

A Protocol for Managing Unauthorised Encampments in Cambridgeshire

This document sets out a Joint Agency Protocol between the local authorities across Cambridgeshire and Cambridgeshire Constabulary for managing unauthorised encampments.

The parties to the Protocol are: -

Peterborough City Council
Cambridgeshire County Council
South Cambridgeshire District Council
East Cambridgeshire District Council
Huntingdon District Council
Fenland District Council
Cambridge City Council
Cambridgeshire Constabulary

Each partner agency has specific responsibilities in relation to dealing with unauthorised encampments which are described within this document.

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 legislation. Romany Gypsies and Irish Travellers are protected under this Act. The Public Sector Equality Duty applies to the police and all other public authorities. The Act places a duty on all authorities to have due regard to the need to eliminate unlawful racial discrimination and promote equality of opportunity and good relations between persons of different racial groups.

This protocol aligns with Home Office Statutory Guidance that supports the introduction of the Police, Crime Sentencing and Courts Act 2022.

“It remains the case that the response to unauthorised encampments and to individuals who do not leave land when asked to do so, causing harm in the conditions set out, requires a locally driven multi-agency response, led by local authorities and supported by police.”

Home Office Statutory Guidance

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1. Introduction

- 1.1 This protocol supports the National Police Chief's Council (NPCC) Operational Advice in relation to Trespassing on Land without Consent. It reflects the changes in legislation introduced by the Police, Crime Sentencing and Courts Act 2022 and replaces any previous partnership protocol in relation to unauthorised encampments.
- 1.2 There are two key elements to an unauthorised encampment; Firstly that those present are trespassers – i.e they are on land they do not own and do not have permission to be on and, they are or intend to reside there.
- 1.3 An unauthorised encampment could be many things, including people in tents or people in caravans. However, if people have entered land without the landowner's permission, it is unauthorised and represents a trespass.
- 1.4 The statutory guidance supporting the Police Crime Sentencing and Courts Act states that the legislation has been designed to apply to anyone who meets the conditions for enforcement action, regardless of race or ethnicity. It also states that whilst the Government expects the police to act where appropriate against those who break the law, the police and other public bodies must also continue to consider their obligations under human rights legislation, their Public Sector Equality Duty and wider equalities legislation.
- 1.5 This is an important point as, in many cases, Gypsies, Roma and Travellers – recognised ethnic groups in England and Wales – are often involved in setting up what are referred to as unauthorised encampments. A wider understanding of why this happens and the context of these events, is necessary to make a reasoned judgment on appropriate action, together with the evidence of individual events.
- 1.6 Police officers can assess the impact of an unauthorised encampment however, there should be no expectation of police involvement simply because it is there.

2. Aim

- 2.1 The aim of this protocol is to:
 - Identify the respective responsibilities of Police and partner agencies in responding to unauthorised encampments
 - Manage public and partnership expectations recognising the statutory responsibilities of both the police and local authorities
 - Proportionately respond to reports of unauthorised encampments using a joint partnership approach
 - Deliver a consistent response while upholding the Human Rights Act, the Public Sector Equality Duty and wider equalities legislation
 - Promote the safety and wellbeing of all communities involved and affected by unauthorised encampments

3. Principles

- 3.1 Responsibility for dealing with unauthorised encampments initially rests with the landowner. Peaceful, non-confrontational occupation of land will normally be dealt with by private landowners or the Local Authority using powers available to them to regain possession of the land. However, where there are aggravating factors then there may be a need for Local Authorities and Police to consider taking action.
- 3.2 There are a range of powers available to landowners, Local Authorities and Police for dealing with unauthorised encampments. The local authority has primacy for action relating to unauthorised encampments on any council land, including highways and land classed as 'primary land'.
- 3.3 The unauthorised encampments provisions do not seek to lead to action against rough sleepers, nor to those looking to access the countryside for leisure, such as ramblers and other groups, providing they do not meet the conditions for the offence.
- 3.4 The mere presence of an encampment without any aggravating factors should not normally create an expectation that police will use eviction powers. This should be communicated to the public, landowners, local authorities, and other agencies.
- 3.5 Police officers and staff must act in a neutral, objective and open way, ensuring that the circumstances of each encampment are considered on an individual basis. It is acknowledged that the majority of persons on unauthorised encampments are law abiding, with a minority who may take part in criminal or antisocial behaviour. It is generally the behaviour of this minority that causes increased community tension.
- 3.6 Local authorities and the police respect the right of people to pursue different lifestyles and to live in a style different from that of the wider community. However, individuals or groups pursuing different lifestyles are required to act lawfully in the same way as that expected or applied to the wider community.
- 3.7 The police have a positive duty to prevent crime and disorder and the proportionate use of police powers will be considered where required.
- 3.8 The police will undertake to:
 - Respond to each case on its own merits and determine through gathering evidence what the appropriate action should be
 - Proactively investigate allegations of crime, harassment and anti-social behaviour
 - Where there is a requirement for police involvement, undertake to reach joint decisions between the local authority, landowner(s) and the police regarding the most appropriate course of action balancing the impacts on all affected parties
 - Balance the needs and expectations of members of the settled community with those in the encampment, taking proper account of the Human Rights Act
 - Engage with all local communities and provide reassurance that the authorities are taking appropriate, proportionate and legal action and,
 - Ensure that the police remain impartial and that no Breach of the Peace takes place where civil action is being taken involving bailiffs.

4. Decision Makers

- 4.1 Each local authority will identify an officer with responsibility for dealing with unauthorised encampments. These officers will be at a level within the organisation which enables them to take on-the-ground action and enforcement decisions. For the local authorities this will generally be the Traveller Liaison Officer (TLO)¹. For the police, this will either be the Force Duty Manager or the local Community or Neighbourhood Inspector.
- 4.2 When any of the parties to this agreement becomes aware of an unauthorised encampment on land, information about it and its location will be passed on to the relevant local authority team responsible for Traveller liaison. In the event of criminality being identified, the police should also be notified. Information will also be provided to other relevant service providers depending on the prevailing circumstances (e.g. Health, Education etc). This should not preclude the police from acting to remove an encampment out of hours should circumstances make this a necessity.

5. Private Land

- 5.1 Responsibility for unauthorised encampments on private land rests with the landowner. Local authorities will not usually take action to evict where there is an unauthorised encampment on privately owned land. The Traveller Liaison Officer will give the landowner (if known), any information as is appropriate regarding the intentions of the trespassers regarding their proposed length of stay. Where the landowner is seeking to recover possession of the land, the TLO may provide advice and assistance as to the necessary process.
- 5.2 In the case of significant community or public safety concerns, calls for police or previous incidents in relation to the same group of trespassers where a police response was appropriate, the nominated lead police officer (or his/her representative) should make an early visit to the land to assess the situation and liaise with those present.
- 5.3 Neither police officers nor local authority officers should give legal advice to landowners or trespassers other than that available in information leaflets provided by the local authority; rather the landowner should be advised to seek independent legal advice. See Appendix 1 for a summary of the powers available to private landowners.

6. Local Authority Controlled Land

- 6.1 If the encampment is on local authority controlled land then the relevant local authority will be the lead agency and will take responsibility for assessing the circumstances of the encampment, including the welfare of those present.

¹ References in this document to Traveller Liaison Officer include other nominated officers within the relevant local authority who fulfil such a role or function.

- 6.2 The Traveller Liaison Officer of the authority owning or having control of the land will visit the unauthorised encampment as soon as practicable, ideally within 24 hours², to assess the circumstances and determine a suitable course of action. This also presents an opportunity to provide the campers with information on location of housing providers, health, education, social services, and waste disposal facilities.
- 6.3 Where the authority reaches the view that the incident is not causing a level of damage, disruption or distress that would require the use of police powers, it should consider providing services, such as toilets, a refuse skip and a supply of drinking water at that site.³
- 6.4 Should the local authority Traveller Liaison Officer have reason for a police officer to accompany them on this site visit, then a request should be made to the police control room. The reason for requesting police attendance should be documented.
- 6.5 Where appropriate, the local authority Traveller Liaison Officer will advise the police control room of the result of any site visit.

This should include:

- Location of the encampment and its suitability
 - Any agreed time for the trespassers to move on
 - Total number of vehicles
 - Approximate number of residents
 - Whether there are any health or welfare considerations with regard to the trespassers encamped there.
 - Any anticipated action by the Council
- 6.6 If forces are made aware of issues relating to trespassing without consent, they will be expected to respond to each case on its own merits and determine through gathering evidence, what the appropriate action should be. Ideally, this will be a joint decision together with the local authority and landowner.
- 6.7 If it is determined necessary to consider the use of police powers, the police will give consideration to the legislation available, whichever is the most appropriate to manage the circumstances. Ultimately, the final decision on the use of powers under S60-62 of the Criminal Justice and Public Order Act 1994 rests with the police, but the use of police powers should not be the default position.

² Local authorities may only be able to react on the next working day.

³ According to Circular 18/94, where there are no available authorised pitches and no nuisance is being caused, local authorities are advised to consider providing basic services including drinking water, a skip and toilets. Additionally, where there are children 'in need' who would not otherwise achieve a reasonable standard of health and development without such services, services could be provided under Section 17 of the Children Act 1989

7. Police Response to Unauthorised Encampments

- 7.1 Cambridge Constabulary has adopted the National Police Chief's Council (NPCC) Advice in respect of dealing with Trespassing on land without consent. This provides guidance covering the options to be considered in using the powers available for police when responding to circumstances in respect of trespassing on land without consent. Such powers have been amended by the Police, Crime, Sentencing and Courts (PCSC) Act 2022.
- 7.2 This operational advice is supported by the statutory guidance issued by the Secretary of State under Section 62F of the CJPOA 1994⁴ which assists forces in the exercise of these powers in both the new and amended provisions of the Act.
- 7.3 The statutory guidance states that these measures have been designed to apply to anyone who meets the conditions for enforcement action regardless of race or ethnicity. It also states that whilst the Government expects the police to act where appropriate against those who break the law, the police must also continue to consider their obligations under human rights legislation, their Public Sector Equality Duty and wider equalities legislation.
- 7.4 Where appropriate, upon being advised of a new unauthorised encampment, visits by the police should, wherever possible be done together with the Local Authority, landowner and other relevant agencies in order that an assessment can be carried out. PCSOs should only be deployed to encampments as part of the local neighbourhood policing team response, not in relation to confrontational situations with the occupants of unauthorised camps when they are being initially set up.
- 7.5 'Site' Meeting
- (a) Where the use of eviction powers is considered necessary, a meeting will take place which shall, if possible, include the nominated lead police officer, Local or Duty Inspector or nominated deputy (if not already lead officer), the local authority Traveller Liaison Officer, the lead nurse for Gypsy and Traveller health or their representative, the landowner and, if appropriate, a representative from the encampment.
 - (b) The aim of the meeting will be to achieve a common understanding of the problems caused by the encampment and to formulate a solution, which addresses and resolves the problems.
 - (c) Many owners and occupiers of land find it difficult to understand why the police or the local authority will not immediately exercise their powers when requested to do so. Care should be taken by the lead police officer and/or the local authority Traveller Liaison Officer to ensure that, if the power is not exercised, the reason why is communicated to both owners and occupiers of the land and to other interested parties.
 - (d) Should the police or the local authority decide to use their powers they will advise the landowner and local community.

⁴ [Draft Statutory Guidance for Police on Unauthorised Encampments \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/101444/draft-statutory-guidance-for-police-on-unauthorised-encampments.pdf)

- 7.6 Current legislation affords the police and local authorities a range of powers, the use of which is subject to a range of factors. Groups of known individual families where there are small numbers in acceptable locations, not causing anti-social behaviour or crime, can be allowed to remain in that location longer than would otherwise be the case if the law were different. This approach leads to the Gypsies and Travellers having a real incentive to act in a responsible manner.

8. Consideration of Use of Police Powers

- 8.1 The co-ordinated use of powers available under the Criminal Justice and Public Order Act (CJPOA) 1994 allows for a proportionate response to incidents covered by this guidance based on the behaviour of the trespassers.
- 8.2 Sections 60C to 60E of the Criminal Justice and Public Order Act 1994 set out the criminal offence relating to residing on land without consent, in or with a vehicle, and associated seizure and forfeiture powers. Ultimately, the final decision on using the new Section 60C(1) CJPOA power rests with the police, but the use of police powers should not be the default position.
- 8.3 The use of police powers under Section 61 or 62 CJPOA 1994 to bring about the prompt and lawful removal of groups trespassing without consent will be considered where:

i) Local amenities are deprived to communities or significant impact on the environment.

This could include, for example, occupying any part of a recreation ground, public park, school field, village green, or depriving the public use of car parks. The fact that other sections of the community are being deprived of the amenities must be evident before action is taken.

ii) There is local disruption to the economy.

Local disruption to the economy would include occupying a shopping centre car park, or in an industrial estate, if it disrupts workers or customers, or agricultural land, if this results in the loss of use of the land for its normal purpose.

iii) There is other disruption to the local community or environment.

This might include where other behaviour, which is directly related to those present is so impactful that a prompt eviction by police becomes necessary, rather than by other means.

iv) There is a danger to life.

An example of this might be a group gathered adjacent to a motorway, where there could be a danger of children or animals straying onto the carriageway.

v) There is a need to take preventative action.

This might include where a group of trespassers have persistently displayed anti-social behaviour at previous sites and it is reasonably believed that such behaviour will be displayed at this newly established site. This reasoning will take on greater emphasis if the land occupied is privately owned, as the landowner will be responsible for the cleansing and repair of their property.

9. Residing on Land without Consent in or with a vehicle S60C(1) CJPOA 1994

9.1 The primary conditions of this new criminal offence are contained in Section 60C(1) of the Criminal Justice and Public Order Act 1994, as amended by the PCSC Act 2022. The offence applies where:

- a) a person is aged 18 or over;
- b) a person is residing, or intending to reside, on land without the consent of the occupier of the land;
- c) a person has or intends to have at least one vehicle with them on the land;
- d) one or more conditions in subsection 60C(4) of the CJPOA are met (see 8.3 below);
- e) the person is requested to leave and/or remove their property by the landowner, a representative of the landowner or police.

9.2 Section 60C(2) goes on to say that a criminal offence is committed when a person meets all the conditions in Section 60C(1) as above and also meets one of the following:

- a) a person fails to comply with the request to leave as soon as reasonably practicable; or
- b) a person re-enters or enters the land with an intention of residing there without consent and has, or intends to have a vehicle with them, within 12 months of the request being made.

9.3 The specific conditions related to harm under Section 60C(4) are:

- a) in a case where a person is **residing on the land**, significant damage or significant disruption has been caused or is likely to be caused as a result of their residence;
- b) in a case where a person is not yet residing on the land, **it is likely that** significant damage or significant disruption would be caused as a result of their residence if they were to reside on the land;
- c) that significant damage or significant disruption **has been caused or is likely to be caused** as a result of conduct carried on, or likely to be carried on, by that person whilst on the land;
- d) that significant distress **has been caused or is likely to be caused** as a result of offensive conduct carried on, or likely to be carried on, by that person whilst on the land.

9.4 Those aged 18 or over would commit the proposed offence if they reside or intend to reside on land without consent and:

- they have or intend to have at least one vehicle with them;
- they cause or are likely to cause significant damage, disruption or distress as a result of either residing / intending to reside on the land or their conduct / potential

conduct whilst on the land;

- they fail as soon as reasonably practicable to leave when directed to by the owner, someone representing them or the police, or return within the prohibited period of **12 months**.

9.5 The word **significant** will be crucial in establishing if any criminal offence has been committed under this new legislation. The statutory guidance states: “If the police deem the harms to not be significant, then the offence under Section 60C would not apply.”

9.6 Consideration will be given to whichever is the most appropriate legislation available to manage the circumstances. In cases where no significant harms or any criminal offence have been committed, police may decide to take other enforcement action using Sections 61 or 62 of the Criminal Justice and Public Order Act 1994, providing the necessary conditions are met.

10. Section 61 Criminal Justice and Public Order Act, 1994

10.1 The use of Section 61 Criminal Justice & Public Order Act 1994 relies upon reasonable steps being taken, by or on behalf of the landowner, to ask trespassers to leave in every case before police powers can be used.

10.2 Section 61 gives police the powers to direct trespassers on land who have the common purpose of residing there for any period. As introduced in the 2022 Act, a direction under 61 can be issued to trespassers on land that forms part of a highway, but only where other conditions are met.

10.3 The power applies where a senior officer reasonably believes that:

two or more people are trespassing on land with the purpose of residing there, that the occupier has taken reasonable steps to ask them to leave, and either of the below have occurred:

- any of the trespassers have caused, damage, disruption, or distress or
- The trespassers have between them six or more vehicles on the land.

10.4 The conditions that can be caught by the power to direct under 61(1) (a) have been broadened under the 2022 Act. These replicate the damage, disruption and distress included in the new offence but will not need to meet the threshold of ‘significant’.

10.5 Failure to comply with the direction, by failing to leave the land as soon as reasonably practicable, without reasonable excuse, is an offence.

10.6 Similarly, it is an offence for a trespasser who has left the land in compliance with a direction to re-enter it as a trespasser within 12 months of the direction being given.

- 10.7 If breached without reasonable excuse, police will be able to exercise powers of arrest and seizure. If a person fails to remove their vehicle as directed, without reasonable excuse, or enters the land as a trespasser within 12 months of the direction to leave being given, the police officer may seize and remove that vehicle under section 62 of the CJPOA.
- 10.8 Where the landowner has agreed the encampment may stay, those in that encampment are not trespassers. Section 61 or 62A therefore CANNOT apply. (Ref. Josette Fuller and others -v- Chief Constable of Dorset Police 12/12/01).
- 10.9 Where a landowner has given his permission for the encampment to remain for a period of time and there is significant change in circumstances necessitating removal of the encampment, the police can ask the landowner to withdraw permission for the encampment. The change that prompted this request and the reason for the request must be documented. Evidence should be taken to show that the withdrawal of permission has been communicated to those occupying the encampment and understood by them.
- 10.10 Similarly if an eviction notice has already been served, or court proceedings are pending through the civil courts, but due to a sudden and significant change in the circumstances of the encampment, its immediate removal is considered necessary, the use of Section 61 or Section 62A can still be an option. This change in circumstances must be documented and subsequently evidenced.
- 10.11 A notice under Section 61 can only be issued when all preconditions are met.

11. Section 62 Criminal Justice and Public Order Act, 1994

- 11.1 Section 62A of the Criminal Justice & Public Order Act 1994 creates a power for a senior police officer to direct a person to leave land and remove any vehicle or other property with him / her on that land if the senior police officer present at a scene reasonably believes that the conditions below are satisfied.
- 11.2 The conditions are-
- that the person and one or more others (the trespassers) are trespassing on the land;
 - that the trespassers have between them at least one vehicle on the land;
 - that the trespassers are present on the land with the common purpose of residing there for any period;
 - if it appears to the officer that the person has one or more caravans in their possession or under their control on the land, that there is a suitable pitch on a relevant caravan site for that caravan or each of those caravans;
 - that the occupier of the land or a person acting on his behalf has asked the police to remove the trespassers from the land.
- 11.3 The conditions in this section are fewer than under Section 61 and concentrate more on the simple fact of trespassing for the purpose of residence. The availability of suitable pitches at authorised sites or transit facilities will be an **essential** consideration before powers under Section 62 A-E can be used and

liaison between police and their local authorities will be necessary to ascertain such availability or otherwise.

- 11.4 Where the occupier of the land is a public body, before the police are asked to give a direction under 62A, the local authority and other public bodies should have undertaken relevant welfare enquiries.
- 11.5 It is essential that the senior police officer consults with the local authority Traveller Liaison Officer in order to ascertain the availability and suitability of a pitch on a relevant caravan site in their area before considering use of the above power. Where a suitable pitch is available, the police officer should consult with the trespassers to ascertain their views on the pitch proposed and allow them to make any representations should they not agree that the pitch is suitable. These representations should be recorded by the police officer and considered in liaison with the Traveller Liaison Officer. The reason for any decision taken to remove the trespassers despite their representations should be recorded, along with the views of the Traveller Liaison Officer regarding the suitability and availability of a pitch on a relevant caravan site.

12. Personal circumstances of the trespassers

- 12.1 Local Authorities should be the lead agency in the initial stages of assessing the welfare of trespassers.
- 12.2 When considering how to respond, police should consider the potential impact issuing a direction to leave, arresting a person or seizing a vehicle may have on the families involved and on the vulnerable, before taking an enforcement decision.
- 12.3 Where there are no authorised sites, and the local authority reaches the view that the incident is not causing a level of damage, disruption or distress which cannot be effectively controlled, it should consider providing services, such as toilets, a refuse skip and a supply of drinking water at that site.

13. Direction to Leave

- 13.1 Before issuing a direction to leave, it is essential that all decisions relating to the use of the power, including other options considered and why they were not taken, are properly recorded and documented.
- 13.2 In circumstances where police powers are used, these should be recorded on the relevant forms included within the NPCC Operational Advice. Body worn video should be used to record both the verbal direction and the service of a written notice.
- 13.3 The issue of a direction should usually be carefully planned and subject to a community impact and risk assessment, which should both be documented. It should include contingency plans for removing/ impounding vehicles, provision of alternative accommodation (especially minors) and officer availability.

14. Pre-Planned Evictions

- 14.1 The nature and timing of the enforcement of a direction to leave will be an operational matter for the police, though the local authority will normally be consulted. Usually it should be conducted in daylight.
- 14.2 Where police officers or the local authority are required to undertake pre-planned evictions under any power, consideration should be given to the appropriate level and nature of resources.
- 14.3 The risk assessment must be documented and must include:
- Type and condition of land (i.e. special clothing needed)
 - Number of trespassers
 - Behaviour of trespassers
 - Any criminal and community intelligence on trespassers
 - Number and type of vehicles
 - Health of trespassers
 - Age of trespassers – persons made vulnerable by reason of age or any other factor - what facilities might be required, e.g. social or child services?
 - Animals - are they a danger? - what resources are needed to deal?
 - Sanitation - any health hazards in existence?
 - What contingencies exist for serious disorder?
 - Have weapons been seen, used or suspected?
 - Implications of eviction for the trespassers
 - Implications of the eviction for other residents
 - Traffic considerations during the eviction

This is by no means an exhaustive list and wide consultation is encouraged during this planning and information gathering process.

15. Operational Considerations for Eviction Procedures

- 15.1 Whichever approach to eviction is taken, the local authorities and police will support each other in terms of resources and equipment, subject to their legal duties and powers. Police should be involved at an early stage in planning any eviction.
- 15.2 Plans should be formulated to cover which personnel would be involved and which towing contractors would be used. An in-principle agreement should be reached about where any seized vehicles will be stored. The following details must be agreed and recorded before any decision is made to remove an unauthorised encampment: -
- Which agencies need to be contacted / called out
 - Alternative accommodation for the trespassers (particularly children)
 - Availability of specialist equipment e.g. bolt croppers
- 15.3 Other services should be alerted prior to a forced eviction. This should include warning social services, Traveller Education Services, health services and

homelessness officers, and could also involve consideration of alternative accommodation for horses and dogs.

- 15.4 There should continue to be ongoing engagement with the local communities in order to reduce the potential for increased community tensions.
- 15.5 A senior local authority officer should where possible, attend forced evictions to ensure that all agents follow codes of behaviour. The officer should attempt to encourage the unauthorised campers to move voluntarily wherever possible.
- 15.6 Police should be notified of any evictions involving civil powers but will not automatically attend. Often, evictions are carried out peacefully by court officials without the need for police being present. Each eviction should be assessed based upon any risk factors present. Where there is reason to believe there is likely to be a breach of the peace, police will attend. It is acknowledged that the police cannot act as bailiffs or assist bailiffs unless specifically authorised by a court order.
- 15.7 Many authorities do not employ council staff in forced evictions. Where bailiffs or other agencies and contractors are employed, a code of expected behaviour should be agreed. This code must recognise that private bodies whilst acting as agents of the public authority are required to take due regard of human rights and equalities legislation and behave accordingly.
- 15.8 Police should take action if any criminal offences are committed during any eviction action by bailiffs or private firms.
- 15.9 If police advise that it is inappropriate to carry out an eviction, it should always be delayed until an agreed time.

Powers Available to Private Landowners

Civil Procedures Rules Part 55

A landowner (including a local authority) can obtain a possession order in the civil courts requiring the removal of trespassers from property, including land. Under the Civil Procedures Rules Part 55, the claim must be issued in the County Court in whose jurisdiction the property or land is situated. Exceptionally, the claim may be issued in the High Court if there is substantial risk of public disturbance or of serious harm to persons or property which properly require immediate determination.

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.

If awarded, the order can be transferred to the High Court so a Writ of Possession can be granted. As soon as the writ of possession has been received, the landowner can instruct High Court Enforcement Officers to remove the trespasser(s), using no more than reasonable force.

Common law

Private landowners can remove Unauthorised Encampments/ trespassers using Common Law (otherwise known as Halsburys Laws of England.) It states that if a trespasser peaceably enters or is on land without permission or consent, the landowner may request him to leave. After this has happened, and the people don't leave, then the trespasser(s) must be requested to leave the land in writing. There are no requirements that state a minimum period of time to allow them to stay.

In cases where the landowner has already asked the trespassers to leave and they have failed to do so, then the landowner has the right to use no more than reasonable force in order to make the trespasser(s) leave their land.

Before this step is carried out, it is recommended that a certificated enforcement officer (Bailiffs) is involved, as otherwise the landowner could be liable for any injury caused. Trained enforcement Officers will know & understand the law, as well as the psychology in the removal of problem trespassers.

Role of local authorities and police in managing unauthorised camping on private land.

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 Bureau or solicitors. Authorities should remind landowners about the importance of using reputable bailiffs and only 'reasonable force'.

Powers Available to Local Authorities

Many encampments are dealt with through negotiation. Where this fails, local authorities have two main sets of powers to tackle unauthorised encampments:

Section 77 Criminal Justice and Public Order Act 1994

Section 77 Criminal Justice and Public Order Act 1994 empowers the local authority to direct trespassers to leave the land and remove any vehicles or other property that they have with them under the following legislation:-

If it appears to a local authority that persons are for the time being residing in a vehicle or vehicles within that authority's area :-

- (a) on any land forming part of a highway;
- (b) on any other unoccupied land; or
- (c) on any occupied land without the consent of the occupier,

the authority may give a direction that those persons and any others with them are to leave the land and remove the vehicle or vehicles and any other property they have with them on the land.

The Criminal Justice and Public Order Act 1994 (CJPOA) gives local authorities in England and Wales powers to make directions to leave land being used by itinerant groups (s77). It is an offence to fail to comply with such a direction. In proceedings for an offence under this section, it is a defence for the accused to show that his failure to leave or to remove the vehicle or other property as soon as practicable, or his re-entry with a vehicle, was due to illness, mechanical breakdown or other immediate emergency. If the direction to leave is not complied with, the local authority can apply to magistrates' court for an order requiring the removal of vehicles and any occupants from the land (s78).

Civil Procedures Rules Part 55

A Local Authority can also use the Civil Procedure Rules as described above.

Box 1 summarises some of the main features of the two sets of powers, highlighting differences and similarities.

Box 1 : Some Features of Civil and Criminal Justice and Public Order Act Powers for Local Authorities

| Civil Powers | CJPOA ss77 and 78 |
|--|---|
| Only on land in LA ownership | On private as well as LA land where encampment is without the consent of the occupier of the land |
| Possession orders are effective against anyone on the land, not necessarily those resident when the notice was first served | Only effective against people directed to leave. All newcomers must be served with directions to leave |
| Civil orders can cover wide geographical areas where a real threat of further encampment can be demonstrated | It is an offence for unauthorised campers to return within three months to land they have been directed to leave; only applies to the same individuals |
| There is no defence to an action for trespass (other than showing non-trespass) | It is a defence for the accused to show that his failure to leave or to remove the vehicle or other property as soon as practicable, or his re-entry with a vehicle, was due to illness, mechanical breakdown or other immediate emergency |
| No criminalising effect | Can have the effect of criminalising Gypsy/Traveller unauthorised campers who fail to move when directed to leave, a factor taken seriously by the courts. In practice, authorities normally proceed against the unauthorised campers by way of complaint for an order requiring them to remove their vehicles from the land, and not for the criminal offence of contravening a direction to leave the land. |
| County court bailiffs can be used; their services must be paid for and may lead to delay in enforcement. It is recommended that the police attend such evictions in order to prevent a breach of the peace | Responsibility for eviction lies with the local authority. Officers or agents of the local authority may use reasonable force to evict. It is recommended that the police attend such evictions in order to prevent a breach of the peace |
| Often seen as safe and relatively straightforward | Potentially quicker than civil powers, but greater risk of being effectively contested |

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| Local authorities have responsibilities to make welfare enquiries when reaching eviction decisions, to take into account considerations of common humanity, and to honour the other statutory duties they may have towards the unauthorised campers |
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| Unauthorised campers can attend and be represented at the court hearing |
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| Decisions can be similarly challenged by means of judicial review on the grounds that they have been reached improperly |
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Other legal measures available to local authorities:

The Government believes that local authorities should always follow a route which requires a court order. As local authorities and public bodies, authorities must have regard to considerations of common humanity or other statutory duties, and must ensure that the human rights of unauthorised campers are safeguarded.

Local highways authorities have powers to evict unauthorised campers from highway land in certain circumstances under the Highways Acts. Section 143 of the Highways Act 1980 requires unauthorised campers to be given 28 days notice to leave, and its use may be unsuitable where rapid eviction is called for.

Local bylaws may have provisions for evicting unauthorised campers from car parks, parks or other public areas.

Enforcing against Unauthorised Development

Where anyone buys land and develops it as a caravan site without planning consent, any enforcement must be through the planning system; the powers described above against trespass cannot be used.

A breach of planning control is not in itself an offence; enforcement is a matter for the discretion of the local planning authority. Decisions to enforce must be made on planning grounds. Some key factors may include whether the breach of control unacceptably affects public amenity, highway safety, the Green Belt, public landscape, or the existing use of land or buildings meriting protection in the public interest. The action taken should be proportionate to the breach.

The current enforcement regime provides a mix of powers with which to deal with breaches of planning control in a controlled but flexible manner. The main powers are summarised in Box 2.

Case law has determined that all enforcement measures must be proportionate in the context of the Human Rights Act, and in particular with regard to rights under Article 8 when dealing with Gypsies and Travellers. Guidance on using planning enforcement powers is available in Circular 10/97, Planning Policy Guidance 18: *Enforcing Planning Control* and *Enforcing Planning Control: Good Practice Guide for Local Planning Authorities*.

Main Planning Enforcement Powers to be used against Unauthorised Development

The discretionary powers available to local planning authorities (LPAs) were set out in the Planning and Compensation Act 1991 which amended the Town and Country Planning Act 1990 (TCPA 1990). Section references below refer to the TCPA 1990 as amended.

Planning contravention notice (s171C): This may be used where it appears that there may have been a breach of planning control and the LPA requires information about the activities on the land or to find out more about the nature of the recipient's interest in the land.

Enforcement notice (s172): This requires steps to be taken to remedy the specified breach within a given period. There is a right of appeal to the Secretary of State against an enforcement notice. If the notice is upheld, failure to comply is an offence with a maximum penalty on conviction of £20,000 (unlimited in the Crown Court).

Stop notice (ss183-184): This has the effect of immediately stopping any activity which contravenes planning control; an enforcement notice must also be served. There is no right of appeal to a stop notice, but compensation may be payable if an appeal against the associated enforcement notice is allowed on legal grounds. If a stop notice is contravened the resulting offence can be prosecuted in the Magistrates' Court with a maximum penalty on conviction of £20,000 (unlimited in the Crown Court).

Breach of condition notice (s187A): Where there is a failure to comply with any condition or limitation imposed on a grant of planning permission this procedure provides a fast-track enforcement option to secure compliance with no statutory right of appeal to the Secretary of State.

Injunctions (s187b): The LPA is able to seek an injunction in the High Court or County Court to restrain any actual or expected breach of planning control. It is not necessary to serve an enforcement notice prior to applying for an injunction.

Direct action (s178): Where any steps required by an enforcement notice are not taken within the compliance period, the LPA may enter the land and take the required steps and recover reasonable costs incurred in doing so. The whole enforcement process must have been completed before direct action is possible.

Compulsory purchase (s226 (1)(b)): With the authorisation of the Secretary of State, an LPA may compulsorily acquire any land in their area 'for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated'. There is scope for objection and a public local inquiry. This has been successfully used against unauthorised development in order to restore land to its lawful use for agriculture.

Special considerations

1. Critical Incident

1.1 There clearly exists the potential for a critical incident if powers are used inappropriately or without recourse to discretion.

1.2 A critical incident is defined as 'Any incident where the effectiveness of the police response is likely to have a significant impact on the confidence of the victim, their family and / or the community'

Effectiveness: The measure of professionalism, competence and integrity of the police response.

Significant impact: Common sense application, the consideration of impact is that which is felt.

Confidence: Refers to the long-term confidence in effective policing.

2. Human Rights

2.1 The rights of trespassers must be balanced against the rights of the wider community. The principal ECHR rights engaged will be:

- Freedom of conscience, thought and religion (Article 9)
- Freedom of association and assembly (Article 11)
- The right to quiet enjoyment of possessions (Protocol 1) (A caravan or other mobile home is a possession)
- Respect for private and family life, home and correspondence (Article 8) (The meaning of 'home' includes: '*Any premises or shelter used by an individual as his / her home and in which s/he has legal interest.*')

2.2 These are all conditional rights. They may be infringed where necessary to meet one of the derogations set out in the relevant article.

2.3 The following principles must therefore apply whenever any action (or inaction) is contemplated.

Proportionality

- A Public Authority should only interfere with an individual's rights where necessary.
- Should anyone's rights be infringed, this must be fair and achieve a balance between the needs of a democratic society and the rights of the individual.
- Any interference must be proportionate to the legitimate aim pursued.
- Any decisions made, which could impact on Human Rights, must be reviewed periodically for fairness and proportionality.
- Where an objective can be achieved in more than one way, the least intrusive method must be chosen.

Legality

- Actions must comply with legislation and any derived statutory regulation or case law.

Accountability

- Actions will be open to scrutiny.
- A full record must be kept of options considered and actions taken.
- Factors influencing decisions must be recorded. This includes reasons for not taking action.

Necessity

- Actions must be “necessary in a democratic society”.
- Any infringements of human rights must be justified.

If these preconditions are not met a violation of ECHR is likely. Any such violation is actionable against the relevant Public Authority.

3. Basis of Understanding

- 3.1 It is essential that the rights of every person affected are considered and balanced.
- 3.2 The issues of proportionality, fair balance, public interest and necessity therefore need to be adjudged against the potential for critical incidents and abuse of process claims.

4. Equality Act

- 4.1 Romany Gypsies and Irish Travellers are recognised as ethnic minority groups under the Equality Act 2010 for the purposes of anti-discrimination legislation. This means that they may be victims of racially aggravated offences and offences under the Equality Act 2010. The Equality Act places a duty on public authorities to have due regard to the need to advance equality of opportunity between people who share a protected characteristic and people who do not share it. In relation to service provision this mean considering the need to:
- remove or minimise disadvantages suffered by people due to their protected characteristics;
 - meet the needs of people with protected characteristics; and
 - encourage people with protected characteristics to participate in public life or in other activities where their participation is low.

It is essential that care be taken to avoid the possibility of unlawful discrimination in the area of service delivery.

Partnership Contact numbers relating to managing unauthorised encampments:

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| Cambridgeshire Police | 101 |
| Fenland District Council | 01354 654321 |
| Huntingdonshire District Council | 01480 388388 |
| South Cambs District Council | 03450 450051 |
| East Cambs District Council | 01353 665555 |
| Cambridge City Council | 01223 475000 |
| Cambridgeshire County Council | 01223 717423 |