

Powers for dealing with unauthorised developments and encampments

Unauthorised development and encampments

Question 1:

What evidence is there of unauthorised development and encampments in your community, and what issues does this raise for the local community?

Please enter your comments here

Across Nottinghamshire there have been many incidents of unauthorised encampments and up until very recently County, Borough & District Councils have worked independently depending on where an encampment has appeared, each authority gathering information separately and collating in different ways, so describing accurately what has happened in Nottinghamshire is fragmented. Over the past few months a sub-group of the Safer Nottinghamshire Board has been established to develop shared protocols with the intention to provide a consistent approach – this work is ongoing and complicated by the fact that local partners use different powers to deal with unauthorised encampments.

When encampments appear there are invariably complaints and concerns raised by the settled community and cohesion issues emerge. These include complaints of anti-social behaviour, noise pollution, fly-tipping, and sanitation issues.

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Question 2:

We would like to invite evidence of unauthorised encampments which have occurred in the last 2 years, as follows:

- a. the number of instances where trespassers have occupied land without authorisation, including the location and scale of the encampment.
- b. whether the land in a) required cleaning or repair once the encampment had left, and if so, what was the cost?
- c. how was each unauthorised encampment encouraged to leave, how long did it take, and was the local authority able to move them on; or did the police become involved?

Please enter your comments here

As stated at question 1 getting an accurate picture of the full extent of unauthorised encampments across Nottinghamshire is problematic as land ownership determines the action taken. A partnership group consisting of all the 9 Councils' in

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Nottinghamshire and the police has been formed and part of the role will be to develop a system to record incidents more accurately and protocols around appropriate of sharing information is being considered.

The County Council land that has been occupied is mainly alongside highways, school/leisure facilities or in the case of rough sleepers on land & forestry the County Council own or lease to others.

We have record of 17 unauthorised encampments on County Council land from April 2016 to date. The locations vary and some locations have been occupied numerous times, we prefer not to provide details of the locations in this consultation because of concerns about potential further encampments on those sites.

The scale also varies from single homeless occupiers with a tent, to 10 caravans and supporting vehicles.

We are also aware of unauthorised encampments on City, Borough & District Council sites with 30+ Caravans and towing vehicles.

Some sites required cleaning and the costs we have been charged in the region of £1200 – we know this is not a true cost as the clearance/cleaning has been delivered by the waste collection teams from Borough & District Councils and no re-charge has been made.

We have also spent £4,500 in additional external legal costs over the period.

We have not routinely calculated the costs associated with taking calls from the public reporting encampments, conducting welfare visits, internal legal services time, managing enquiries and communication with the public and the time spent by local members addressing the settled communities concerns. These costs associated with our response would be substantial mainly attributable to staff and elected members time.

The time taken for a site to be vacated again varies, this can be within hours of a welfare visit and no formal legal process to 17 weeks in one case which involved a site with a mother having pre-natal health issues and a birth that required the baby to have post-natal hospital support.

Streamlining the powers under which local authorities can direct unauthorised campers to leave land

Question 3:

Do you think that the existing powers made available to local authorities to remove unauthorised campers from land are effective?

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Please enter your comments here

Nottinghamshire County Council seek to obtain possession orders pursuant to Part 55 of the Civil Procedure Rules to remove unauthorised campers from our land. We find these orders to be effective in the majority of cases without the need to take enforcement action against unauthorised occupiers. The process of obtaining a possession order can take several days and a quicker and more efficient solution would be preferable, particularly if it could be obtained against the land being occupied rather than “persons unknown” as this would make it easier to take enforcement action if the land was subsequently reoccupied by the same or other unauthorised occupiers.

Question 4:

Do you think local authorities could improve their use of existing powers?

Please enter your comments here

We are aware of other powers available to local authorities e.g. seeking injunctions or the power to issue a direction to leave the land pursuant to s.77 of the Criminal Justice and Public Order Act 1994 however consider that many of these powers are not usually appropriate due to time, cost and risk of public order incidents.

Question 5: What other powers may help local authorities deal with unauthorised encampments?

Please enter your comments here

The powers in place enable a proportionate and considered approach to dealing with encampments.

If there is evidence of the same people returning after a possession order the ability to issue on the spot penalty fines or seize assets may discourage repeat offending. However, this action may result in public order issues and further fractures in the cohesion between settled and travelling communities.

A specific power that enables a streamlined procedure to be followed to prevent or deal with an unauthorised encampment on an unacceptable encampment location e.g. school or public grounds or where creating a traffic hazard would be very helpful.

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Aggravated trespass

Question 6:

Do you consider that the current powers for police to direct trespassers to leave land are effective?

Please enter your comments here

No. To our knowledge these powers have not been used by the Police on encampments on Nottinghamshire County Council owned land for a variety of reasons. A key factor for the police is the resource requirements to implement such a directive and to manage any crime and disorder implications from this course of action. The lack of alternative and/or suitable sites for encampments to move to are also a problem for local authorities and the police alike.

Question 7:

Would any new or revised powers that enable police to direct trespassers to leave land make it easier to deal with unauthorised encampments?

Please enter your comments here

The possibility of issuing on the spot fines and seizure of assets if the request to move was not immediately actioned may result in quicker vacation of unauthorised sites. But may have unintended consequences for public order and community safety.

Question 8:

Do you consider that the Government should consider criminalising unauthorised encampments, in addition to the offence of aggravated trespass? If so, how should a new offence differ, and what actions and circumstances should it apply to?

Please enter your comments here

The Government could consider criminalising unauthorised encampments on prescribed unacceptable locations e.g. SSSI, school or public grounds, and when creating a traffic hazard.

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Use of injunctions to protect land

Question 9:

What barriers are there to the greater use of injunctions by local authorities, where appropriate, and how might they be overcome?

Please enter your comments here

Limited resources and expertise in local authority legal departments as well as time and cost constraints of pursuing injunctions

This constraint could be overcome if alternative simplified and efficient procedure for taking action to prevent or deal with repeat offenders or where evidence that particular locations will be/are being targeted by unauthorised occupiers.

Joint-working between local authorities, communities and the police

Question 10:

Do you have any suggestions or examples of how local authorities, the police, the courts and communities can work together more successfully to improve community relations and address issues raised by unauthorised encampments?

Please enter your comments here

In Nottinghamshire a countywide network has been established with the aim of developing consistent approaches by the Police, County, City and the 7 Borough and District Councils. This network is a recent development and all partner organisations recognise the issues faced by both the settled community and travellers.

A key area that will be worked on is improved communication with local communities when an encampment occurs, a focus of this will be to share where possible as much information about the circumstances around the encampment and the plans and powers being used by the landowner to resolve the situation.

Court Processes

Question 11:

Are there ways in which court processes might be modified in a proportionate way to ensure unauthorised encampments can be addressed more quickly?

Please enter your comments here

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In relation to possession orders, reducing the time between service of proceedings and the actual hearing date from two to one clear day.

Speeding up the process for instructing the court bailiffs to enforce a possession order by giving priority to unauthorised encampments and arranging an eviction appointment within 48 hours of a warrant of possession being issued.

Removing the requirement to seek a warrant of restitution where a possession order has been in place for more than 3 months and enabling enforcement action to be taken promptly throughout the period that the order is valid.

Interim possession orders

Question 12:

In your view, what would the advantages and disadvantages be of extending the IPO process to open land?

Please enter your comments here

A particular advantage would be that it would carry the threat of a criminal sanction if the IPO was not adhered to.

The process of obtaining an IPO appears to be lengthier than the current process for seeking an order pursuant to Part 55 of the Civil Procedure Rules against trespassers. Additionally, by definition it is not a final order so would necessitate a further step to take place to obtain a final possession order increasing the overall time and cost.

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Question 13:

Are you aware of any specific barriers which prevent the effective use of current planning enforcement powers?

Please enter your comments here

This is not an issue for the County Council as a County Planning Authority our role is to deal with planning control in relation to minerals and waste development. All other development and enforcement of any breach/unauthorised development is the responsibility of the Local Planning Authorities (LPA's), this role is fulfilled by Borough and District Councils.

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Question 14:

If you are aware of any specific barriers to effective enforcement, are there any resourcing or administrative arrangements that can help overcome them?

Please enter your comments here

As stated at question 13 – this is not an issue that impacts a County Planning Authority.

Question 15: Are you aware of any specific barriers which prevent the effective use of temporary stop notices? If so, do you have a view on how these barriers can be overcome?

Please enter your comments here

As stated at question 13 – this is not an issue that impacts a County Planning Authority.

Improving the efficiency of enforcement notice appeals

Question 16:

How do you think the existing enforcement notice appeals process can be improved or streamlined?

Please enter your comments here

As stated at question 13 – this is not an issue that impacts a County Planning Authority.

Government Guidance

Question 17:

How can Government make existing guidance more effective in informing and changing behaviour?

Please enter your comments here

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The existing government guidance cites 20+ pieces of civil/criminal powers available to deal with unauthorised developments and encampments, whilst these two issues occasionally have a relationship, to have a single legislative route (civil or criminal) for unauthorised encampments would be most welcome.

A consistent of approach across the country would help clarify for those who persistently occupy land that does not belong to them what the consequences of their occupations will have.

Question 18:

If future guidance was issued as statutory guidance, would this help in taking action against unauthorised development and encampments?

Please enter your comments here

Yes – clear statutory guidance would carry more weight and provide the basis for a more consistent approach towards unauthorised encampments being taking across the country. It could also address any grey areas for the benefit of both landowners and those who trespass.

Planning and traveller site provision

Question 19:

Are there any specific barriers to the provision of more authorised permanent and transit sites? If so, is there any action that the Government could take to help overcome those barriers?

Please enter your comments here

The availability of authorised sites is an issue across the Country and is also evident in Nottinghamshire. The availability of land in Local Planning Authorities is very limited for any type of development, this coupled with the resources required to effectively equip and manage sites makes providing more authorised sites very difficult.

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Impacts on the travelling community

Question 20:

What impact would extending local authority, police or land owner powers have on children and families and other groups with protected characteristics that public authorities must, in the exercise of its functions, have due regard to under their Public Sector Equality Duty?

Currently when considering enforcement action to seek the removal of an unauthorised encampment a welfare visit is always conducted. This is a pre-requisite for the possession order approach which Nottinghamshire County Council prefer to adopt. This covers key questions around health, children's welfare/education and wider safety issues. Any extension or changes to the powers should recognise that this welfare approach needs to be part of the action taken.

Question 21:

Do you expect that extending the powers referred to above would have a positive or negative impact on the health or educational outcomes of Gypsy, Roma and Traveller communities? If so, do you have any evidence to support this view, and/or suggestions for what could be done to mitigate or prevent any negative impacts?

Please enter your comments here

The need to have robust and simplified powers is very important.

Problems occur for the wider community when land is illegally occupied, this ranges from safety issues on highway verges to rendering leisure facility land unusable for periods of time both whilst occupied and for periods after whilst land is left to recover.

The requirement to conduct a welfare assessment should always be part of the decision making process before enforcement action is taken, health and education arrangements need to form part of any assessment.

Other comments

Question 22:

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Do you have any other comments to make on the issue of unauthorised development and encampments not specifically addressed by any of the questions above?

Please enter your comments here

No

Your opinion is valuable to us. Thank you for taking the time to read the consultation and respond.