

Overview & Scrutiny Panel Review Report on Unauthorised Encampments in Thanet

Cabinet	16 December 2019
Report Author	Penny Button Head of Safer Neighbourhoods
Portfolio Holder	Cllr Whitehead, Housing and Safer Neighbourhoods
Status	For Recommendation
Classification:	Unrestricted
Key Decision	Non Key
Reasons for Key	N/A
Previously Considered by	Traveller Working Party 6 November 2019 Overview & Scrutiny Panel 19 November 2019
Ward:	All

Executive Summary:

The O&S Panel commissioned a Review Group to develop an understanding and managing the impact of Traveller unauthorised encampments in the Thanet area; whilst ensuring that TDC continues to undertake its obligations to the Traveller community and Thanet residents. This Group reported back to the O&S Panel in November who agreed to pass recommendations to Cabinet.

Recommendation(s):

It is recommended that further work is undertaken to assess the feasibility and cost implications of three temporary tolerated sites in the district at Potten Street, St Nicholas at Wade, Tivoli Brooks and Ramsgate Port, with a view to using them on a rotational basis.

CORPORATE IMPLICATIONS

Financial and Value for Money	There are no direct financial implications arising from this report. One of the recommendations for Cabinet to consider is that further work be undertaken to assess the feasibility and cost implications of establishing temporary tolerated sites in the district. The cost of undertaking this work can be met from existing budgets. However, it should be noted that there is currently no budget for the provision of sites within the medium term financial plan.
Legal	No specific additional legal comments, as the relevant legislation is referred to in the body of the report. However, it is worth commenting that the provision of temporary sites could reduce the very regular requirement for the Council to take action to remove unauthorised encampments in the district.
Corporate	Section 124 of the Housing and Planning Act 2016 removes the duty on local authorities under the Housing Act 2004 to assess the accommodation needs

	<p>of Gypsies and travellers in their area as a distinct category. Instead, it specifies that local housing authorities should consider the needs of people "residing in or resorting to their district with respect to the provision of sites on which caravans can be stationed, or places on inland waterways where houseboats can be moored".</p> <p>It is anticipated that there will be modifications, following the recent examination, to the draft Local Plan to recognise the Gypsy and Traveller accommodation needs identified. Draft Local Plan Policy HO22 would therefore state that "Pending the next review of the Plan the Council will take proactive steps to accommodate all emerging needs of Gypsy and Travelling communities within the District on temporary sites and, wherever possible, permanent sites which meet the [access and environmental criteria set out in the Plan]. The Council shall address the identified need and monitor need in three stages: to continue to work with families to identify suitable short term sites; to commence immediately to identify suitable long term sites and to grant permission for them; and, to identify additional sites required to meet total provision in the next Plan review."</p>								
<p>Equality Act 2010 & Public Sector Equality Duty</p>	<p>Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.</p> <p>Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.</p> <table border="1" data-bbox="400 1339 1372 1601"> <tr> <td colspan="2">Please indicate which aim is relevant to the report.</td> </tr> <tr> <td>Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,</td> <td></td> </tr> <tr> <td>Advance equality of opportunity between people who share a protected characteristic and people who do not share it</td> <td></td> </tr> <tr> <td>Foster good relations between people who share a protected characteristic and people who do not share it.</td> <td></td> </tr> </table> <p>The council has to ensure it meets the requirements set out within The Equality Act 2010, which makes it unlawful to treat someone less favourably because of a range of protected characteristics, including race, nationality or ethnic or national origins. The following of a nomadic lifestyle is lawful, indeed it is a culture that is recognised and protected through legislation.</p>	Please indicate which aim is relevant to the report.		Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,		Advance equality of opportunity between people who share a protected characteristic and people who do not share it		Foster good relations between people who share a protected characteristic and people who do not share it.	
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CORPORATE PRIORITIES (tick those relevant) ✓	
Growth	
Environment	
Communities	✓

1. Introduction and Background

- 1.1.** The frequency and duration of unauthorised encampments has grown considerably in recent years, with a sharp increase in the last two years.
- 1.2.** Historically these incursions have used TDC land, KCC land and private land, however there has been a growing tendency to use TDC land.
- 1.3.** The Equality Act 2010 makes it unlawful to treat someone less favourably because of a range of protected characteristics, including race, nationality or ethnic or national origins. The following of a nomadic lifestyle is lawful, indeed it is a culture that is recognised and protected through the Act.
- 1.4.** It is therefore imperative that full consideration of this Act is given when the council determines what action to take against unauthorised encampments.
- 1.5.** The Equality Act does not give a legal right to trespass, however, trespass is a civil rather than a criminal offence. Sections 77-78 of the Criminal Justice and Public Order Act gives local authorities the power to direct individuals to remove their vehicles and belongings and to leave our land, or any land occupied without the consent of the landowner, when and if required.
- 1.6.** Prior to considering the issuing of a section 77 notice, the council is required to undertake an assessment of any welfare needs or concerns of every individual at the location. Only when (and if) officers undertaking visits to the encampment are satisfied that there are no welfare concerns will a notice be issued.
- 1.7.** Before a court application for and order to facilitate the removal of groups engaged in unauthorised encampments, the council response takes account of the issues of behaviour, whether, criminal, anti-social or nuisance, in combination with the impact on the landowner and settled community rather than simply because encampments are present at a specific location. It is not unusual to negotiate the duration of an encampment meaning that authority from court to facilitate a removal is not always required.
- 1.8.** Decisions to evict or not must, of course, be balanced (as directed by legislation and Government guidance), and be compliant with the terms of the Human Rights Act 1998, demonstrating legality, necessity, and proportionality.
- 1.9.** The Police have powers to evict people from unauthorised encampments, as provided for by Sections 61 and 62 A-E, Criminal Justice & Public Order Act 1994 and have their own criteria and thresholds that must be met prior to the issue of a section 61 notice.
- 1.10.** S.187B of the Town and Country Planning Act 1990. Section 222 of the Local Government Act 1972, gives power to local authorities to apply for preventive injunctions in order to prevent unauthorised encampments. Following the outcome of the London Borough of Bromley green space injunction legal advice was at the current time the district did not fulfil the background criteria to support an application in Thanet.

- 1.11. Over 70 locations across Thanet have been assessed as vulnerable to vehicle based unauthorised encampments. A programme of additional security measures for locations is under discussion but at best estimates will take several years to facilitate. A district wide Public Space Protection Order is being considered across foreshore and cliff top locations.
- 1.12. Legal advice has been sought as to the use of the current Anti-Social Behaviour (ASB) PSPO covering Margate and Ramsgate town centres. Legal advice states that whilst the PSPO should not be used to prohibit the encampments they can be an effective tool to tackle waste.
- 1.13. Legal advice has been sought as to the use of existing bye laws with regard to no overnight camping in specific parts of the district. Whilst byelaws are not commonly used they are a tool which we can utilise in future with adequate signage, but only if those engaged in unauthorised vehicle based encampments can be advised of other suitable locations.
- 1.14. Section 124 of the Housing and Planning Act 2016 places a duty on local authorities under the Housing Act 2004 to assess the accommodation needs of Gypsies and Travellers in their area as a distinct category. Instead, it specifies that local housing authorities should consider the needs of people "residing in or resorting to their district with respect to the provision of sites on which caravans can be stationed, or places on inland waterways where houseboats can be moored".
- 1.15. The Travellers Review Group was set up at the Overview & Scrutiny Panel to review and report back to the Panel an understanding and managing the impact of Traveller unauthorised encampments in the Thanet area; whilst ensuring that TDC continues to undertake its obligations to the Traveller community and Thanet residents.
- 1.16. The review group were asked to investigate the impact of Traveller incursions in Thanet and make recommendations to the Overview and Scrutiny Panel on what the Council could do to mitigate the impact of the incursion (if necessary) whilst still meeting its obligations to local residents and the Travellers.

2. Current Situation

- 2.1. As part of the Local Plan the Local Authority is required to assess if provision of Gypsy and Traveller accommodation is required. In previous assessments there has been no requirement needed. However, due to the rise in unauthorised encampments there is now a (cultural) need over the total plan period for 7 permanent and 5 transit pitches. These are not sites but vehicle pitches, these pitches can be delivered through the Local Authority or private sites. Unlike other areas, Thanet has no local authority or privately run sites.
- 2.2. The council's draft local plan 2011-2031 has been subject to recent examination and it is anticipated that the Planning Inspector will propose a modification to address the identified need for gypsy and traveller accommodation. The anticipated modification will set out three stages:
 - to continue to work with families to identify suitable short term sites;
 - to commence immediately to identify suitable long term sites and to grant permission for them; and,

- to identify additional sites required to meet total provision in the next Plan review.
- 2.3.** Following adoption of the current draft Local Plan, the council will complete a review of the plan, including the identification of proposals for specific sites to be allocated for any gypsy and traveller accommodation still required. This is likely to be through a 'call for sites' process.
- 2.4.** The current or future Local Plan does not determine who will deliver sites. Sites could be in public or private ownership and delivered by public bodies, private developers or individual households within the gypsy and traveller communities.
- 2.5.** There are three distinct types of sites, transit, temporary tolerated and permanent. Each of these sites require different levels of infrastructure and have different impacts, to look at options for all of these is a significant piece of work which was not achievable within the short timescale of the review group to report back to Overview and Scrutiny Panel. The Group therefore concentrated on options for temporary tolerated sites only.
- 2.6.** A temporary Tolerated site is by its nature 'temporary' and would not be considered as a permanent geographical addition to the district.
- 2.7.** The advantage with this type of sites is that it enables agencies to direct unauthorised encampments to this site to be tolerated for an agreed amount of time. This enables more effective enforcement on those unauthorised encampments which chose to ignore the direction and stay on other land. A temporary tolerated site also allows easier management of amenities such as waste collection and toilet provision, reducing the impact on the local area.
- 2.8.** A temporary tolerated site will also provide provision whilst working on longer term resolutions to fill the required allocation. It is anticipated that planning permission will not immediately be required to change the sites to a temporary tolerated use, although this will be reviewed with the Council's planning team once further feasibility work has been carried out.
- 2.9.** The Review Group looked at all TDC land based assets and visited all potential suitable sites and made observations around their initial suitability as a temporary tolerated site. Subsequently an options matrix was completed measuring the advantages/disadvantages of each location and scoring them accordingly, with the three lowest scoring sites being the preferred options. These sites were:
- Potten Street, St Nicholas at wade (owned by KCC)
 - Tivoli Brooks (owned by TDC) and;
 - Ramsgate Port (owned by TDC)
- 2.10.** In order to minimise the impact it was proposed that the three sites identified from the options matrix were looked at to be operated on a rotational basis and that further work was required to assess the feasibility and cost implications of the sites.
- 2.11.** Overview & Scrutiny Panel thanked officers for providing support to the review group and acknowledged that it was a difficult decision to make. They expressed concern that Ramsgate Port had been proposed as a site because it was currently under a feasibility study for investment purposes.

- 2.12. The Panel were addressed by two members of the public who spoke against the use of Potten Street and against the provision of a site in Thanet. Two members also addressed the panel and spoke about the work of the group expressing concern over the short list of sites particularly Tivoli.
- 2.13. The panel recognised the work of the review group and the work that they had undertaken in identifying sites, including visiting them and the consideration that had been given to how these sites would impact the settled local communities and other factors like flooding. They questioned the legal need to provide a site and why we would provide one as there is now legal obligation.
- 2.14. The Panel were concerned to ensure that the council currently using all its powers to remove unauthorised encampments in the district and the cost of dealing with them, it was pointed out that the costs go beyond the transport costs for things such as waste removal.
- 2.15. The panel agreed the need to be thorough in its review and firm in its recommendations and they felt strongly that the public view should be sought before a final decision was made on the issue.
- 2.16. It was noted that whilst extensive work had been carried out by the review group it did not have a remit, or timescales, to conduct a public consultation.
- 2.17. The O&S Panel did not agree with the recommendations of the Working Party and following robust scrutiny recommended to Cabinet that further work be undertaken including extensive public consultation to assess the feasibility and cost implications of establishing temporary tolerated sites in the district.

3. Options

- 3.1. That Cabinet adopt the Overview & Scrutiny Panel recommendation that further work be undertaken including extensive public consultation to assess the feasibility and cost implications of establishing temporary tolerated sites in the district.
- 3.2. That Cabinet reject the recommendation of the Overview & Scrutiny Panel
- 3.3. That Cabinet approve that further work is undertaken to assess the feasibility and cost implications of three temporary tolerated sites in the district at Potten Street, St Nicholas at Wade, Tivoli Brooks and Ramsgate Port, with a view to using them on a rotational basis.

4. Recommendations

- 4.1 An extensive amount of work has already been undertaken to identify the three temporary tolerated sites in the district at Potten Street, St Nicholas at Wade, Tivoli Brooks and Ramsgate Port. The advantage with this type of sites is that it enables agencies to direct unauthorised encampments to these sites to be tolerated for an agreed amount of time. This will enable more effective enforcement on those unauthorised encampments which chose to ignore the direction and stay on other land.
- 4.2 It is recommended that further work is undertaken to assess the feasibility and cost implications of three temporary tolerated sites in the district at Potten Street,

St Nicholas at Wade, Tivoli Brooks and Ramsgate Port, with a view to using them on a rotational basis.

Contact Officer:	Penny Button, Head of Safer Neighbourhoods
Reporting to:	Gavin Waite Director of Operational and Commercial Services.

Annex List

Annex 1	Overview & Scrutiny Report from 19 November 2019
Annex 2	Summary of site findings
Annex 3	Options Matrix

Corporate Consultation

Finance	Chris Blundell, Head of Financial Services and Deputy section 151 Officer
Legal	Estelle Culligan - Head of Legal and Democratic Services