Human Rights Act 1998 and Equality Act 2010. The Council also needs to consider obligations, where appropriate, under other legislation which includes the Education Act 2002, Housing Act 1996 and the Children’s Acts 1989 and 2004.

Decisions on taking enforcement action against unauthorised encampments must be reasonable and proportionate. The fundamental needs and rights of travellers must be considered and balanced with the interests of the wider community.

## **Welfare Checks**

The Council will carry out welfare checks and any identified needs will be referred to the appropriate Council Services and/or support agencies.

Where, for example, there is a serious risk to-  
the environment  
highway safety  
human health, or,  
access issues to facilities or homes,

it is likely that it will be appropriate for an assessment, to be limited to the information available, when the Police or the Council first approach the encampments and to engage with those.

In cases where an urgent welfare need is identified the Council may consider delaying the removal of the encampment or part of the encampment so that the urgent welfare needs are sufficiently met, unless the encampment is on an unsuitable site. Alternatively the Council may encourage the person(s) with the identified welfare need to relocate to a more suitable location.

## **Tolerating unauthorised encampments**

The Council will not normally tolerate any encampment where it is giving rise to complaints from other members of the community, or when it is located on:-

- where it is giving rise to complaints from other members of the community
- recreational facilities such as sports pitches, playgrounds, parks, local nature reserves or picnic sites;
- part of an education facility of any type;
- sites that need special protection due to wildlife, landscape or archaeological considerations (this applies whether or not the land in question has been formally designated);
- sites that give rise to a health and safety risk (for example, through pollution); or
- sites that cause problems of traffic or access.



This list is not intended to be exhaustive and is merely illustrative.

There will be circumstances where an unauthorised encampment may be tolerated for a short period of time. The instances where this would happen (and the duration of any stay) would be decided on a case-by-case basis after having proper regard to the facts and personal circumstances of each unauthorised encampment.

In return the Council expects acceptable behaviour from travellers which includes:

- no fly tipping on the site occupied by a camp;
- sites are kept and left clean and tidy;
- sites are not used for business activities
- not engaging in anti-social behaviour.

This list is not intended to be exhaustive and is merely illustrative.

A Code of Conduct is set out in the Protocol and any breach of this Code may lead to any agreed period of toleration being terminated.

## **Removing unauthorised encampments**

Where an encampment does not meet the acceptable criteria for toleration, the Council will use any of the following powers, or any other power it deems appropriate:

- Part 55, Civil Procedure Rules (CPR) ;
- Criminal Justice and Public Order Act (CJPOA) 1994 – Section 77;
- Common Law power to evict trespassers off land;
- Injunctions to protect land from unauthorised encampments
- Closure Orders
- Public Space Protection Orders

The Police have their powers in managing unauthorised encampments, i.e. Section 61 and 62 of Criminal Justice and Public Order Act 1994. The Council may request the Police, where appropriate and necessary, to use their powers.