

Report subject	Managing Unauthorised Encampments: Members Working Group Report
Meeting date	30 September 2020
Status	Public
Executive summary	<p>To advise Cabinet of the considerations undertaken and subsequent recommendations brought forward by the cross-party members working group for unauthorised encampments</p> <p>The report contains items considered and options reviewed in reaching a consolidated policy for the management of encampments and the future options for the control of unauthorised encampments across BCP Council. This includes the recommendations for:</p> <ol style="list-style-type: none"> 1. Policies for the management of future encampments 2. Policies regarding target hardening of sites 3. The feasibility for pre-emptive injunctions 4. The feasibility of providing alternative stopping places
Recommendations	<p>It is RECOMMENDED that:</p> <p>a) Cabinet adopt the revised policy for the management of unauthorised encampments across BCP Council.</p> <p>b) That the working party will be asked to explore the following options: the feasibility of providing alternative stopping places; the use of pre-emptive injunction against trespass; target hardening and management of incursions. Their recommendations to be brought back to Cabinet within four months including the necessary governance, resources and consultation that would be required.</p> <p>c) To adopt a balanced approach to target hardening as local circumstance dictate.</p>
Reason for recommendations	<p>To introduce a single and consolidated policy that is in keeping with the Equality Act, for the management of unauthorised encampments, that provides suitable control measures and alternative provision for the travelling community in order to reduce the incidents of unauthorised encampments.</p>

Portfolio Holder(s):	Councillor Felicity Rice, Portfolio Holder for Environment and Climate Change
Corporate Director	Kate Ryan, Corporate Director of Environment & Communities
Report Authors	Andy McDonald/Peter Haikin
Wards	Council-wide
Classification	For Recommendation

Background

1. The working group report covers the options to be considered in dealing with any individual or group of individuals who have moved onto a piece of land owned by BCP Council with the intension of residing on it without permission, thus constituting trespass.
2. An unauthorised encampment is a generic term used to describe persons using a temporary structure to reside on land without the landowner or occupier's consent. This may include vehicles, caravans, tents or similar temporary structures or shelters.
3. Unauthorised camping is not a criminal offence. It is a civil offence (trespass), giving landowners the right to repossess their property using the due process of law. The prevention of trespass is the responsibility of the landowner.
4. The previous Councils of Bournemouth, Dorset (Christchurch) and Poole had distinct policies and procedures for addressing unauthorised encampments. These policies differed considerably in terms of site management, the provision of alternative stopping places, the levels and scope of target hardening, the levels of site provision once an encampment had been established and the method of legal address to obtain possession.
5. Prior to April 2019, Christchurch Borough fell under the jurisdiction of Dorset County Council who had summer transit provision at Piddlehinton. The police therefore had an option to serve direction orders under section 62 of the Criminal Justice and Public Order Act (1994).
6. A joint protocol between Dorset Police and Dorset Local authorities provides a coordinated approach to unauthorised encampments. The vast majority of encampments within the conurbation are managed by the local authority. The Police do have discretionary powers under Section 61 & 62 of the Criminal Justice and Public Order Act (1994) if certain criteria are met to direct occupiers to leave site, in particular if an alternative stopping place is provided.
7. The formation of BCP Council brought together four Councils in which historical data would indicate a potential of up to 50 unauthorised encampments per annum. This seasonal cycle peaks between March to October, with expenditure in the region of £100,000 per annum.

8. Cabinet approved on the 9th October 2019 to establish a cross party member Working group to review the current policy and procedures and recommend a consolidated BCP Policy for managing unauthorised encampments once established.
9. The group would also examine the potential options and future direction for policy development in the prevention or deterrent of future unauthorised encampments and possible remedies to direct groups to leave site within current legislation and changes to legislation being proposed by recent government consultations.
10. The Council has sought legal counsel to advise on the potential and scope of the use of pre-emptive injunctions in the control of unauthorised encampments. These have been used extensively within the London Boroughs, being obtained through the High Courts. A recent successful High Court appeal has thrown some doubt on the legitimacy of such injunctions, in doing so setting new case law. The Council wishes to seek further Counsel advice and clarification to ascertain if this is still a potential option for the future within BCP Council.
11. The Government has been consulting on the strengthening of current legislation or the introduction of new legislation in relation to powers for tackling unauthorised encampments since April 2018. The legacy Councils of Poole and Bournemouth both submitted response to an initial consultation in June 2018. The Government had in response indicated a will to change current legislation or introduce new legislation
12. In November 2019, the Government has invited further consultation, titled "strengthening police powers to tackle unauthorised encampments". This consults on measures which include:
 - a. The criminalising of the act of trespass within England and Wales
 - b. Amending section 61 & section 62A of the Criminal Justice & Public Order Act 1994.

Following consultation with the portfolio holder, the working group and officers a response was developed, with a return being submitted on the 5th March 2020 by BCP Council.

13. The original working group report was scheduled to be presented to Cabinet in April 2020, but the advent of Covid -19 has caused a delay in its presentation as both Cabinet and the Service have had to reprioritise critical work schedules in response. The Working Group report was re-affirmed by the group in July 2020.
14. There has been a significant drop in unauthorised encampments for 2020 (48%, 25/08/2020), which is thought likely to be linked to Covid-19 and the cancelation of several major events and attractions within BCP Council and Dorset.
15. Initially Government Covid-19 advice was implemented in managing a small number of encampments by tolerating, assisting in their welfare requirements and not seeking possession. With the lifting of Covid-19 restrictions and the easing of self-shielding the draft management policy has been used to implement a more unified approach to unauthorised encampment management across BCP Council.
16. It should be noted that wild camping has been prevalent during the summer of 2020 causing a significant impact on the beach front, nature reserves and public open spaces. Whilst wild camping has sometimes been an issue in previous years the scale has increased dramatically and therefore officers will be looking at options to

enable this to be managed and enforced in a more dynamic fashion. This will be reviewed along with the rest of the seafront byelaws and the public space protection orders over the winter period. This is therefore not in scope for this report due to the short-term duration of these types of encampment.

Options Appraisal

17. Please refer to the Cross-Party Members Working Group Report for options available, appraisal of the advantages and disadvantages of each option and the reasons for recommending a particular option.

Recommendation 1: New consolidated policy on the management of unauthorised encampments

18. The policy gives guidance as outlined below in which any other additional facilities may be provided, the level of site management and /or any other actions which may be undertaken by the Council. In that:
 - a. Any provision of skips will be determined following an environmental impact assessment.
 - b. Any provision of toilets will be determined following the undertaking of a welfare and educational needs assessment.
 - c. Security will only be provided in exceptional circumstances following an assessment on community impact. Security may be deployed where intelligence suggests there is a risk of an imminent unauthorised encampment.
 - d. Other levels of engagement or action will be determined following the dynamic risk assessment which will determine the level of risk to staff who may be brought into direct conflict, by undertaking their normal duties i.e. parking enforcement.

Recommendation 2 – Target Hardening

19. The working group considered the merits and disadvantage of extensive target hardening across BCP Council.
20. It was recommended that any target hardening is undertaken on a limited basis as local circumstances dictate following post encampment assessment.

Recommendation 3 – Alternative Stopping Places.

21. It is recommended that officers through delegated authority to the Director of Environment in consultation with the Portfolio Holder for Environment & Climate Change and the members working group determine the necessary governance, resources and consultation to explore the feasibility of providing a range of alternative stopping places across the BCP conurbation.
22. It is recognised that any future works would require input and engagement from across the wider Council and our partners within the community involved in the management of unauthorised encampments. This would include members of the cabinet, ward councillor, planning, corporate comms, community engagement, Dorset Police, Dorset Race Equality Council and representatives of the gypsy & traveller community in identifying and developing any future options.

Recommendation 4 – Pre-emptive injunctions

23. It is recommended that officers through delegated authority to the Director of Environment in consultation with the Portfolio Holder for Environment & Climate Change and the members working group determine the necessary governance, resources and consultation to explore the feasibility of providing pre-emptive injunction for sites that have a demonstratable history of unauthorised encampments across BCP Council.
24. That the Council seeks further legal advice from legal counsel in light of the recent successful challenge within the Court of Appeal against the LB Bromley, in which a pre-emptive injunction appeal was partially upheld in respect to seeking a blanket injunction.
25. This has set legal precedence, in which other Councils have subsequently successfully obtained pre-emptive injunctions, although on sites with a known history of anti-social behaviour, unauthorised encampments. It must be noted that these Councils had to provide evidence to the court that they could demonstrate they were actively working towards the provision of alternative stopping places and that a thorough and meaningful equality impact assessment had been undertaken
26. It is recognised that any future works would require input and engagement from across the wider Council and our partners within the community involved in the management of unauthorised encampments. This would include members of the cabinet, ward councillor, planning, corporate comms, community engagement, Dorset Police, Dorset Race Equality Council and representatives of the gypsy & traveller community in identifying and developing any future options.

Summary of financial implications

27. Please refer to the Cross-Party Members Working Group Report for summary of the financial implications arising from that report.

Additional information to the Working Group report

28. An additional £50K had already been allocated to the Environment budget for 20/21 to employ an additional member of staff to manage unauthorised encampments. This post has been deferred to provide a mid-year savings for 20/21, but it is anticipated that this will be required for 21/22.
29. The report recommends target hardening on a limited basis as local circumstances dictate. It is anticipated that the current revenue budget will cover most remedial works within BCP Council
30. The Significant target hardening of key sites is not recommended within the Working Group report. Thus, if accepted an additional £350K will not be required.
31. Additional legal counsel required as part of the feasibility study into pre-emptive injunctions is estimated not to exceed £5K. Advice given would form part of any future recommended option brought back to cabinet.
32. Initial expenditure into the feasibility study into the provision of alternative stopping places is estimated to be 20K. This would primarily be around obtaining specialist planning advice, which may be provided inhouse if capacity is available.
33. The adoption of the draft management policy and lower numbers of encampments experienced during 20/21 has led to an underspend in the budget allocated to unauthorised encampments. It is anticipated feasibility costs (£25K, as outlined above) on a one-off basis can be met from this service underspend.

34. Any future spend would depend on the future recommended option derived from the feasibility studies and this would be financially evaluated in more detail and brought back to Cabinet for future approval.

Summary of legal implications

35. Please refer to the Cross-Party Members Working Group Report for summary of the legal implications

Summary of human resources implications

36. Please refer to the Cross-Party Members Working Group Report for summary of the legal implications

Summary of public health implications

37. Please refer to the Cross-Party Members Working Group Report for a summary of sustainability impact of their decision.

Summary of Public Health Implications

38. Please refer to the Cross-Party Members Working Group Report for a summary of Public health Implications.

Summary of equality implications

39. Please refer to the Cross-Party Members Working Group Report for a summary of Equality Implications

Summary of risk assessment

40. Please refer to the Cross-Party Members Working Group Report for a summary of risk assessment

Background papers

41. Please refer to the Cross-Party Members Working Group Report for a summary of background Papers

Appendices

42. Please refer to the Cross-Party Members Working Group Report for appendices

43. Government Guidance in relation to the management of unauthorised encampments:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/418139/150326_Dealing_with_illegal_and_unauthorised_encampments_-_final.pdf

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/7837/143582.pdf

44. Government Guidance in relation provision of transit sites/alternative stopping places

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/11439/designinggypsiesites.pdf

Members Working Group Report



Report subject	Managing Unauthorised Encampments: Policies and Procedures
Meeting date	14 th July 2020
Status	Public Report
Executive summary	<p>To advise Cabinet of the considerations undertaken and subsequent recommendations brought forward by the cross-party members working group for unauthorised encampments</p> <p>The report contains items considered and options reviewed in reaching a consolidated policy for the management of encampments and the future options from the control of unauthorised encampments across BCP Council. This includes the recommendations for:</p> <ol style="list-style-type: none">1. Policies for the management of future encampments2. Policies regarding target hardening of sites3. The feasibility for pre-emptive injunctions4. The feasibility of providing alternative stopping places
Recommendations	<p>It is RECOMMENDED that:</p> <ol style="list-style-type: none">a) Cabinet adopt the revised policy for the management of unauthorised encampments across BCP Council. This policy outlines a unified approach to the provision of welfare and waste facilities and the provision of security for an individual encampment.b) Authority be delegated to the Director of Environment in consultation with the Portfolio Holder for Environment & Climate Change and the members working group to determine the necessary governance, resources and consultation to explore the feasibility of providing temporary stopping places, and also a pre-emptive injunction against trespass for specifically named public spaces across Bournemouth Christchurch and Poole in accordance with current legal advice.c) To adopt a balanced approach to target hardening as local circumstance dictate.

Reason for recommendations	To introduce a single and consolidated policy for the management of unauthorised encampments and provide suitable control measures and alternative provision for the travelling community in order to reduce the incidents of unauthorised encampments.
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Working Group Chair	Councillor Dr Felicity Rice, Portfolio Holder for Environment and Climate Change
<p>Working Group Members</p> <p>09/2019 – 07/2020</p>	<p>Councillor Felicity Rice, Portfolio Holder & Chair of Members working Group</p> <p>Councillor Jane Kelly, Deputy Chair</p> <p>Cllr Richard Burton</p> <p>Cllr Diana Butler</p> <p>Cllr Duane Farr</p> <p>Cllr Mohan Iyengar</p> <p>Cllr Colin Bungey</p> <p><u>07/2020</u></p> <p>Cllr Simon McCormack</p> <p>Cllr May Haines</p> <p>Cllr Tony Trent</p>
Wards	Council-wide
Classification	For Recommendation

Background

1. This report covers the options to be considered in dealing with any individual or group of individuals who have moved onto a piece of land owned by BCP Council with the intention of residing on it without permission, thus constituting trespass.
2. An unauthorised encampment is a generic term used to describe persons using a temporary structure to reside on land without the landowner or occupier's consent. This may include vehicles, caravans, tents or similar temporary structures or shelters.
3. Unauthorised camping is not a criminal offence. It is a civil offence (trespass), giving landowners the right to repossess their property using the due process of law. The prevention of trespass is the responsibility of the landowner.
4. The previous Councils of Bournemouth, Dorset (Christchurch) and Poole had distinct policies and procedures for addressing unauthorised encampments. These policies differed considerably in terms of site management, the provision of alternative stopping places, the levels and scope of target hardening, the levels of site provision once an encampment had been established and the method of legal address to obtain possession.
5. A joint protocol between Dorset Police and Dorset Local authorities provides a coordinated approach to unauthorised encampments. The vast majority of encampments within the conurbation are managed by the local authority. The Police do have discretionary powers under Section 61 & 62 of the Criminal Justice and Public Order Act (1994) if certain criteria are met to direct occupiers to leave site, in particular if an alternative stopping place is provided.
6. The formation of BCP Council brought together four Councils in which historical data would indicate a potential of up to 50 unauthorised encampments per annum. This seasonal cycle peaks between March to October with expenditure in the region of £100,000 per annum.
7. Cabinet approved on the 9th October 2019 to establish a cross party member Working group to review the current policy and procedures and recommend a consolidated BCP Policy for managing unauthorised encampments once established.
8. The group would also examine the potential options and future direction for policy development in the prevention or deterrent of future unauthorised encampments and possible remedies to direct groups to leave site within current legislation and changes to legislation being proposed by recent government consultations.
9. The Council has sought legal counsel to advise on the potential and scope of the use of pre-emptive injunctions in the control of unauthorised encampments. These have been used extensively within the London Boroughs, being obtained through the High Courts. A recent successful High Court appeal has thrown some doubt on the legitimacy of such injunctions, in doing so setting new case law. The Council is currently seeking further Counsel advice and clarification to ascertain if this is still a potential option for the future.

10. The Government has been consulting on the strengthening of current legislation or the introduction of new legislation in relation to powers for tackling unauthorised encampments since April 2018. The legacy Councils of Poole and Bournemouth both submitted response to an initial consultation in June 2018. The Government had in response indicated a will to change current legislation or introduce new legislation
11. In November 2019, the Government has invited further consultation, titled “strengthening police powers to tackle unauthorised encampments”. This consults on measures which include:
 - a. The criminalising of the act of trespass within England and Wales
 - b. Amending section 61 & section 62A of the Criminal Justice & Public Order Act 1994.
12. A return was submitted on the 5th March 2020.

Recommendations

13. The cross-party members working group was formed as a recommendation from a previous cabinet report date 9 October 2019: Revised policy and practice for unauthorised encampments.
14. The group have met to consider the alignment of policies and procedures across BCP Council in respect to the management of unauthorised encampments and to review and recommend potential directions of travel in prevention of unauthorised encampments across BCP Council public spaces.
15. Their recommendations are outlined below.

Recommendation 1 – New consolidated policy on the management of unauthorised encampment.

16. That the Council adopts the new policy which gives guidance as outlined below that:
 - a. Any provision of skips will be determined following an environmental impact assessment.
 - b. Any provision of toilets will be determined following the undertaking of a needs assessment.
 - c. Security will only be provided in exceptional circumstances following an assessment on community impact. Security may be deployed where intelligence suggests there is a risk of an imminent unauthorised encampment.
17. The Council has a legal duty as a top tier authority to undertake a needs assessment to identify any health or educational needs within the encampment.
18. The Council also undertakes a dynamic risk assessment that reviews the potential impact the encampment has on the local environment, the overall usage

- of the occupied site, the local community and the level of engagement the group will have with Council staff and other agencies.
19. The assessments help to determine the level of facilities the Council will provide to the encampment as outlined in 18, a),b) & c).
 20. The assessments are used to determine whether the group have exceeded the criteria in which the Council as the landowner can reasonably ask the Police to use their powers under Section 61 of the Criminal Justice and Public Order Act 1994 to direct the group to leave the site
 21. The assessments also give an indication as to whether Police support is required in dealing with other Civil offences that may be occurring within the encampment and/or the serving of legal notices to obtain possession of the land.
 22. The assessments also give an indication as to the level of risk staff may face in undertaking their normally duties, which may bring them into direct conflict with the unauthorised encampment.
 23. The Police cannot use Section 62 of the Criminal Justice and Public Order Act 1994 as BCP Council does not provide a suitable alternative stopping place within the authority to direct an encampment to our leave the authority's jurisdiction.
 24. **Appendix 1 & 2** outlines the recommendations as to the assessment criteria for managing unauthorised encampment and the dynamic risk assessment undertaken at the time of engagement.

Recommendation 2 – Target Hardening:

25. The working group considered the merits and disadvantage of extensive target hardening across BCP Council. This was rejected due to the high impact on the natural landscape, the cost implications, the effectiveness of target hardening, the displacement to other public spaces and the restrictions it causes to other users of public spaces. It was recommended that any target hardening is undertaken on a limited basis as local circumstances dictate following post encampment assessment.

Recommendation 3 – Alternative Stopping Places.

26. It is recommended that officers through delegated authority to the Director of Environment in consultation with the Portfolio Holder for Environment & Climate Change and the members working group determine the necessary governance, resources and consultation to explore the feasibility of providing alternative stopping places across the BCP conurbation.
27. The seasonality of unauthorised encampments and their average duration of stay of less than 28 days has indicated that there is not a requirement to provide a permanent transit site.
28. This would enable the police to use their discretionary powers under section 62 of the Criminal Justice and Public Order Act 1994, to direct a group to an alternative stopping place or leave the authority's jurisdiction.
29. It is also anticipated that any future government changes in legislation regarding trespass will also require the local authority to provide an alternative stopping place in order to enact such legislation

30. Through consultation with other local authorities the provision of alternative stopping places has proven to be the most effective deterrent to the formation of unauthorised encampments within public spaces.
31. It is recommended in the medium to long term, that the Council explores the option of providing a range of temporary stopping places across the BCP conurbation.

Recommendation 4 – Pre-emptive injunctions:

32. It is recommended that officers through delegated authority to the Director of Environment in consultation with the Portfolio Holder for Environment & Climate Change and the members working group determine the necessary governance, resources and consultation to explore the feasibility of providing pre-emptive injunction for sites that have a demonstratable history of unauthorised encampments across BCP Council.
33. That the Council seeks further legal advice from legal counsel in light of the recent successful challenge within the Court of Appeal against the LB Bromley, in which a pre-emptive injunction appeal was partially upheld in respect to seeking a blanket injunction. Injunctions could still be sought on sites with a known history of anti-social behaviour and unauthorised encampments

Summary of financial implications

34. It is anticipated that the number of unauthorised encampments will remain at an average 50 encampments per annum if no alternative solutions as outlined in recommendations 2,3 and 4 are not implemented.
35. The intensity of encampments between March & October each year means a full-time member of staff will need to be assigned to manage unauthorised encampments throughout this period.
36. This will include site liaison, overseeing the legal process for possession, liaison with the relevant enforcement agencies and elected members, undertake statutory counts, respond to consultations, manage internal communications, respond to FOI's and respond to extensive media and public enquiries either verbally or in writing
37. It is anticipated a managerial post will be required costing in the region of £50K per annum.
38. It is anticipated that changes in policy with regards to the management of unauthorised encampments will release nominal costs savings due the scale of unauthorised encampments experienced across BCP Council, especially with the addition of Christchurch.
39. Currently a budget of £100K per annum is allocated to target hardening from the old Bournemouth's legacy budget. No such budgets exist within legacy Poole or Christchurch. It is anticipated that to target harden in line with legacy Bournemouth would require resources running into several millions and would take several years to deliver.
40. It is estimated that some key locations within Poole and Christchurch could be significantly target hardened in line with Bournemouth for £350K over the next year. Although it is anticipated that this will cause displacement requiring an additional round of target hardening in future years and additional financial resources. (This is currently not the favoured option).
41. Guidance given by legal counsel to pursue the option of obtaining a pre-emptive injunction for key sites across BCP Council, has indicated that this would require

a significant uplift in resources in order to provide the relevant legal evidence to deliver within a 3-month time, once the initial temporary injunction has been obtained. This has been estimated to cost around £125K.

- a. Instruction of Counsel to obtain injunction + court fees (20 K)
 - b. Registration of land to BCP through land registry (25K)
 - c. Preparation of legal documentation and GIS mapping for permanent injunction (£25K), internal resource
 - d. Posting on site of legal documentation (200+) (£20-30K), would be higher if function is externalised. (£50K+)
 - e. Obtaining writ of assistance + court fees, to enforce injunction (£2-3K)
42. It must be noted that additional costs could further be incurred if a legal challenge through the Court of Appeal is raised against the initial injunction.
43. The costs of alternative stopping place/s within BCP Council in order to comply with Section 62 of Criminal Justice & Public Order Act 1994 or any new legislation introduced by the government to criminalise the act of trespass is currently unknown.
44. The cost of providing facilities for an alternative stopping place in which facilities provided are off a basic level and thus costs are relatively small in comparison to the provision of a permeant transit site in which a full range of permanent facilities are required.
45. It is anticipated that resource would be required to undertake a meaningful public consultation, under take land surveys, draw up management agreements and purchase and construct minor facilities.
46. Initial opinion appears to favour recommendations 1, 3 & 4

Summary of legal implications

47. The Council would need to consider the legal implications of the different operating models proposed. This would include the use of:
- a. Section 77/78 of the Criminal Justice and Public Order Act 1994 vs the use Civil Procedure Rules, Part 55 to gain possession of land.
 - b. The legal process involved in obtaining a pre-emptive injunction and its subsequent enforcement
 - c. The legal requirements associated with the provision and management of alternative stopping places.
48. Advice has been taken from the Councils legal team
49. Counsel has been sought on the legal process, feasibility and implications of pre-emptive injunctions
50. The Government are currently undertaking additional consultation into the powers for dealing with unauthorised encampments, by seeking views on the strengthening of Police powers to tackle unauthorised encampments. This has the potential to provide new legislation and alter current guidelines in current legislation by:
- a. Criminalising of the act of trespass within England and Wales
 - b. Amending the criteria for implementation within section 61 & section 62A of the Criminal Justice & Public Order Act 1994.

51. It must be noted that any likely changes in legislation and guidance will be in conjunction with the provision of alternative stopping places in order to enact.
52. It must also be noted that pre-exemptive injunctions are liable to legal challenge through the Court of Appeal

Summary of human resources implications

53. It is anticipated that the number of unauthorised encampments will remain at an average 50 encampments per annum if no alternative solutions as outlined in recommendations 2,3 and 4 are not implemented.
54. The intensity of encampments between March & October each year means a full-time member of staff will need to be assigned to manage unauthorised encampments throughout this period. This will include site liaison, oversee the legal process for possession, liaise with relevant enforcement agencies and elected members, undertake statutory counts, respond to consultations, manage internal communications, respond to FOI's and respond to extensive media and public enquiries either verbally or in writing
55. Guidance given by Counsel to obtain a pre-emptive injunction has indicated that this would require a significant uplift in resources to collate the relevant legal evidence to support this application, which has to be delivered within a 3-month time span, once the initial temporary injunction has been obtained.
56. This would include:
 - a. Evidence gathering, submission of papers and representation in the high court to obtain injunction and any subsequent enforcement action (Instructed Counsel)
 - b. GIS mapping of all intended sites to be covered by said injunction (In house through Environmental Services team)
 - c. The registration of said land to the ownership of the Council if required (In house via property services and Legal)
 - d. Legal advice and assistance from Law & Governance, to manage the process.
 - e. Posting of legal notices on identified land to be covered by the injunction (In House through Environmental service team)
57. The identification and provision of a range of potential alternative stopping places across the BCP conurbation would require:
 - a. A review to be undertaken of BCP assets to determine a range of suitable locations (In house through Environmental team)
 - b. An application and granting of planning permission to site (In House & Planning)
 - c. A robust and timely public consultation exercise (In house and Corporate comms)
 - d. A robust communication plan will need to be implemented (Corporate Comms)
 - e. Procedures introduced to operate and manage any potential TSP (In house team)

Summary of sustainability impact

- 58. Loss of land in providing temporary Stopping places
- 59. Will have greater control on welfare facilities and disposal of waste on sites managed by Local Authority as temporary Stopping places.
- 60. Reduction in damage to Public open spaces and associated facilities.
- 61. Reduction in loss of public open space for leisure and recreational activities.
- 62. Reduction on the impact on tourism within key locations and subsequent loss of income.

Summary of public health implications

- 63. Needs assessment will still be undertaken to determine and identify any specific health & educational issues on an encampment by encampment basis

Summary of equality implications

- 64. Gypsies and Travellers, who it is believed comprise the vast majority or unauthorised encampments in BCP, are afforded specific protections as a result of case law, the Human Rights Act 1998, and the Equality Act 2010. Their right to continue with a nomadic lifestyle is specifically protected, and the Council has a duty to consider how its policies or decisions will affect people who are protected under the Equality Act.
- 65. Each unauthorised encampment requires a Welfare Needs Assessment (WNA) to ascertain any issues relating to health, education, and wellbeing. Government guidance acknowledges that many within the travelling community experience difficulty in accessing such services, and the WNA identifies issues and signposts Gypsies and Travellers to relevant services
- 66. This report specifically addresses issues around unauthorised encampments but does not cover wider but related Gypsy and Traveller policy matters such as permanent housing provision, public health impacts, or modern slavery.
- 67. The new consolidated policy on unauthorised encampments will require a full Equality Impact Assessment.

Summary of risk assessment

- 68. The public perception and reaction to the location of alternative stopping places is very high and will draw considerable complaints and media attention. This can be mitigated through robust public consultation and communication strategy
- 69. There is a risk that pre-emptive injunctions can be challenged legal through the Courts of Appeal. This will be mitigated by taking legal counsel through eminent Counsel involved in this field of expertise and drawing lesson learnt from previous case law
- 70. Police not using their discretionary powers under Section 61 or 62 of the Criminal Justice and Public Order Act 1994. This is mitigated through frequent liaison between all parties involved in the management of unauthorised encampments.
- 71. Government consultation could change legal framework for dealing with unauthorised encampments. It is anticipated that this will be a strengthening of

current powers, rather than a fundamental change in legislation. It is however anticipated that in order to enact any new powers to the full an alternative stopping place must be considered.

Background papers

72. Government Consultations

73. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/844954/Unauthorised Encampments - consultation paper.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/844954/Unauthorised_Encampments_-_consultation_paper.pdf)

74. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/776942/Unauthorised development and encampments response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/776942/Unauthorised_development_and_encampments_response.pdf)

75. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697354/Consultation - unauthorised encampments.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697354/Consultation_-_unauthorised_encampments.pdf)

76. Government guidance documentation

77. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/11439/designinggypsiesites.pdf

78. Legal counsel advice

79. Historical data and records

80. **Appendices**

Appendix 1: Unauthorised Encampment Management Assessment Criteria

Unauthorised Encampment Management Assessment Criteria

6th February 2020

These criteria should be read in conjunction with the Dynamic Risk Assessment for Unauthorised Encampments:

Site details:

The information gathered within section 1 to 7 is to assess the level of impact the group is having or has had on a specific public space in relation to the users of the space and the potential impact on the local community or businesses.

1. This is a legal requirement. They are not committing trespass until they have been asked to leave and have refused to do so.
2. Can the experience from previous encampments be used as an indication to the impact of the current group?
3. The size of a group and the percentage of space it occupies within any said public space has a significant bearing on the level of impact. i.e. 3 living units within a 10-hectare park or 20 living units within a 1-hectare pocket park.
4. As per item 3
5. The closer to residential property the more likely the impact will be greater due to the general activities within the encampment i.e. generators, vehicle movements etc
6. As per Item 5, but in reference to commercial properties
7. This is to determine how much usable space is lost for everyday activity by the public and is linked to item 3. We have to consider:
 - a. How much space is lost to general activity or recreational use by the public.
 - b. Are any activities impacted. i.e. sports, events, parking etc
 - c. Can the site still be accessed or traversed?
 - d. Are other facilities being impacted i.e. community centres
 - e. Are local businesses being impacted
 - f. How high is the environmental impact?
 - i. Waste disposal
 - ii. Environmentally sensitive locations i.e. SSSI
 - g. Do the group have access to alternative welfare facilities?

- h. Do the group have any welfare/educational needs? (Welfare & Educational needs assessment are undertaken, which is a requirement of top tier Councils). This may determine whether any welfare facilities are provided i.e. toilets

Details of UE:

This section is designed to collect data which may be required to determine a future course of action.

- 8. If the group contains greater than 6 vehicles/living units then the Police may consider the use of their discretionary powers under Section 61 of the Criminal Justice and Public Order Act 1994 (S61) to direct them to leave. However, their own risk assessments are aligned with ours in determining the level of impact.
- 9. This may be an indication as to the level of waste that the group could generate and determine if any waste disposal facilities are required i.e. skips

Background:

These criteria link to the legal guidance given for consideration into why the Council may request the Police to use their discretionary powers under S61 to direct an encampment to leave site. This would be linked to the number of vehicles/living units within the group.

Please note this has to be significant in its impact and provable, not hearsay. An act of criminal damage has to be proven in court of law beyond all reasonable doubt against a named individual, not on the balance of probabilities, and would not apply to the whole group.

- 10. Has damage been caused to the land or property?
- 11. Has threatening, abusive and insulting words or behaviour been used against an employee of the Council? This does not mean against members of the public.
- 12. Can we request S61? We have to answer yes to questions 1, 7,10,11 to facilitate a strong request and the overall conclusion of the risk assessment considering all other criteria must be very strong. The Police will use the same criteria in reaching their formal reply.
- 13. Have we informed the Police, and have we requested S61 if item 12 is met?
- 14. Is there evidence of ASB? We have to consider the actual level of nuisance, not the perceived level. There is often a large level of concern and misconception on the arrival of an unauthorised encampment, especially within the first 24 Hours. We ask all concerned to report incidents to the Police as this builds up an evidence-based profile of any ASB or potential criminality. This will determine if we can revisit the request for the Police to use S61 and aid in their decision-making process. Please note that the legal definition of nuisance is something that has to be sustained over a

considerable period of time (months, years). As we can normally obtain possession within 2 weeks this would not meet the legal threshold for nuisance.

Site Management or Provision of Facilities:

- 15. Security: Determined through level of impact (Medium to High) on the community or any received intelligence from a recognised source as to an imminent encampment.
- 16. Toilets: Determined through needs assessment process.
- 17. Waste provision: Based through risk assessment criteria and potential impact on the environment

It must be noted that currently BCP Council can only request the Police to use Section 61 of the Criminal Justice and Public Order Act 1994, as BCP Council does not provide an alternative stopping place in which Section 62 could be used to direct them specifically too or leave the jurisdiction of the authority.

S61 only allows the Police to direct a group to leave a specific location, it does not allow them to follow, direct them to another location or leave the jurisdiction of the local authority.

Thus, before requesting that the Police use S61, consideration must be given as to the impact the group may potentially have on an alternative location against the impact they are having within their current location.

Appendix 2: Dynamic Risk Assessment

Dynamic Risk Assessment for Unauthorised Encampment (UE)

Name of site:

Date:

Site details

1. Has the UE group been informed that they have no permission to be on the site and asked to leave the site?

Yes/ No

2. Has this site had other UE over the last 12 months?

Yes/ No

If yes, please list dates and no of units:

3. Size of site UE is on (note for reference football pitch is 7,140 square metres)

Size:

4. Percentage of the available site area taken by UE (circle answer)

0-25%

25-50%

50-75%

75-100%

5. Distance from residences (note for reference a Tennis Court is 23m long) (circle answer)

0-25m

25m-50m

50m-100m

100m-200m

Greater

6. Distance from commercial premises (circle answer)

0-25m

25m-50m

50m-100m

100m-200m

Greater

7. Does the UE prejudice/prevent use of the site?

Yes/ No

If yes, please describe (eg does the site carry any designations, stops sports use etc)

Impact on site users

Details of UE

8. Please record number of living units below. Are there more than 6 units?
Yes/ No

Record no under each type of living unit			
Caravan	Camper	Tent	Total Units

1 Unit
2-3 units = minor
UE
4-6 units = small
UE
7-9 units =

medium UE
> 9 units = large UE

9. Does it appear the group is working? (working/commercial vehicles, sign written vehicles)

If yes, please enter provide details

Yes/ No

Background

10. Has damaged been caused to the land or property?

If yes, please provide details (inc Crime no):
--

Yes/ No

11. Has threatening, abusive, insulting words or behaviour been used to the occupier/employees? Yes/ No

If yes, please provide details (inc Crime no):
--

12. Does the UE meet the criteria the Police use to decide if they will use their powers under Sec 61 of the Criminal Justice & Public Order Act 1994?

Yes/ No

Note Questions 1,7, 10, 11 should be answered Yes to facilitate a strong request to the Police considered using their powers under Sec 61 of the Criminal Justice & Public Order Act 1994

13. Have the Police been contacted?

If yes, please provide details (inc Date & Crime /incident no):

Yes/ No

14. Is there evidence/reports of ASB on site?

If yes, please provide details, eg fires, ASB noise, ASB use of vehicles, fly tipping, human waste (inc Crime no)

Impact of ASB assessment (Circle one)

Yes/ No

UE Management

15.. Is security required?

Yes/ No

Circle type and explain reasoning

16. Will the UE require toilet provision?

Yes/ No

Explain reasoning and what's provided

Circle type and explain reasoning (e.g. working group)

17. Will waste provision be provided?

Yes/ No

Details of other comments/observations to be taken into account:

Completed by:

Date:

25/02/2020