
**ADOPTION OF A REVISED POLICY TO DEAL
WITH UNAUTHORISED ENCAMPMENTS**

Responsible Cabinet Member – Councillor Stephen Harker
Responsible Director(s) – John Buxton, Director of Development and Environment

Purpose of Report

1. To provide background information and recommend adoption of a revised policy to deal with unauthorised encampments.

Information and Analysis

2. The Council provides two caravan sites for travellers that have been in existence for thirty years. Both are well used. Neasham Road Caravan Site has twenty pitches. Honeypot Lane Caravan Site is currently being refurbished, with the assistance of grants from the Office of the Deputy Prime Minister (ODPM) with thirty pitches on the main site and ten pitches on the Transit Site.
3. Generally each year between April and October, the Council responds to about a dozen unauthorised encampments (detailed in **Appendix C**) which have varied in size from a single caravan up to a maximum of forty-nine. These give rise to complaints from residents living closest to the encampments. During 2004 for each occasion of an unauthorised encampment both Council Sites were full and the Transit Site had not yet been completed.
4. Where there is a suitable pitch available on a Caravan Site in our area the Council may request the Police to use their powers under Section 62 of the Criminal Justice and Public Order Act 1994 to direct trespassers to leave land and to remove any vehicles and other property. Now that the Council has provided a Transit Site, this will be an available option, subject to space being available, welfare enquiries having been made and the travellers being willing to conform to the site rules.
5. Unauthorised encampments are almost always, by definition, unlawful. However, there are insufficient authorised sites nationally and it should be recognised that some unauthorised camping will continue and may in certain circumstances and situations be tolerated for a defined time period. There are locations, however, where encampment will not be acceptable under any circumstances. Each encampment location must be considered on its merits against criteria such as public health risks, serious environmental damage, genuine nuisance to neighbours, traffic hazard and proximity to other sensitive land-uses and health and safety considerations for the unauthorised campers.

6. The key objectives in dealing with unauthorised encampments include:
 - (a) Being able to plan ahead to minimise problems and to avoid the need to deal with everything on a crisis basis.
 - (b) Prevention of crime and anti-social behaviour and effective enforcement against perpetrators.
 - (c) That the needs and legitimate expectations of all parties - landowners and the settled community, Gypsies and Travellers are considered.
 - (d) Setting a framework within which clear, consistent, timely and appropriate decisions can be made on unauthorised encampments to minimise disruption.
 - (e) Directly involving all those with an interest and clarifying roles and responsibilities so all parties involved know who will do what in different circumstances, within the realistic limits of what is possible and allowing some flexibility.
 - (f) Ensuring that policies and approaches reflect the human rights of both the settled and travelling communities and are compliant with legislation to promote equality of opportunity and good race relations.

7. The Council's existing policy on unauthorised encampments (adopted in February 2001) has been revised taking into account "Guidance on Managing Unauthorised Encampments" issued by the ODPM in May 2004 (and the supplement issued 7 March 2005) and the experience of securing an Eviction Order from the Magistrates Court in 2004. The proposed Policy is attached as **Appendix A**. An Equality Impact Assessment has been carried out on this Policy.

8. Details of the relevant legislation is attached as **Appendix B** a summary of local data as **Appendix C**.

9. There are new additions to the previous policy to provide greater transparency on actions, responsibilities and the decision making/recording process. It includes:
 - (a) A traveller Code of Conduct attached as **Appendix D**
 - (b) A summary of unacceptable locations attached as **Appendix E**;
 - (c) Reasons for eviction **Appendix F**
 - (d) A proposal for joint agreement with the Police, Durham and Tees Valley Authorities **Appendix G**
 - (e) A form to share information on traveller movements **Appendix J**

10. Gypsies and travellers are a part of British life, and have been so for many centuries. They make up a very small minority within the wider population. Gypsies and Irish Travellers are recognised under the Human Rights Act as ethnic minorities against whom discrimination is unlawful. Public authorities, including Local Authorities and the Police, have a general duty to eliminate unlawful discrimination, promote equality of opportunity and good race relations in carrying out their functions. A legally tested definition of Gypsy is "a person of nomadic habit of life, whatever their race or origin who wander or travel for the purpose of making or seeking their livelihood but does not include members of an organised group of showmen or persons engaged in circuses or fairs traveling together." This definition is problematic because it specifically relates to habitual lifestyle rather than ethnicity.

11. The situation in practice is more complex. It is generally accepted that Gypsies and other Travellers live in caravans, or other vehicles, and follow a lifestyle which is nomadic or semi-nomadic, that involves travel during at least part of the year. In Darlington there are:
 - (a) Full-time Travellers who travel more-or-less all the time, and all the year round.
 - (b) Seasonal Travellers who travel all or most of the summer (from a few weeks to several months) and stay put in the winter, having some kind of base on a site or in a permanent dwelling.
 - (c) Holiday Travellers who are basically settled on sites, or in houses, but travel for a few weeks in the summer, living during that period in some kind of trailer or caravan.
 - (d) Special occasion Travellers who are basically settled but travel for family or other occasions, for example weddings, funerals and fairs.
 - (e) Settled Travellers who live on residential sites or in houses/flats and travel little if at all.

12. Traveling patterns also vary and include:
 - (a) Long distance Travellers who may regularly travel between several English regions and may visit Ireland or even travel to destinations in continental Europe.
 - (b) Regional Travellers who may regularly travel within a single region, or over relatively short distances between two or more regions.
 - (c) Local Travellers who travel regularly but over short distances, perhaps around a single town or city.

13. At present there are more Gypsy/Traveller caravans in circulation than there are 'authorised' legal places for them to stop. At any one time there are around 3,500 Gypsy/Traveller caravans on unauthorised sites in England. Hardly any of these could be accommodated on existing authorised sites specifically provided for Gypsies and Travellers.

14. Unauthorised encampments vary enormously:
 - (a) In size: from a couple of vehicles to groups with over 100 caravans.
 - (b) In location: from the hidden away and unobtrusive to neighbours, to the highly visible and intrusive.
 - (c) In behaviour of unauthorised campers: from those where no-one on the encampment causes any nuisance to others, to those where many cause nuisance.
 - (d) In impact on the land: from groups who leave a camping area tidier than they found it, to those who leave the land damaged and with mountains of fly-tipped trade waste and domestic refuse.

15. The three main reasons identified for unauthorised camping in Darlington are:
 - (a) Seasonal travelling - linked to long established national Gypsy gatherings such as Appleby Horse fair in June.
 - (b) Work opportunities – activities such as building repairs, block paving house driveways and garden maintenance
 - (c) Visiting other Gypsies and Travellers who live in Darlington within the settled community either in houses or in authorised encampments. These visits are often associated with significant family events such as weddings, funerals and illness.

16. Officers follow written procedures recording information and collecting evidence (summarised in **Appendix I**) when dealing with travellers. The welfare needs of unauthorised campers are included within the policy as a material consideration by officers when deciding whether to start eviction proceedings or to allow the encampment to remain longer. This involves officers seeking information from travellers, in confidence, about their family needs in relation to health, welfare, education and accommodation.
17. Details of the encampment are brought to the attention of the Health Visitor and Education staff, employed to support travellers, asking for their professional opinion relating to the travellers needs.
18. Welfare needs do not, however, give an open-ended 'right' for unauthorised campers to stay as long as they want in an area. For example, the presence of a pregnant woman or school age children does not mean that an encampment can remain indefinitely. To defer an eviction which is justified on other grounds, the need must be more immediate and/or of a fixed term. All cases are decided on their individual merits. Good practice suggests that eviction should be delayed while such acute welfare needs exist and are being met; during this period the encampment should be pro-actively managed and the status regularly reviewed.
19. Case law has established that, while neither eviction action against trespassers nor planning enforcement is incompatible with Human Rights Act (HRA), either could potentially breach Article 8 rights if not properly used. Authorities and other public bodies covered by the HRA, must be able to demonstrate that all eviction and enforcement decisions are 'proportionate' in weighing individual harm (in the loss of 'home' for the Gypsy or Traveller) against the wider public interest. Potential challenge under the HRA means that all decision-making must be fully recorded with reasons and evidenced to withstand scrutiny. (**Appendix H** is the example of a form intended to record any decision to either tolerate or proceed with the eviction process).
20. The Environmental Health Section is expected to respond within one working day to notification of the presence of a camp. The focus on the first day is to collect and share information about the travellers so that a decision can be made about toleration or eviction. It is difficult to predict the time that will be taken from the identification of an unauthorised encampment to the lawful eviction of travellers from the land. This is because the legal process requires a Clerk of the Court to allocate the time and date for the hearing of first the Summons and then the Eviction Order and allowance for the traveller(s) time to seek legal advice. A realistic minimum time would be 10 days.
21. Any decision to tolerate the presence of a traveller or travellers will be dependent upon suitable arrangements being made for provision of drinking water, toilet facilities and collection of household waste. The traveller will be expected to pay directly for these facilities.

Resources and Land Protection

22. Responding to unauthorised encampments requires the allocation of officers to respond to complainants, enforcement action, refuse collection, clearance of waste and land maintenance. In 2004 is estimated to have cost £16,000 (£10,000 officer time) and caused disruption to the delivery of some existing services.

23. There are large areas of open recreation land in the ownership of the Council that are easily accessible to caravans, and vehicles, and a small number of these have been regularly used for many years during the summer months by travellers, as camp sites, causing complaints from the residents of nearby housing. To prevent vehicular access to these vulnerable areas it is estimated barriers would be required along a linear length of 20 km.
24. Following the departure of the travellers from Council owned land at Springfield Park, John Dixon Lane, Alderman Crooks Park, Redhall and McMullen Road/Allington Way in the Summer of 2004, the Council took action to protect those areas of open public land by the erection of earth barriers or placing large rocks, to prevent entry of caravans (a linear length of 1 km) with gated entrances for horticultural vehicles. Expenditure of £27,850 for this work and an additional £10,500 annual ground maintenance cost was agreed.
25. Future actions that will require new resources will include the provision of information to travellers and the community about the Council's Policy and the erection of "no camping" signs to improve communication.

Equality Impact Assessment

26. The results of an equality impact assessment carried on the proposed policy have been recorded in accordance with the guidance included within the Corporate Equalities Review and Plan 2003/04.

Government Action to Address the Causes of Problem Gypsy Traveller Sites

27. In January 2005 the Government published its response to the Office of the Deputy Prime Minister Select Committee investigation into Gypsy and Travellers and stated its determination to address the issues relating to the accommodation and wider needs of Gypsy and Travellers in ways which address both the interests of that community and the settled community generally. In particular:
 - (a) Conducting its major accommodation policy review, looking also at issues such as social exclusion and community cohesion.
 - (b) Including Gypsy and Traveller accommodation needs within the Local Housing Assessment process carried out by Local Authorities.
 - (c) From 2006/07 onwards providing funding for new sites and improvements to current sites through Regional Housing Boards' funding (this is the £2.5 billion housing capital budget distributed on the advice of the nine regional Housing Boards).
 - (d) Consulting on new planning guidance "Planning for Gypsy and Traveller Sites" (to replace Department of Environment, Food and Rural Affairs (DEFRA) Circular 1/94 "Gypsy Sites and Planning") requiring local authorities to ascertain local need for Gypsy and Traveller sites; identify suitable locations; and make provision for the accommodation needs of Gypsies and Travellers within their development plans.
 - (e) Introducing a Temporary Stop Notice so that local authorities can speed up planning enforcement on inappropriate sites (proposed introduction March 2005).

28. The Government has already extended funding for the refurbishment of existing authorised Gypsy and traveller sites to include the creation of new residential site (the ODPM is currently inviting bids for projects to refurbish and create new authorised sites from the £8 million a year fund).

Legal Implications

29. This report has been considered by the Borough Solicitor for legal implications in accordance with the Council's approved procedures. There are no issues which the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the report.

Section 17 of the Crime and Disorder Act 1998

30. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is considered that the contents of this report will have an effect.

Council Policy Framework

31. The issues contained within this report represent a change to Council policy.

Recommendations

32. That the policy attached to this report as **Appendix A** be adopted.

Reasons

33. The Policy will:
- (a) Enable the management of unauthorised encampments in an efficient and effective way within the legal framework.
 - (b) Enhance the Council's decision-making process providing transparency and directly involving those with an interest.
 - (c) Reflect the human rights of both the settled and travelling community and is compliant with race relations legislation.

John Buxton
Director of Development and Environment

Background Papers

1. "Guidance on Managing Unauthorised Encampments" issued by the Office of the Deputy Prime Minister in May 2004.
2. Supplement to the "Guidance on Managing Unauthorised Encampments" issued by the Office of the Deputy Prime Minister on 7 March 2005.
3. "Gypsy and Traveller Sites" ISBN 0-10-164652-9 Government response to ODPM Select Committee report made in November 2004

4. E-Mail from Durham Constabulary dated 17 March 2005
5. E-Mail from Darlington PCT dated 18 March 2005

Appendices

- a. Proposed Policy
- b. Relevant Legislation
- c. Unauthorised Encampments
- d. Traveller Code of Conduct
- e. Unacceptable Locations
- f. Reasons for Eviction
- g. Proposal for joint agreement with the Police, Durham & Tees Valley Authorities
- h. Record of Decision on Toleration or eviction of travellers from Unauthorised Encampments
- i. Summary of Environmental health Intervention
- j. Traveller Caravan Movement Certificate

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UNAUTHORISED ENCAMPMENTS POLICY

Definitions

1. All references in this document to Travellers includes 'Gypsies' or any other persons who have a nomadic lifestyle for all or part of the year. All references to "Director" mean the Director of Development and Environment and those Officers authorised by the Director.

Scope

2. This document provides the framework for decisions that will be made when dealing with unauthorised encampments other than those where the travellers are resident on their own land, or on land with the landowner's permission.

Equality Impact Assessment

3. Gypsies and Irish Travellers are recognised under the Human Rights Act as ethnic minorities against whom discrimination is unlawful. The results of an equality impact assessment carried on the policy have been recorded in accordance with the guidance included within the Corporate Equalities Review and Plan 2003/04.

Responsibility

4. Responsibility for making and implementing decisions in respect of unauthorised encampments is delegated to the Director of Development and Environment who authorises officers to act on his behalf. The Environmental Health Manager will be responsible for co-ordinating action within the Council in relation to unauthorised encampments by:
 - (a) responding to reports of encampments and requests for advice or assistance from the residents and businesses in the Borough;
 - (b) providing traveller liaison;
 - (c) monitoring camps to assess standards of public health and hygiene;
 - (d) deciding upon toleration or eviction; and
 - (e) keeping affected local ward councillors and residents informed of the status of a camp.

Sharing Information

5. The collection and sharing of information is essential to deal with unauthorised encampments in a positive manner.
6. Officers will seek information by:
 - (a) Asking travellers, when they first arrive in Darlington, to provide details of their health, welfare, education and accommodation needs so that this can be shared with relevant agencies that provide services.
 - (b) Information exchange with other Council departments, adjoining local authorities and other agencies.
 - (c) Consultation with settled communities living close to unauthorised sites.

7. Officers will provide information by:
- (a) Making the policy available on its web site, and as a hard copy on request.
 - (b) Providing travellers, when they first arrive in Darlington, with face to face contact with officers and written information that includes: a summary of this policy, the Code of Conduct for Caravan Occupiers, details of camp locations that will not be tolerated; the criteria applied when considering the need to evict; a letter requesting that they relocate to an authorised traveller site and details of the location of authorised camps including Honeypot Lane Transit site.
 - (c) Keeping affected local ward councillors and residents informed.
 - (d) Notifying other neighbouring local authorities and Police forces of traveller movements to and from its area.

Site Provision and Land use Planning

8. The Council follows Government guidance for the provision of permanent and transit traveller and Gypsy sites. The Council provides caravan sites for travellers at Honeypot Lane and at Neasham Road with the management and maintenance provided by leaseholders living on site, and who are from the traveller community.
9. Neasham Road is a well-established twenty-pitch site. Each pitch has electricity, water and its own amenity unit containing a WC, shower, sink and bin store.
10. Honeypot Lane is a well-established site with adjoining pasture. Refurbishment, started in 2004, part-funded by the Council and with the assistance of grants from the ODPM, that will upon completion, early in 2005, result in thirty hard standing pitches with new street lighting, drainage, water and electrical services. Seven pitches are for self-contained static "chalet" caravans and the remaining twenty-three for mobile caravans are provided with new amenity units. Each amenity unit contains a WC, kitchen and shower. The total number of pitches has been reduced and the majority have been enlarged to allow families with more than one caravan (and vehicles) to remain together. The new transit site, completed in October 2004 with the assistance of grants from the ODPM, adjoins the main site and has 10 hard standing pitches each capable of accommodating more than one caravan. Each pitch has electricity and mains water supply. Shared toilet and washing facilities for males, comprises 3 WCs, 3 wash hand basins and a shower; with the same provision for females. A new SureStart building serves the whole site and incorporates a communal room and an office for the specialist health visitor. Car parking and a fenced grass play area for children are adjacent to the building.

Land Protection

11. There are large areas of open recreation land in the ownership of the Council that are easily accessible to caravans and vehicles. A small number of these have been regularly used for many years during the summer months by travellers as unauthorised campsites causing complaints from the residents of nearby houses. The Council will take action, where necessary, to protect land from unauthorised encampment.

12. Barriers to prevent entry of caravans to land at Springfield Park, John Dixon Lane, Alderman Crooks Park, Redhall and McMullen Road/Allington Way were constructed in Autumn 2004 using earth mounds, large rocks and lockable gates.

Working Arrangements and Protocols with Different Agencies

13. The Police have prepared a draft policy and procedures for dealing with unauthorised encampments and publication is expected soon.

Managing Unauthorised Encampments

14. The Council will at all times act in a humane and compassionate fashion. The power to evict from an unauthorised encampment will be used where appropriate, including, but not exclusively, to afford a high level of protection to land and property of owners and occupiers and to reduce nuisance and anti-social behaviour. Each case will be considered separately and on its merits, taking into account the individual circumstances.
15. In making decisions in regard to the eviction or toleration of any particular unauthorised encampment, the Director will balance the relative weight given to each of the responsibilities which rest with the Council, including those outlined in ODPM "Guidance on Managing Unauthorised Encampments" and Department of Environment Circulars 1/94 and 18/94. Regard will be given to:
 - (a) compliance with "Caravan Occupiers Code of Conduct";
 - (b) examples of unauthorised encampments that will not be tolerated;
 - (c) criteria for eviction;
 - (d) agreements with Police and neighbouring local authorities;
 - (e) legislative requirements.
16. Formal repossession procedures will normally be undertaken where encampments occupy land owned by Darlington Borough Council, or land belonging to others where a request has been made to the Council for assistance in removing an encampment, where in the opinion of the Director it is:
 - (a) an unacceptable hazard to health or safety; or
 - (b) an unacceptable nuisance to the general public by reason of its size, location, nature or duration; or
 - (c) an unacceptable impact on the enjoyment, use or habitation of adjoining or nearby property, or interferes with the effective management of that property; or
 - (d) likely to cause, damage to property; or
 - (e) prejudicing or is likely to prejudice the use of land for its intended purpose or by legitimate tenants or occupants; or
 - (f) too large for its location or is causing unacceptable impact on its environment; or
 - (g) detrimental to the interests of the public, for some other reason, if allowed to remain for an extended period; or
 - (h) the cause of unacceptable levels of crime and/or anti-social behaviour.
17. When making a decision the Director shall also take into account:
 - (a) the health and safety of the occupants of the encampment;

- (b) the availability and suitability of sites and accommodation for travellers provided by the Council, and private sector in the Council's area, and those of adjoining Councils;
 - (c) obligations under legislation regarding highways, public open spaces, the countryside and town and country planning;
 - (d) any other relevant considerations;
18. When a decision has been made by the Director to pursue legal proceedings, and to obtain an eviction order, early discussions will take place with the Police to clarify roles and responsibilities including the use of bailiffs, the location that each caravan will be taken to, and the time of eviction.
19. If a decision to tolerate an unauthorised encampment is being considered then the decision will be dependant upon suitable arrangements having been made for provision of drinking water, toilet facilities and collection of household waste. The traveller will be expected to make the arrangements, or pay the Council to provide these facilities.
20. The appendices to this policy set out the legal framework and the Council's operational actions to implement this policy.

Arrangements for monitoring and review of the Policy

21. The Director of Development and Environment has responsibility to keep this policy under review and for monitoring the effectiveness of the policy in practice. In particular any change in legislation, new case law or guidance issued by central government will be taken into account.
22. An Equality Impact Assessment has been carried out on this policy.

SUMMARY OF THE LEGISLATIVE FRAMEWORK

Site Provision

1. The Caravan Sites and Control of Development Act 1960 Section 24 gives local authorities discretionary powers to provide caravan sites. While there is no duty on local authorities to provide Gypsy sites, DoE Circular 18/94 makes clear that authorities should maintain their existing Gypsy caravan sites, and should continue to consider whether it is appropriate to provide further permanent caravan sites for Gypsies in their areas. Government is currently reviewing policy on Gypsy site provision. Gypsy Sites Refurbishment Grant makes limited funding available for provision of transit and emergency stopping places.
2. Private site provision is governed by planning legislation. DoE Circular 1/94 sets out the Government's policy on Gypsy site provision and urges local planning authorities to consider, and to look favourably, at applications for Gypsy sites in development planning and development control.

Dealing with Unauthorised Encampments

3. There is no specific legislative duty placed on local authorities to deal with unauthorised encampments by Gypsies and Travellers.
4. Local authorities can take action as landowners through civil actions against trespass using Civil Procedure Rules Part 55, heard in a County Court. Local authorities have powers given by the Criminal Justice and Public Order 1994 Act Sub Section 77 and 78. These require cases to be brought in the Magistrates' Court.
5. Common law rights to recover land from trespassers are also available to local authorities over land they occupy. Authorities are, however, advised not to use such powers unless there is exceptional justification for doing so and, for example, the Police are unable to use their powers under Section 61 of the Criminal Justice and Public Order Act.
6. DoE Circular 18/94 provides guidance to local authorities on the exercise of s77 powers, and reminds them of their other duties towards Travellers in terms of education, children and homelessness legislation.
7. Case law (starting with the judgement of Sedley J in *R v Wealden District Council ex parte Wales*) has developed and clarified the courts' expectations of the welfare enquiries and decision-making processes local authorities should adopt in making evictions under 1994 Act and other powers.
8. Where Travellers camp on land which they own or on other private land with the consent of the landowner, district councils may take planning enforcement action, or prosecute for running a caravan site without a site licence.

Criminal Justice and Public Order Act 1994 Section 61

9. Under Section 61 of the CJPOA, the Police have discretionary powers to direct trespassers to leave land. Action under Section 61 is normally much quicker than under Section 77, and the welfare considerations less onerous but there are conditions in the legislation which have to be fulfilled before eviction can take place. The senior police officer present can direct trespassers to leave if reasonable steps have been taken by or on behalf of the landowner/occupier to ask them to leave and there are two or more people intending to reside on the land.
10. Any one of three further conditions that must be met are:
 - (a) if any of the unauthorised persons occupying the land has caused damage to the land or to property on the land;
 - (b) If any of the unauthorised persons occupying the land has used threatening, abusive or insulting words or behaviour towards the legal occupier, a member of his family or an employee or agent of his;
 - (c) If any of the unauthorised persons occupying the land have between them six or more vehicles on the land.
11. Section 61 cannot be used on land on the highway (with limited specific exclusions listed by Section 61 (9)(b)). It is an offence to fail to leave the land as soon as reasonably practicable or to enter the land again as a trespasser within three months of the date the direction was given.
12. The current Association of Chief Police Officers guidance notes that there can be no blanket policies, but refers to some of the circumstances in which it might be appropriate to use Section 61 against an encampment.
13. The statutory conditions must obviously be met. Case law (*Fuller*) has determined that any notice period given to unauthorised campers must have expired before Section 61 can be used. In other words, the unauthorised campers must clearly have failed to respond to requests from or on behalf of the legal occupier of the land to leave before the Police can act. Some Police forces have streamlined this process by drawing up standard documents which, when signed by the owner/occupier of the land, give the Police authority to act as their agents in dealing with the encampment.
14. The fact that a landowner initially allows an encampment to remain does not preclude subsequent Police action so long as it is clear that reasonable steps have since been taken by the landowner/occupier to get the unauthorised campers to move, and that they have failed to do so.
15. The decision to use Section 61 is an operational one for the Police. Its early use should be considered where it is likely to be a proportionate response, and especially where there is evidence of:
 - (a) unacceptable behaviour by unauthorised campers at the encampment, including individual criminal activity, which cannot be controlled by means other than eviction;
 - (b) significant disruption to the life of the surrounding community;
 - (c) serious breaches of the peace or disorder caused by the encampment.

16. Where triggers such as the above are experienced, good practice suggests that Police should be prepared to act as long as the statutory conditions are met. Police forces/commands should not adopt blanket policies or presumptions either for or against the use of Section 61.
17. Home Office Circular 45/1994 says 'The decision whether or not to issue a direction (under Section 61) to leave is an operational one for the Police alone to take in the light of all of the circumstances of the particular case. But in making his decision the senior officer at the scene may wish to take account of the personal circumstances of the trespassers; for example, the presence of elderly persons, invalids, pregnant women, children and other persons whose well-being may be jeopardised by a precipitate move.' Case law (*Small*) has established that, while Police officers do not have to undertake welfare enquiries as such, they must be aware of humanitarian considerations in reaching their decisions and must ensure that all decisions are proportionate. A decision may be taken to explicitly exclude individuals or families with serious welfare needs from a Section 61 direction to leave.
18. Above all, Section 61 should be used within the framework of a jointly agreed strategy for managing unauthorised camping (see Chapter 3). Local authorities, Police and other stakeholders should agree the sorts of circumstances in which Section 61 might be considered appropriate. It is also important that Section 61 should be used consistently within a local area.
19. Regular exchange of monitoring information on unauthorised encampments between Police and local authority personnel is important. In particular, each party should keep the other informed about decisions taken and progress.

Criminal Justice and Public Order Act 1994 Section 62A to 62E

20. Sections 67 to 71 of the Anti-social Behaviour Act 2003 insert Sections 62A to 62E into the Criminal Justice and Public Order Act 1994 (CJPOA). The legislation provides the Police with enhanced powers, where the occupier asks, to direct trespassers to leave land and to remove any vehicles and other property from the land, where there is a suitable pitch available on a relevant caravan site elsewhere in the local authority area.
21. The power may be used where:
 - a) at least two persons are trespassing;
 - b) the trespassers have between them at least one vehicle;
 - c) the trespassers are present on the land with the common purpose of residing there for any period;
 - d) it appears to the officer that the person has one or more caravans in his possession or under his control on the land, and that there is a *suitable pitch* on a *relevant caravan site* for that caravan or each of those caravans.
 - e) the occupier of the land (i.e. the freehold owner or lessee), or a person acting on the occupier's behalf has asked the police to remove the trespassers from the land;
22. A *relevant caravan site* is one which is situated in the same local authority area as the land on which the trespass has occurred, and which is managed by a local authority, registered social landlord, or other person or body as specified by order by the Secretary of State. In two tier authority areas, where a district council is situated within a wider county council area, the *relevant caravan site* may be anywhere within the county council area.

23. Where eviction is considered to be the only option, and the public body believes the conditions required for S62A to S62E of the CJOPA are satisfied, including relevant welfare enquiries, and a *suitable pitch* is available, then the public body may ask the police to remove the unauthorised campers from the land.
24. Where a direction has been given to a person, it is an offence for that person to enter any land in the local authority as a trespasser within three months of the direction being given. A constable may immediately seize and remove a vehicle from the land where there is non-compliance.

Powers Available to Other Landowners

25. Several government bodies are major landowners and their land may be subject to unauthorised encampment - examples include the Forestry Commission and the Highways Agency. Public bodies should ask local authorities to assist with welfare enquiries and local authorities should be prepared to help with these.
26. Private landowners may obtain a possession order through the civil courts requiring the removal of trespassers from their land, using Civil Procedures Rules Part 55 in the county court. Private landowners have no welfare responsibilities towards Gypsies and Travellers and would not be expected to take unauthorised campers' needs into account when deciding to evict.
27. Some private landowners seek to avoid the expense and costs of going to court by using common law rights to recover land from trespassers using 'reasonable force' as necessary. Such action is lawful, and some firms of bailiffs have carried out many evictions effectively and without trouble. Good practice guidelines for common law evictions would seek to ensure that no more than necessary 'reasonable force' is used and might include:
 - (a) Police should always be notified of an eviction and called in to stand by to prevent a breach of the peace.
 - (b) If Police advise that it is inappropriate to carry out an eviction, it should always be delayed until an agreed time.
 - (c) There is a role for local authorities and Police in managing unauthorised camping on private land.
28. As a minimum, local authorities should inform private landowners about their rights to recover land from trespassers, through the courts or using common law powers; authorities should not offer legal advice to landowners but rather refer them to Citizens' Advice Bureaux or solicitors. Authorities should remind landowners about the importance of using reputable bailiffs and only 'reasonable force'.
29. Within the overall strategy for managing unauthorised camping, the local authority might consider acting more directly against encampments when requested by a private landowner, particularly if the Police are not prepared to use Section 61 to evict the encampment. Police should take action if any criminal offences are perpetrated during eviction action by bailiffs or private firms.

Other Enforcement Measures

30. District authorities have powers to deal with statutory nuisance (which could include, for example, rubbish accumulation at unauthorised encampments) and noise. The Crime and Disorder Act 1998 places a duty on Chief Police Officers and local authorities to work together to develop and implement a strategy for reducing crime and disorder. Section 17 imposes a duty on all local authorities (and others) to *'without prejudice to any other obligation imposed upon it . . . exercise its functions with due regard to . . . the need to do all it reasonably can to prevent crime and disorder in its area'*.

Service Provision for Gypsies and Travellers

31. Gypsies and Travellers are entitled to access health, housing, education and welfare services as citizens in the same way as members of the settled community. There is specific recognition of the needs of Traveller children in accessing education, with a Traveller Grant payable under Section 488 of the Education Act 1996. Travellers as a particular group have been identified as having higher than average health needs.

Human Rights

32. The Human Rights Act 1998 incorporates the European Convention on Human Rights into British law. Several Convention rights are relevant in dealing with unauthorised camping. The main relevant rights are:

Article 8: Right to respect for private and family life Everyone has the right to respect for his private and family life, his home and his correspondence.

33. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
34. Case law has established that, while neither eviction action against trespassers nor planning enforcement is incompatible with HRA, either could potentially breach Article 8 rights if not properly used. Authorities, and other public bodies covered by the HRA, must be able to demonstrate that all eviction and enforcement decisions are 'proportionate' in weighing individual harm (in the loss of 'home' for the Gypsy or Traveller) against the wider public interest. Potential challenge under the HRA means that all decision-making must be fully recorded and evidenced to withstand scrutiny.

First Protocol, Article 1: Protection of Property

35. Every natural and legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
36. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

37. This Article might be seen as protecting the settled community's right to quiet enjoyment of their possessions, which might be threatened by nuisance, noise or anti-social behaviour from a problematic unauthorised encampment. This should be one of the considerations to be borne in mind by local authorities and Police when considering eviction action. To date there is no relevant case law.

First Protocol, Article 2: Right to Education

38. No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

39. Education of Gypsy/Traveller children is frequently raised in cases dealing with eviction proceedings, and particularly with planning enforcement actions against unauthorised development. In such cases the question resolves itself to one of the balance between the individual harm to Gypsy/Traveller children's' educational needs and the public interest harm in allowing unauthorised development to persist. To date there is no specific case law on arguments relying on this Article in this context.

Article 14: Prohibition of Discrimination

40. The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property birth or other status.

41. While Article 14 rights are potentially engaged in any action concerning Gypsies and Travellers (as ethnic groups and national minorities), the Article can only be successfully argued if another Article is found to be breached. Where a claim under any Article is rejected, it follows that any claim under Article 14 also falls.

Race Relations and Equalities

42. The Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 gives public authorities - including ODPM, the Home Office, local authorities and the Police - a general duty to eliminate unlawful discrimination, and to promote equality of opportunity and good race relations in carrying out their functions. It also gives listed public bodies specific duties including one to create and publish a Race Equality Scheme which details how they will meet the general duty. In developing new policies or strategies public authorities must assess their impact on different racial groups, and they must consult. If the impact is negative and disproportionate to the aim of the policy, it must be changed. Once implemented, policies must be monitored for their effect on different racial groups. Authorities must publish the results of monitoring and consultation.

43. Both Gypsies and Irish Travellers are recognised as ethnic minorities. Policies for managing unauthorised camping are likely to affect Gypsies and Travellers significantly. The RRA means that local authorities and Police must assess the impact of proposed policies on Gypsies and Irish Travellers and must consult on them. If the policies are likely to have a disproportionately negative impact on Gypsies and Irish Travellers, authorities must ensure that this impact is not disproportionate to the aims and importance of the policies. If it is, it is

important to take measures to reduce this adverse impact or consider other ways to achieve the aims, which would mitigate its negative effect.

44. Since eviction of unauthorised campers and enforcement against unauthorised development are likely to have a large effect on the public, and in particular on the Gypsy/Traveller population, they are functions highly relevant to the RRA general duty and should be prioritised in Race Equality Schemes. When evicting and enforcing, authorities need to ensure that they act in a way which meets the three elements of the general duty and so as to have the minimum negative impact on the Gypsies and Travellers involved.
45. Local authorities and Police must always be able to show that they have properly considered the race and equalities implications of their policies and actions in relation to unauthorised encampments and unauthorised development by Gypsies and Irish Travellers. They must be able to demonstrate that their Policies and actions are proportionate bearing in mind all the circumstances of the case.

Local Government Act 1972

46. Section 222(1)(a) is not limited to situations where there is a particular statutory duty on the authority and can be used to deal with travellers occupying land. It would be appropriate for those situations where the Council can demonstrate that the usual action is ineffective or not effective enough eg where travellers move around the Borough avoiding eviction order. It should be noted that the relevant interest must be one which affect those living within the area of the local authority, or at least affects a significant group of residents. If the interest is one which affects a group of residents rather than all those living in the area, the local authority must be satisfied that the protection of the interest will nevertheless be a matter which is generally beneficial to the area as a whole. The local authority must be satisfied that it would be “expedient” for it to become involved in the matter (ie that there is a good reason to be involved in the proceedings rather than simply leaving the individuals concerned to protect their own interests). There are also the HRA and Race Relations Act considerations to be taken into account.

Local information and data

The Council contributes to the twice-yearly census of Gypsy and Traveller caravans' co-ordinated and published by ODPM.

Table 1 – ODPM Survey 2004 - Count of Gypsy Caravans in Darlington

		19 July 2004		14 January 2004	
Unauthorised sites without planning		Tolerated	Not Tolerated	Tolerated	Not Tolerated
1a	Sites on gypsies own land				
	• Number of caravans	3	0	9	
	• Number of children	3	0	4	
	• Number of adults	5	0	10	
	• Children (0-16)	2	0	1	
1b	Sites on land not owned by gypsies				
	• Number of caravans		40		
	• Number of families		35		
	• Number of adults		72		
	• Number of children		24		
Authorised sites (with planning)		Council	Private	Council	Private
2	• Number of caravans	47	0	76	0
	• Number of families	42	0	60	0
	• Number of adults	81	0	104	0
	• Number of children	42	0	78	0

Table 1 – ODPM Survey 2004 - Count of Gypsy Caravans in Darlington

		20 January 2005	
Unauthorised sites without planning		Tolerated	Not Tolerated
1a	Sites on gypsies own land		
	• Number of caravans	3	0
	• Number of children	2	0
	• Number of adults	2	0
	• Children (0-16)	0	0
1b	Sites on land not owned by gypsies		
	• Number of caravans	3	0
	• Number of families	1	0
	• Number of adults	2	0
	• Number of children	2	0
Authorised sites (with planning)		Council	Private
2	• Number of caravans	97	7
	• Number of families	50	3
	• Number of adults	90 (est)	8
	• Number of children	110 (est)	10 (estimate)

In Darlington there is a combination of known traveller sites that are authorised or tolerated and those that are considered unauthorised/illegal. Routine monitoring visits are made to each encampment and a summary is provided below in tables 3 to 5.

Table 3: Summary of known Traveller Sites in Darlington BC area

LOCATION	STATUS	CARAVAN COUNT November 2004	CARAVAN COUNT 6 January 2005
Honeypot Lane DL3 4DJ	Authorised LA	60	73
Neasham Road DL1 4DJ	Authorised LA	24	30
Hurworth Moor DL2 2EG	Private Planning for 5	3	3
Blackwell Moor DL2 1GB	Private Planning Permission for 2	2	2
Swan House DL2 2XY	Private Unauthorised	3	3
Oxmoor DL2 2UG	Private Planning Permission for 2	2	2
Sadberge DL2 1RN	Private Unauthorised	1	1
Forge Way DL1 2PJ	Private Unauthorised	2 in separate compounds	2

Table 4 Summary of illegal camps in Darlington during 2003

SITE	NUMBER OF VANS	DATE ARRIVED	DATE LEFT
Allington Way	8	22/04/03 DN served 24/04/03	19/05/03
John Dixon Lane	1	19/05/03 DN served 22/05/03	27/05/03
Cummins Alderman Crooks	4	23/05/03	03/06/03
Cummins Alderman Crooks	4	05/06/03 DN served 10/06/04 Summons 13/06/03	17/06/03
Alderman Crooks	2	18/06/03 DN served 20/06/03	23/06/03
Alderman Crooks	9	25/06/03 DN served 02/07/03	07/07/03
Allington Way	9	07/07/03 DN served 09/07/03 Summons 21/07/03 Court Orders 24/07/03	25/07/03
Piercebridge Green	2	21/07/03	22/07/03

SITE	NUMBER OF VANS	DATE ARRIVED	DATE LEFT
McMullen Road	7	04/08/03 DN served 05/08/03 Summons 08/08/03 Court Orders 14/08/03 NB – land had been sold to the Moore family hence process had to be repeated on behalf of landowner	10/09/03
Land adjacent to Old Farm House PH, Morton Palms A67	20	11/08/03 Private land with owner's consent	25/8/03
John Street	2	16/09/03 DN served 23/09/03 Summons 30/09/03	02/10/03
Forge Way	3	16/09/03	17/09/03
Meynell Road	1	19/07/03	20/07/03

Table 5 Summary of illegal camps in Darlington during 2004

SITE	NUMBER OF VANS	DATE ARRIVED	DATE LEFT
Forgeway	3	7 /04/04 DN Served 8 /04/04	14 /04/04
Alderman Crooks/ Cummins	3	28 /04/04	14/05/04
McMullen Road	14	31/05/04	3/06/04
McMullen Road (Car Shock)	2	13/06/04	20/06/04
McMullen Road/ Allington Way	16	13/06/04	20/06/04
Lingfield Way	2	20/06/04	5/06/04
Alderman Crooks Cummins	Slow build up to 49 vans	15/06/04 DNs served at different times as groups arrived – Summonses for 3 August	3/08/04
McMullen Road/ Allington Way 3 fields	49 vans (as above)	3/08/04 DNs served same day with Police	12/08/04 NB moved due to ground conditions. No summonses
John Dixon Lane	28 vans reducing to 12	12/08/04 DNs served 23/08/04 on 20 vans – Summonses on 27/08/04 on 12 vans for 9/09/04	9/09/04

SITE	NUMBER OF VANS	DATE ARRIVED	DATE LEFT
Red Hall	11 rising to 20	9/09/04 DNs 09/09/04 Summonses for 23/09/04 Court 23/09/04	23/09/04
Springfield Park	7	9/09/04 DNs served 9/09/04	11/09/04 – moved to Red Hall
Morton Palms	14	23/09/04	18/10/04
Teesside Airport	2	14/09/04 DN 16/09/04 Summons 29/09/04	7/10/04
Forge Way	3	18/10/04 DN's 21/10/04	26/10/04
Chesnut Street	3	27/10/04	29/10/04

Code of Conduct for Caravan Occupiers

This Code is issued to caravan occupiers and applies in all circumstances regardless of the decisions to tolerate or seek eviction from an unauthorised encampment. Non-compliance with this Code will be used in evidence in any action for eviction from the land. Non-compliance with the Code at a tolerated site is likely to lead to the commencement of eviction proceedings.

Caravan occupiers must:

- (a) Keep caravan groups small, normally not to exceed six caravans at any one time.
- (b) Not create a road hazard or any health and safety hazard.
- (c) Not dump waste and provide evidence, upon the request of authorised Council Officer, that satisfactory provision has been made for all waste, including human waste.
- (d) Not burn rubbish which gives off toxic fumes, or cause any form of nuisance to neighbours or passers by.
- (e) Park vehicles safely and in accordance with the law.
- (f) Not damage fixtures, fittings, trees or hedges.
- (g) Keep the site clean.
- (h) Not threaten or use intimidatory behaviour towards Council employees, other agencies, local residents or other members of the public.
- (i) Keep all animals under proper control.
- (j) Not occupy the same land again for at least another 12 months.
- (k) Once occupation has ceased, move at least 2 miles radius from the site occupied.
- (l) Not engage in any form of criminal activity or anti social behaviour.
- (m) Report incidents of unlawful dumping in the vicinity.
- (n) Identify a spokesperson (with deputy) to represent the group, if requested by an authorised Council Officer.

Camp locations that will not be tolerated

Examples of unsuitable locations are listed below:

- (a) A park, public open space in regular use, public playing fields, sports and recreation ground.
- (b) A village green or other open area within a residential area.
- (c) Public car parking facilities at a hospital, school, supermarket or leisure facility.
- (d) An industrial estate, retail park or business park (this includes a site under development).
- (e) A site where pollution from vehicles or dumping could damage ground water or watercourses.
- (f) A Site of Special Scientific Interest (SSSI) where an encampment endangers a sensitive environment or wildlife.
- (g) A public highway or designated highway land.
- (h) A location where there is, or is likely to be, a significant risk of harm to the health or safety of the caravan occupants eg derelict area with toxic waste or other serious ground pollution; the verge of a busy road where fast traffic is a danger to occupants children.

Criteria to apply when considering the need to evict

An assessment will in all cases be made of each case that includes consideration of the following criteria:

- (a) Compliance with the Code of Conduct (**Appendix C**).
- (b) Unacceptable antisocial behaviour has occurred.
- (c) Environmental Impact.
- (d) Camp location is not tolerated (**Appendix D**).
- (e) The welfare and social needs of the caravan occupiers.
- (f) No toilet, washing or drinking water supply available at the location.
- (g) The availability of authorised caravan pitches in the Tees Valley/Durham County/North Yorkshire.
- (h) Human Rights and Race Relations legislation.
- (i) Complaints from nearby occupiers and the extent to which they are judged to be reasonable and justified.
- (j) The degree to which a lawful tenant or occupier cannot use the land as intended.
- (k) The degree to which the occupation, on prolonged occupation, is detrimental to the interests of the public.

The financial costs incurred by the Council in the short and long term and any affected land owners and people having a legal right to occupy the land.

Joint Agreements with the Police and Neighbouring Local Authorities

1. Darlington Borough Council will enforce the requirements of their policy, having regard to local conditions and circumstances.
2. Darlington Borough Council will liaise with share details relating to the arrival and dispersal of unauthorised encampments with designated officers of Unitary Authorities within Tees Valley, Durham County Council, Durham Constabulary and Cleveland Police. This notification will include details of caravan numbers, locations, any known spokesperson, details of known previous locations, the caravan occupier's future intentions, relevant welfare issues and any other information deemed to be relevant.
3. Durham Constabulary will investigate allegations of criminal and anti social activity associated with unauthorised encampment in accordance with its policies and procedures.
4. Durham Constabulary will use the powers of Section 61 and section 62 of the Criminal Justice and Public Order Act as appropriate. Any request to the Police by an Officer of the Council to invoke these powers should be accompanied by evidence as to the special circumstances which exist.
5. Details about significant anti social behaviour reported or witnessed will be referred to the designated officer in the Local Authority or the Police, who will liaise on intended and/or actual actions taken.
6. All organisations will set up liaison arrangements, including contact points, arrangements for convening meetings and liaison with press and media.

**RECORD OF DECISION ON TOLERATION OR EVICTION
OF TRAVELLERS FROM UNAUTHORISED ENCAMPMENTS**

Location of Encampment:

Date of Arrival:

Factors Taken Into Account	Tick	Comment
Complaints from nearby occupiers and the extent to which they are judged to be reasonable and justified.		
Compliance with the Code of Conduct		
Camp location is not tolerated		
The degree to which the occupation, on prolonged occupation, is detrimental to the interests of the public.		
The degree to which a lawful tenant or occupier cannot use the land as intended.		
The welfare and social needs of the caravan occupiers.		
Details of toilet, washing or drinking water supply available at the location		
The availability of authorised caravan pitches in the Tees Valley/Durham County/North Yorkshire.		
The financial costs incurred by the Council in the short and long term.		
The financial costs incurred by land owners and people having a legal right to occupy the land.		
Human Rights and Race Relations legislation.		

Recommendation:

Toleration (review date:) Eviction

Reason: (#refer to policy)

Signature of Officer making decision:

Date:

Summary of Environmental Health Intervention

Initial Response (all reference to days are working days of Monday to Friday)

Step 1 (Day 1)	Development & Environment Department Call Centre/Reception Receive information about traveller site – record details on data base and create job sheet for EH section.
Step 2 (Day 1)	Environmental Health Section visit site, within one working day, to establish and record details of site, number and type of vehicles and reasons for the camp.
Step 3 (Day 1)	Establish ownership of land. If Council owned land or owner formally seeks Council assistance proceed to step 4. (If travellers occupying land with owners consent notify Planning Enforcement Officer.)
Step 4 (Day 1)	Seek details of travellers health welfare and accommodation needs. Provide written summary of policy on unauthorised encampments that includes a copy of the Code of Conduct to each caravan, details of authorised sites in the area, details of unsuitable locations and reasons for eviction.
Step 5 (Day 1)	Notify Health Visitor, Education with details of location and number of caravans etc – in writing by fax – seeking opinion.
Step 6 (Day 2)	Continue to monitor site - recording details of environmental impact. Record new arrivals and provide them with information as step 4
Step 7 (Day 2)	All information about encampment presented in case file to Environmental Health Manager to make and record decision on toleration or eviction.
Step 8	Receive reports from Health Visitor and Traveller Education - EH manager reviews decision made on toleration or eviction

Toleration Procedure

Step 1 Day 2 +	EH Section monitor site recording: details of changes in numbers or location of caravans; any Public Health Issues (including storage and disposal of household waste); Welfare needs of travellers; Compliance with Code of Behaviour; Compliance with agreed departure dates.
Step 2	Provide regular (weekly) summary to Director
Step 3	Repeat steps 1 & 2 until either: Travellers leave on agreed date or Eviction procedure implemented

Eviction Procedure

Step 1 (Day 2)	EH Section serve direction Notices on each family giving time (not less than 24 hours) to leave site.
Step 2 (Day 2)	Request date from Magistrates Court to hear Council complaint.
Step 3	Serve details of hearing on traveller family so that they can attend and be legally represented
Step 4	Obtain Summons from Court and immediately serve on traveller family
Step 5	Monitor site up to the date hearing of request for Eviction Order
Step 6	Obtain Eviction Order and serve on each traveller family
Step 7	Evict travellers after making arrangements for assistance of Bailiffs

Note: Environmental Health Section will notify Police and adjoining Local Authorities of traveller movements.

Traveller Caravan Movement Certificate

Local Authority Providing Information	Darlington Borough Council Public Protection Division 11 Houndgate
Completing Officer	Tel 01325 388### Fax 01325 388555
Date of Notification	
Location from which Gypsies/Travellers Moving	
Location Gypsies/Travellers Occupied Previously and Possible Future Location	
Number of Vehicles Moving	Caravans: Vehicles:
Estimated Number of Persons in Travelling Group	
Particular Needs of Group (if known)	School Age Children: Health:
Relevant Information about the Encampment/ Occupants	