

**RESPONSE TO GOVERNMENT CONSULTATION ON
POWERS FOR DEALING WITH UNAUTHORISED
DEVELOPMENT AND ENCAMPMENTS**

Presented by the Head of Parklands

EXECUTIVE SUMMARY

The Government is seeking views on the effectiveness of current powers available to local authorities, the police and landowner for dealing with unauthorised development and encampments in England.

The Regional Park suffers on average five unauthorised encampments each year and in 2017 this increased to eighteen. Dealing with such encampments is often costly and can impact visitors' experience of the Park, the Authority's business interests and the environment. There is a substantial risk of industrial scale fly tipping associated with unauthorised encampments and a cost burden associated with the subsequent clearing up. The Authority has a corporate procedure to quickly address unauthorised encampments making use of the range of powers that currently exist, however at times these may not be sufficiently effective in which case the Authority may seek to rely on the powers of local authorities and the police.

The consultation paper includes a series of questions and the Authority's draft officer level response is included in Appendix A to this report. A hard copy of the consultation paper is available in the Committee Office.

RECOMMENDATION

Members Approve: (1) the content of the draft response included at Appendix A to this report.

BACKGROUND

- 1 Concerns about the issue of unauthorised development and encampments were most recently voiced in the House of Commons on 9 October 2017, when the Government heard strong views that in spite of a range of powers already in place, unauthorised development and encampments remain a significant issue which causes genuine difficulties for communities. These include:

- trespassing on private land;
 - occupying public land, including playing fields and children's areas;
 - damage to property;
 - extensive litter and waste;
 - the public and private cost of cleaning or protecting unauthorised sites;
 - noise and anti-social behaviour;
 - abusive and threatening behaviour; and
 - carrying out development without planning permission.
- 2 The Government has requested to hear more evidence about the nature of these issues via a consultation paper entitled 'Powers for dealing with unauthorised development and encampments'.

The purpose of the consultation is to seek views on the range of existing powers available to public bodies, including local authorities and the police, for responding to unauthorised development and encampments. It asks questions about how these powers are used at present, any difficulties associated with the use of those powers, and what, if any, further powers may be required.

A copy of the paper is available in the Committee Office and the authorities responses are required by 23:45 on Friday 15 June.

MANAGEMENT OF UNAUTHORISED ENCAMPMENTS IN THE REGIONAL PARK

- 3 The Regional Park suffers on average five unauthorised encampments each year and in 2017 this increased sharply to eighteen. Dealing with such encampments is a significant burden on both staffing and financial resources, and can cost between £5,000 and £30,000 to evict the occupants and clear fly-tipped waste. In recent years more of these groups have undertaken large scale fly-tipping on Authority land which is part of their unauthorised waste disposal income generating activities. The Authority has a procedure to quickly address unauthorised encampments which has been revised recently in light of reduced support from some police forces.
- 4 A range of powers already exist for local authorities and the police to assist landowners to deal with unauthorised encampments, however it is considered that these are not effective, particularly against the more aggressive fly-tipping groups. These powers are expensive and take considerable time to implement which allows time for other transgressions including fly-tipping to take place. These concerns are shared across a range of agencies and have prompted this consultation.
- 5 The Authority, as landowner, does have some options which enable it to take action directly. The Authority can use its common law power to remove trespassers using reasonable force, however this can prove even more costly when dealing with large groups as security contractors are usually required to conduct the eviction. The schedules included in the draft response indicate the cost of such evictions. The alternative is for the Authority to apply for a Possession Order, however this method is slow and also costly as the progress of applications are dependent on the court's capacity and timetables.

RESPONSES TO CONSULTATION

- 6 Officers' responses recognise the sensitivity of dealing with the travelling community and seek to highlight the distinction between traditional groups and those engaged in organised criminal fly-tipping. Where the latter are identified more decisive powers are needed to avoid unnecessary delay in enforcement.
- 7 Details of incursions experienced in the Regional Park over the past 24 months are provided in Appendix A to this report.
- 8 Recommendations include better co-ordination between local authority service areas such as legal, social and environmental services to facilitate a fast efficient response and that police powers should be extended to deal with aggravated trespass such as in the case of fly-tipping

ENVIRONMENTAL IMPLICATIONS

- 9 Improved enforcement powers if adopted by the Government will reduce the risk of contamination to land from both fly-tipping and poor hygiene.

FINANCIAL IMPLICATIONS

- 10 Improved powers if adopted by the Government could result in fewer unauthorised encampments and of a shorter duration, saving on operational costs.

HUMAN RESOURCE IMPLICATIONS

- 11 There are no human resource implications arising directly from the recommendations in this report.

LEGAL IMPLICATIONS

- 12 Improved legislation may reduce the administrative burden on the Legal team.

RISK MANAGEMENT IMPLICATIONS

- 13 There are potential risk management benefits from the recommendations in this report as improved powers may reduce the risk of damage to business interests and of harm to operational staff.

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Background Papers

Government Consultation on Powers for dealing with Unauthorised Development and Encampments

APPENDIX ATTACHED

Appendix A Response to consultation

Cover letter sending LVRPA response to the Ministry of Communities and Local Government consultation on the powers for dealing with unauthorised development and encampments

Dear Sir/Madam

LVRPA response to the Ministry of Communities and Local Government consultation on the powers for dealing with unauthorised development and encampments

Thank you for consulting the Authority on the above. This is timely given the increasing costs resulting from action which we regularly take to remove unauthorised encampments.

The Lee Valley Regional Park Authority (LVRPA) is a statutory authority created by the Lee Valley Regional Park Act 1966 (the Park Act). It has a statutory responsibility to either provide directly or work with partners to provide facilities for sport, recreation, leisure, entertainment and nature conservation throughout the Park. The inception of the Authority has its roots in the Abercrombie Vision in the London Plan 1944 as a place to support the recreation needs of Londoners.

The Park lies in north and east London extending northwards from the River Thames to Ware in Hertfordshire and includes a mosaic of award-winning facilities and open spaces, including three Olympic Legacy venues which are owned and managed by the Authority. There are approximately 7m visits each year.

The Authority regularly deals with incursions into its estate, which comprises 1600ha, from the Gypsy and Traveller communities. Many of these occur in locations which are isolated and hidden from public view by extensive tree cover and are difficult to monitor. Although the Authority employs a ranger service they cannot cover every corner of the Regional Park.

As the Authority's responses included in the schedule indicate the cost of repairing the damage caused by unauthorised encampments has totalled approximately £38,840.00 over the last 5 years.

The Authority like all public bodies has been affected by the severe constraints on public finances and it is hoped that through a concerted and uniform response from the local authority community and other stakeholders, Government can develop a range of proactive measures which are effective and save on the public finances.

I would be happy to work with you on more detailed ideas once you have collated all the responses.

Yours faithfully,

LVRPA response to the Ministry of Communities and Local Government consultation on the powers for dealing with unauthorised development 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?

The Authority's land has been occupied repeatedly by unauthorised encampments as set out in the response to Question 2 below.

The number of encampments increased significantly in 2017 from an average of 5 per year to 18.

The issues associated with unauthorised encampments vary depending on their location. When they are situated in open parkland area, the public are unable to use the occupied parkland and often for several weeks afterwards due to contamination from human and animal waste which has to be cleared up. When the encampment is situated on a car park, there is loss of business due to the car park no longer being available, customers suffer intimidation and therefore avoid using it. Businesses surrounding the car parks also suffer anti-social behaviour and their patrons have experienced intimidation. Finally, there is frequently industrial scale fly-tipping which makes the occupied site hazardous to access and the Authority is forced to bear the financial burden for remediating the damage caused. There is also the impact on the Authority's staffing resources which prevents security patrols and management activities elsewhere.

Powers for dealing with unauthorised encampments

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; and
- 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?

	Date	Site	Location Authority Area	No. caravans / mobile homes	Days on site	Clean up / repair cost	Enforcement method
1	27/7/16	Lee Valley Leisure Centre - Campsite	Enfield	2	1		LVRPA Officers enforcing byelaws
2	15/8/16	Cornmill Meadows	Epping Forest District	7	2	£70	Authority Officers enforcing byelaws with police support
3	1/9/16	Lee Valley Athletics Centre & Lee Park Way open space	Enfield	20	1	£570	LVRPA Officers enforcing byelaws
4	7/10/16	Waterworks Centre car park	Walthamstow	1	2		LVRPA Officers enforcing byelaws

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5	9/11/16	Lee Valley Athletics Centre car park	Enfield	10	2	£500	LVRPA Officers enforcing byelaws with security contractor. Police unable to attend
6	3/12/18	Lee Valley Leisure Centre - Odeon car park	Enfield	7	2	£100	LVRPA Officers enforcing byelaws
7	6/1/17	Lee Valley Leisure Centre - Odeon car park	Enfield	5	3	£100	LVRPA Officers enforcing byelaws
8	16/1/17	Lee Valley Athletics Centre car park	Enfield	10	2	£100	LVRPA Officers enforcing byelaws
9	14/2/17	Lee Valley Athletics Centre car park	Enfield	5	2	£100	LVRPA Officers enforcing byelaws
10	17/2/17	Lee Valley Athletics Centre car park	Enfield	8	1	£100	LVRPA Officers enforcing byelaws with police support
11	30/3/17	Lee Valley Athletics Centre car park	Enfield	7	2	£500	LVRPA Officers enforcing byelaws with police support
12	13/4/17	Lee Valley Athletics Centre car park	Enfield	13	4	£300	LVRPA Officers enforcing byelaws
13	29/4/17	Lee Valley Leisure Centre - former bowls plot	Enfield	6	4	£300	LVRPA Officers enforcing byelaws
14	9/5/17	Tottenham Marsh open space	Haringey	6	10	£100	Haringey Council enforcement officers, LVRPA Officers with police support - all to no effect. Traveller left on their own accord in the timescale they first stated
15	5/6/17	Lee Valley Leisure Centre - former bowls plot	Enfield	14	33	£24,000	LVRPA Officers tried enforcing byelaws but met with resistance. Police refused to attend without a High Court writ. A section 77/78 power was progressed in conjunction with Enfield Council. This took four weeks to achieve by which time the site had become rat infested, full of fly tipping and group had decided to leave.
16	18/7/17	Rammey Marsh open space	Enfield	5	2	£1,000	LVRPA Officers enforcing byelaws
17	26/7/17	Lee Park Way open space	Enfield	7	1		LVRPA Officers enforcing byelaws.
18	30/7/17	Tottenham Marsh open space	Haringey	12	4	£300	LVRPA Officers enforcing byelaws with security contractor. Police unable to attend

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19	1/8/17	Lee Valley Leisure Centre show field	Enfield	8	3	£2,000	LVRPA Officers enforcing byelaws with security contractor.
20	1/10/17	Lee Valley Ice Centre car park	Walthamstow	1	1		LVRPA Officers enforcing byelaws
21	6/10/17	Cobb Fields, Gunpowder Country Park	Epping Forest District	10	2	£3,500	LVRPA Officers enforcing byelaws with security contractor. Brief attendance by the police
22	22/10/17	Lee Valley Athletics Centre car park	Enfield	8	1		Security contractor with police support
23	6/11/17	Lee Valley Leisure Centre - Golf course car park	Enfield	12	4	£200	LVRPA Officers enforcing byelaws with security contractor.
24	19/11/17	Lee Valley Athletics Centre car park	Enfield	2	1		LVRPA Officers enforcing byelaws
25	19/4/18	Spitalbrook Open Space	Broxbourne	12	2	£5,000	LVRPA Officers enforcing byelaws with security contractor.
						£38,840	

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?

Local Authorities do currently have a sufficient range of powers to deal with unauthorised encampments. However, their ability to use the powers and in particular those granted by sections 77 and 78 of the Criminal Justice and Public Order Act 1994 (CJPOA 1994) in the this Authority's experience has been undermined by a lack of funding, personnel resources and delays in the court system. For example, in one instance, the serving of a section 77 CJPOA 1994 direction was delayed by over 24 hours because welfare officers were unavailable to conduct welfare checks. Such delay increased the risk of damage being caused to this Authority's land and business.

Question 4: Do you think local authorities could improve their use of existing powers?

There could be better co-ordination between the service areas within local authorities, such as their as legal, social services and environmental services which are responsible for dealing with unauthorised encampments. This is to minimise the time taken to implement the powers available. A single contact within a local authority could oversee the local authority's overall response and be responsible for coordinating the various service areas to facilitate the delivery of a quick and effective response.

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

Section 78(2) of the CJPOA 1994 could be clarified to confirm exactly what action can be taken for the purpose of securing a property or a vehicle for removal when enforcing a section 78 court order. For example it could confirm that officers may enter an occupied caravan for the purpose of making it safe to move. This would reduce any ambiguity when conducting enforcement action thereby reducing the risk of delay.

Section 78(2) of the CJPOA 1994 could be clarified to confirm whether local authorities can permit landowners to undertake the physical removal of an encampment on its behalf where a section 78 order has been obtained in respect of land which is not owned by a local authority. This could reduce the burden on local authorities in respect of enforcement cost and allow landowners to have some control over the removal of the encampment.

The requirement to give 24 hours notice under section 78(3) of the CJPOA 1994 could be withdrawn as it causes unnecessary delay to enforcement action. The delay could put the occupied land at further risk of damage from activities such as fly-tipping.

Aggravated trespass

Question 6: Do you consider that the current powers for police to direct trespassers to leave land are effective?

The police's power to direct trespassers to leave land using section 61 of the Criminal Justice and Public Order Act 1994 could be effective; however there appears to be a lack of consistency between police forces in their willingness to use the power. In certain instances, the police have refused to assist at all despite the requirements for the use of the powers being satisfied. In other instances, the police have been proactive in using the powers to assist.

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?

The requirements in section 61 of the CJPOA 1994 as summarised in paragraph 13i-iii in the Consultation Document give the police the power to act after damage has been caused or if a threat, abuse or insult has been directed at a landowner or legitimate occupier. The requirements should be extended to allow the police to direct an encampment to leave if there is a substantial risk of trespassers causing damage, for example by fly-tipping or becoming violent. The police can rely on intelligence and by assessing behaviour to make a judgement. This could allow for the immediate removal of unauthorised encampments thereby reducing the risk of damage caused by unauthorised encampments.

The requirement for there to be six vehicles in section 61 of the CJPOA 1994 should be reduced to one as a just a single vehicle could potentially be used to secure a site to facilitate fly-tipping. Also, the current requirement for there to be six vehicles does not take into account the number of people in each vehicle i.e. there could be six vehicles containing one occupant in each or six occupants in one vehicle who would still be capable of committing the acts set out in para 13i-ii of the Consultation Document.

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?

Unauthorised encampments should be criminalised. It should be an offence to continue trespassing if a trespasser refuses to leave after being asked to do so by a landowner, legitimate occupier and/or the police. The police would then be able to act quickly without having to wait for a trespasser to commit an aggravating offence thus potentially limiting the risk of damage to land and property.

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?

This Authority is not aware of any significant barriers preventing local authorities from obtaining injunctions.

The court process could be accelerated so that an injunction can be obtained as quickly as possible if it is required urgently.

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?

The powers available to local authorities, the police, landowners and legitimate occupiers for dealing with unauthorised encampments could be consolidated into a single piece of legislation. Such legislation could clarify the roles of the local authority and police and provide a template procedure for dealing with unauthorised encampments. This Authority has encountered instances where the police have refused to use its power under section 61 of the CJPOA 1994 stating that it is the local authority's responsibility to take action under section 77 CJPOA 1994 and the local authority claiming vice versa.

There could be a formal mechanism to allow landowners to the appeal to the local authority or police to use their powers under sections 77 or 61 of the CJPOA1994 to assist with the removal of unauthorised encampments. In the Authority's experience, action by local authorities or the police seems to carry more weight and trespassers are more willing to comply once the authorities are involved.

There needs to be more sharing of intelligence between local authorities, the police and local communities. Sharing information in relation to the movements of trespassers, known fly-tippers could reduce the risk of the establishment of encampments and enable to the police to prosecute fly-tipping offenders. If an advance warning of the risk of trespassers setting up encampments can be given to the local community, then measures can be taken to secure vulnerable sites.

Where a local authority is applying for an injunction to protect its vulnerable sites, land owners should be given the opportunity to include their land in the injunction. The existing powers of local authorities and the police in relation to unauthorised encampments could be amalgamated to prevent any overlap in powers and a single procedure for dealing with unauthorised encampments could be created.

Interim possession orders

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?

Priority should be guaranteed to applications for possession orders and interim injunctions where there is a risk of fly tipping or anti-social behaviour.

Question 12: In your view, what would the advantages and disadvantages be of extending the IPO process to open land?

It would be advantageous to obtain an IPO in respect of open spaces if there is a low risk of the trespassers damaging the land while the application for the IPO is being processed. However, the immediate removal of encampments is required in most instances as there is usually a substantial risk of damage to the Authority's land by for example, fly-tipping and anti-social behaviour therefore the court process for applying for an IPO would still be too slow.

Powers for dealing with unauthorised development

Question 13: Are you aware of any specific barriers which prevent the effective use of current planning enforcement powers? - 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? - 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?

The Authority responds to questions 13, 14 and 15 as follows:

The Authority is not a local planning authority. Section 14 of the Lee Valley Regional Park Act 1966 empowers the Authority as a statutory planning consultee. This allows the Authority to defend the Regional Park (on land outside the Authority's ownership) from inappropriate development. In many instances these unauthorised uses have included unauthorised gypsy and traveller encampments. Virtually the whole of the Regional Park is green belt where new development is considered inappropriate unless it is ancillary to this designation and does not adversely impact on 'openness'.

The Authority works in collaboration with the riparian boroughs/districts to support their enforcement action on sites within the Regional Park. The range of planning enforcement powers are underpinned by 'reasonableness'. The issue that many of the unauthorised uses present is that they are completely 'unreasonable' in how they present themselves. The irony is that the Travelling community does not travel and in the vast majority of cases encountered in our experience it requires a pitch to support a 'settled' lifestyle. Unauthorised occupation usually follows a standard pattern:

1. Development commences with unauthorised occupation of land owned by a Gypsy/ Traveller community or family.
2. Retrospective applications are only submitted after several months if at all.
3. Given the location of sites in the greenbelt applications for planning permission are often refused.
4. Inspectors rarely dismiss appeals following refusal of permission or the lodging of appeals against enforcement notices but grant temporary and personal permission on appeal.
5. The effect of the 'temporary' nature of the permissions is that claims of social and health need manifest in schooling and access to health services during the 'life' of the temporary permission creating and even stronger case for the sites being made permanent. Invariably they are granted permanent permission by the local planning authority or on appeal.

The Planning Inspectorate is influenced by the personal circumstances of the applicant and considers the adverse impact on the loss of accommodation re the Human Rights Act 2000. Effective enforcement is difficult because of the isolated nature of this form of development' It is difficult to monitor and because some travelling communities have a reputation for antisocial behaviour the normal planning officer site visit requires additional resources. This can be a burden on local planning authorities which have limited staff resources.

The conduct of many Planning Inquiries involves the production of limited evidence by the appellants and a series of system delays and prevarication by their Counsel. Often these are acceded to by the planning inspectorate because of the need to appear 'reasonable'.

However the impact of all this is that the planning system is seen to treat the Gypsy/Traveller community in a favourable way in comparison in how other forms of development and occupiers are treated.

A more liberal approach to the use of temporary stop notices should be considered which should reduce penalties if enforcement actions subsequently fail. Costs recoverable by the Gypsy/Traveller community should be capped.

Government Guidance

Question 17: How can Government make existing guidance more effective in informing and changing behaviour?

In addition to summarising the powers available for dealing with unauthorised encampments, the guidance should set out a detailed procedure for dealing with unauthorised encampments.

Question 18: If future guidance was issued as statutory guidance, would this help in taking action against unauthorised development and encampments?

Guidance should be issued as statutory guidance and should set out the procedure to be followed for dealing with unauthorised encampments and clarify the respective roles of the authorities involved.

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?

The Authority's recommendations should not have a significant detrimental effect as the recommendations are to consolidate and clarify existing powers.

Other comments

Question 22: 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?

The Authority's open spaces are particularly vulnerable to unauthorised encampments and the Authority has devised a strategic policy for dealing with encampments as soon as they are reported. The appropriate level of response ultimately depends on the nature of the group. For example, a small traveller family who are making an overnight stop may just be issued with a notice asking them to vacate the site by a time negotiated with the Authority's rangers. Further action would then be considered if they then failed to vacate the site. If it is apparent from the outset, that the group intend to occupy the Authority's land for an extended period of time, or pose a safety risk, then immediate action is required to remove them as soon as possible. The Authority will consider various factors such as, the location of the encampment, number of people, age demographic, vehicles and the impact the park's users and commercial interests. The Authority's priority is to prevent any damage to its land and in particular fly tipping therefore an immediate resolution is required where there is a substantial risk of such damage being caused. There is a clear distinction to be made between traditional travelling communities and those that occupy land with caravans specifically in order to facilitate fly tipping. These groups can very quickly deposit industrial size quantities of waste and they control access to the site using intimidation. The longer

these groups are allowed to remain in occupation, the more damage they do to the land, particularly if contaminated waste is brought on such as asbestos. The Authority therefore needs to be able to take immediate action as soon as such group is reported on its land. The Authority's relies heavily on its common law power to remove trespassers with the assistance of the Authority's security contractor as this is usually the quickest method for removing an unauthorised encampment.

The Authority will seek assistance from local authorities and the police if it is unable to remove the encampment using its common law powers. Whilst the Authority is grateful for the assistance it has received from local authorities and police, the process often take far too long by which time substantial damage is caused to the Authority's land and reputation. There is also no guarantee that local authorities or the police will use their powers for dealing with unauthorised encampments therefore this approach cannot be relied upon. The Authority would like to see a mechanism by which it is able to prompt local authorities or the police to use their powers and the local authority and the police to be accountable for failing to use their powers.

The Authority has sought possession orders, however the biggest drawback of this approach is the unpredictable timescales.