 Executive Wednesday 8th March, 2017		Agenda Item No. <h1 style="text-align: center;">10</h1>
Title	Review of Approach to Unauthorised Encampments	
For further information about this report please contact	Chris Elliott chris.elliott@warwickdc.gov.uk 01926 456000	
Wards of the District directly affected	All	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?	No	
Date and meeting when issue was last considered and relevant minute number	December 11 th , 2013 Minute No. 105	
Background Papers	Review of Security of Open Spaces within Warwick District to Prevent Unauthorised Encampments, December 11 th , 2013	
Contrary to the policy framework:	No	
Contrary to the budgetary framework:	No	
Key Decision?	Yes	
Included within the Forward Plan? (If yes include reference number)	Yes Ref No:852	
Equality Impact Assessment Undertaken	No	
<p>The report recognises the impact on residents of the behaviours of some groups making unauthorised encampments and the expectation on the authority and partners to do all it reasonably can to prevent crime and disorder whilst recognising the rights of the Gypsy and Traveller Communities.</p>		
Officer/Councillor Approval		
Officer Approval	Date	Name
Chief Executive/Deputy Chief Executive	08/02/17	Chris Elliott
Head of Service	08/02/17	Marianne Rolfe, Tracy Darke, Rob Hoof, Bill Hunt (acting Head of Housing)
CMT	08/02/17	Andy Jones, Bill Hunt
Section 151 Officer	08/02/17	Mike Snow
Monitoring Officer	08/02/17	Andy Jones
Finance	08/02/17	Mike Snow
Portfolio Holder(s)	08/02/17	Cllr Moira-Ann Grainger, Cllr Peter Phillips
Consultation & Community Engagement		
<p>WDC works in partnership with Warwickshire County Council, the other Warwickshire district and boroughs and Warwickshire Police in a joint approach to dealing with unauthorised encampments. WDC attended a recent county wide meeting convened by the Police & Crime Commissioner and have liaised with other authorities within and outside of Warwickshire.</p>		
Final Decision?	Not entirely	
Suggested next steps (if not final decision please set out below)		
<ul style="list-style-type: none"> Meet with County partners to confirm an updated joint protocol. 		

1. Summary

- 1.1 Following an increase in the frequency of unauthorised encampments in the District and the recent incursions over the Christmas and New Year Holidays the report reviews the current approach and sets out a new approach to help address the issues generated by unauthorised encampments.

2. Recommendation

- 2.1 That the Executive notes the trend of increasing number of unauthorised encampments in the District, both on Council owned and other land.
- 2.2 That the Executive notes the events over the recent Christmas/New Year period as set out at Appendix 1 and the learning points that arise from a review of that situation.
- 2.3 That the Executive notes the powers that are available to the Council, the County Council and the Police in relation to unauthorised encampments as set out in Appendix 2 of this report and the observation note on use of Injunctions at Appendix 3.
- 2.4 Agree to the principles of a new joint protocol with partners as set out in Appendix 4 and delegate to the Chief Executive, Head of Health and Community Protection in consultation with the Health and Community Protection Portfolio Holder to negotiate a detailed protocol and report back to the Executive for approval.
- 2.5 That the Executive delegates authority to the Chief Executive, Head of Health and Community and Head of Neighbourhood Services, in consultation with the Portfolio Holders for Health and Community Protection, Housing and Property Services and Neighbourhood Services, to agree the prioritisation of the list at Appendix 5 upon which it proposes to install preventative measures over a two year period from 1st April 2017, in order to prevent unauthorised encampments, to be funded from the Community Projects Reserve up to a maximum of £174,000 plus 5% contingency.
- 2.6 That the Executive notes the limitation on the use of powers because of the absence of a transit site within the District and asks Officers to prepare a report on site provision at the earliest opportunity.

3. Reasons for the Recommendation

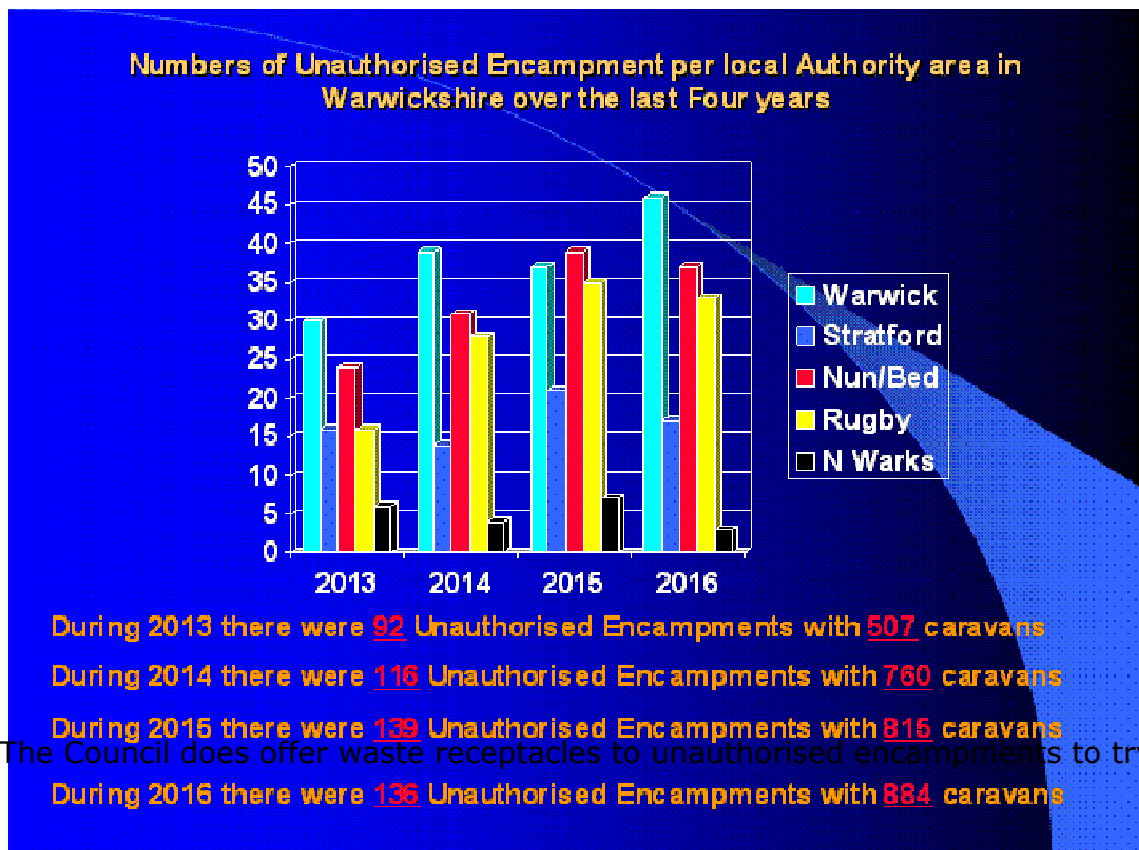
Recommendation 2.1

- 3.1 Over the past 4 years there have been 39 unauthorised encampments on 11 WDC sites, totalling 304 days, an average of 7.8 days (Calculated from the first day of arrival until vacant possession is re-obtained). The table below shows the geographical spread on unauthorised encampments on Council owned land.

	2008	2009	2010	2011	2012	2013	2014	2015	2016	Total
St Nicholas Park							1		1	2
The Holt	1					1				2

Myton Fields	2					2				4
Redland park						1	1			2
Fords Fields						1	1	1		3
Newbold Comyn			1	1			1	5	8	16
Campion Hills							1	2		3
Hampton Road	2	1	1				1	1	3	9
Twycross Walk							1			1
Edmondscote Road							1	1	1	3
Saltisford Gardens									2	2
Harbury Lane			2	2	2					6
Abbey Fields	2	1								3
Hatton Park								1		1
Total	7	2	4	3	2	5	8	11	15	

3.2 However, this is only part of the picture as the above data does not include unauthorised encampments on land in other ownerships including upon highway land. The table below shows the overall picture of unauthorised encampments across the County broken down by District/Borough over the last few years. For Warwick District there is a very clear upward trend and it is also clear that Warwick District now experiences the highest level of unauthorised encampments in the County.



3.3 The Council does offer waste receptacles to unauthorised encampments to try to minimise

Community Cleansing Teams. Section 5 gives an outline of the average annual cost to the Council of dealing with unauthorised encampments.

Recommendation 2.2

- 3.4 The situation reached something of a crescendo over the recent Christmas and the New Year break in Warwick (and is being repeated to a lesser degree this week as the report is being written). Although this is not the first time the Council has been faced with a large unauthorised encampment, the particular circumstances and timing have attracted much interest. The circumstances as they happened are summarised in Appendix 1 of this report. It is clear that whilst officers did everything that they could as quickly as they could, there were no preventative measures in place to deter the unauthorised encampments and the inability to get a court date earlier than 10th January, meant ultimately that the powers of the Police had to be relied upon. Fortunately, the good liaison between the Council and the Police meant that this was possible. However, for the local community, the perception was that both the Council and the Police were inactive and not dealing with the issue. There is therefore a need to be able to make the public and local community aware of what powers the Council and Police actually do have in such situations, so that expectations can be appropriately set. In addition, efforts are to be made to secure quicker access to the courts as a matter of routine. The above learning points will be addressed operationally by officers.

Recommendation 2.3

- 3.5 One of the issues arising from the community's perspective was a lack of understanding of the powers that are available to the Council and to the Police to dealing with such situations. Appendix 2 summarises the powers that are available and why some are preferable to others.
- 3.6 Appendix 3 contains an Observation note on the use of Injunctions which would not suggest that this "tool" offers much to the Council in helping to tackle this situations faced but recourse should be made to it as and when the circumstances dictate.

Looking Forward

- 3.7 Looking forward in terms of the Council being better able to tackle such situations, the following 3 pronged approach would seem appropriate:
1. Develop even closer working relationships with the Police, County Council and other agencies;
 2. Consider what it can do on its own land to help prevent unauthorised encampments;
 3. Resolve the situation regarding the provision of sites, permanent and transit.

This approach involving a combination of the provision of a site (permanent and transit), installing preventative measures in the most vulnerable open spaces and a clear protocol for dealing with unauthorised encampments should strike the balance between all needs of both the Gypsy/Traveller community and the local resident/business community and so serve as a disincentive to carry out unauthorised encampments in the District and therefore lower the number that occur.

Recommendation 2.4

- 3.8 On the first point in paragraph 3.7 above, in order to provide a coordinated response with key partners the Police and Crime Commissioner has proposed the development of an updated protocol, the principles of which are set out in Appendix 4. It is suggested that the Chief Executive, Head of Health and Community Protection in consultation with the Health and Community Protection Portfolio Holder are delegated authority to negotiate the detailed updated protocol and to report back to the Executive to seek approval. Such an updated protocol will help ensure that there is regular dialogue and a clear understanding about expectations with Gypsy & Traveller communities.

Recommendation 2.5

- 3.9 On the second point in paragraph 3.7 above, there are approximately 180 open spaces owned by Warwick District Council, varying in size, usage and accessibility. These areas include parks, woodlands, wildlife areas, car parks, playing fields, children's play areas, burial grounds and amenity green space. Open spaces are by their nature are designed to be as accessible as possible to the public, normally offering more than one entrance point, and in some cases allowing access to car parks on the site.

- 3.10 These sites are therefore prone to use for unauthorised encampments, even where existing restrictions such as gates and bollards are present. A desk top evaluation has been carried out of the security of all WDC sites in the district, which have been categorised as follows:-

Sites with no access/secure	56 sites
Unlikely to be used for unauthorised encampments	89 sites
Open site/possible access	35 sites

- 3.11 Officers have identified a number of Council owned locations that are vulnerable to unauthorised encampments and have estimated the costs as set out in Appendix 5. If all were protected it would cost a total of £174,000 (when rounded up) plus a contingency allowance of 5%, to rectify the position, which could be funded from the Council's newly established Community Projects Reserve. Such measures could help protect the amenity of these destination parks and car parks in line with works carried out at Harbury Lane supporting residents and local businesses. However, the Executive needs to decide if it wishes to undertake all the works in the list or only part thereof. Works to protect Newbold Comyn are already being undertaken. It is likely that if a substantial number of sites are proposed for such measures, the work would have to be undertaken over 2 years. It is proposed that the agreement to the list of sites is delegated to the Chief Executive, Head of Health and Community Protection and Head of Neighbourhood Services in consultation with the respective portfolio holders for those service areas and of Housing and Property Services.
- 3.12 It needs to be noted that it will be impossible to protect all of the Council's open land. Measures to protect certain areas may result in encampments taking up occupation elsewhere in the vicinity that have not been protected. However, there is evidence that installing measures to limit access to certain areas can work. For example, at Harbury Lane there had been a number of unauthorised encampments that had taken place over many years. After each encampment additional measures were introduced. In the autumn of 2012 an investment of £12,000 was made at Harbury Lane to prevent unauthorised encampments.

That investment included security gates, fencing, height restriction barrier and heavy duty lock. That investment has been successful in that there have been no unauthorised encampments since (5 years) though there has been an increase in the number of unauthorised encampments at other nearby sites.

Recommendation 2.6

- 3.13 One of the underlying issues is that the Council has not been successful in locating suitable land for transit sites for many years. Indeed Warwick District is the only local authority area in the County not to have any such site. Whilst it is not possible to prove a cause and effect between that fact and the high number of unauthorised encampments the District is experiencing, it is clear that the lack of available transit or emergency stopping sites does prohibit the use of some powers that the Police possess and clearly if that changed then there would be an additional "string" to the "bow" of the Police and the Council. Officers do however, suggest some caution because provision of a transit site would not necessarily forestall all unauthorised encampments.
- 3.14 Warwickshire County Council are progressing with sites for two emergency stopping places for Gypsy and Traveller communities in transit. One of these stopping places will be in the north of the County, the other in the south (in Stratford District, near Southam). Whilst these will provide important facilities to help manage Gypsy and Traveller encampments, they are insufficient to fully meet the whole of the County's and the District's need for transit pitches. The reason for this is that an emergency stopping place can only be used for 28 days whilst a transit site can be used for 3 months.
- 3.15 In the context of developing the Local Plan the Gypsy & Traveller Accommodation Assessment, commissioned in 2012, identified a need for 31 pitches over the next 15 years, 25 within five years, as well as 6-8 transit pitches. The District Council will therefore need to provide a further transit site through the Gypsy and Traveller Site Allocation Development Plan. This will need to accommodate approximately 7 pitches. At this stage, no site has been identified.
- 3.16 Once in place the Police will be able to direct Gypsies and Travellers, in accordance with their policies and procedures, onto transit or emergency stopping sites if there is space available, making unauthorised encampment in the District easier to deal with. This is particularly so when an unauthorised encampment is situated on highway land as the powers the Police currently exercise to direct trespassers to leave are only exercisable in relation to on highway land. Should they refuse to go to such sites they can then be directed out of the County by the Police.
- 3.17 Members will not need to be reminded by Officers of the difficulty of finding landowners (Councils included) to offer land for such sites or for communities to agree to them. However, in the context of recent events it is now imperative that a report be brought forward to resolve the site provision at the earliest opportunity.

4. **Policy Framework**

- 4.1 **Sustainable Community Strategy** –The Council has a vision to make Warwick District a great place to live, work and visit. Ensuring that our local communities are safe is a vital part of achieving that vision. Crime and disorder significantly impacts on the quality of life of residents, businesses and visitors.

The level of crime and disorder is cited as the top consideration when deciding on where to live. Consequently, work in tackling crime and disorder is a significant part of the Council's vision for Safer Communities:

Protecting our communities from harm with an emphasis on the prevention of incidents, whilst focusing on the most vulnerable to make them feel safer

- 4.2 Regrettably, many unauthorised encampments have often been accompanied by other criminal acts. There have also been impacts on the local environment and on health conditions, some of which impact on the Gypsy and Traveller communities as well as the resident communities.
- 4.3 **Fit for the Future (FFF)** - The issue faced impacts on the Service and Money Strands of the Council's FFF programme in that the unauthorised encampments have an impact on normal service delivery, diverting staff time and in some cases preventing Council services from being delivered and so affecting income. Clearing up after the unauthorised encampments also costs the Council money that could be better spent.
- 4.4 **Impact Assessments** – the report consider the impact on residents, officer time and budgets but recognises that a dialogue with representatives of Gypsy and Traveller communities is essential if we are to develop a clear and effective policy. The development of the County wide protocol will need to address equality impacts more definitively.
- 4.5 **Local Plan**

The draft Local Plan, which has now been through the examination, includes the following policies for Gypsy and Traveller site provision:

* Policy H7 states that a Development Plan Document (DPD) allocating sites to meet the proven need through the GTAA, will be published soon after the adoption of the Local Plan.

* Policy H8 lists the criteria that the Council will use in assessing potential sites for their suitability.

* Policy H9 relates to the potential for the Council to invoke its powers of compulsory purchase as a last resort, should no suitable sites be forthcoming.

5. **Budgetary Framework**

- 5.1 The total cost of situational measures at key sites is estimated to be in the region of £174,000 (Appendix 3). If members were mindful to undertake any of this work identified, then this would have to be met from the Community Projects Reserve which currently has £868,000 available. Other reports on the same agenda propose some use of this Reserve.
- 5.2 The Council has been experiencing costs (direct and indirect) in dealing with illegal encampments of £ 16,200 on average per annum, broken down as follows:

Legal disbursements	£5,900
Horse Fair	£800
Neighbourhood Services	£9,500* includes an allowance for staff time
Total	£16,200

However, the above does not include any staff time cost of the Private Sector Housing Team which has responsibility for serving notices etc., nor for the Council's Community Safety Team when they are involved.

6. Risks

- 6.1 The proposed joint approach looks to avoid conflict and minimise risk by producing a clear and effective policy following dialogue with representatives of the Gypsy and Travelling Communities. Inappropriate use of powers, or failing to follow due process and procedure in dealing with the Gypsy and Traveller communities could expose the Council and its partners to legal action. An agreed joint protocol will help avoid such a risk.
- 6.2 There would be legal costs and officer time for us and partners if we were to evidence gather and take to court the case for a civil injunction. The risk of legal challenge is there too and whilst the likelihood is low this would incur further costs.
- 6.3 We have evidence from the works carried out at Harbury Lane that preventative measures can prevent unauthorised encampments but we also recognise that it is not possible to defend all our sites and there will inevitably be some displacement. Preventative measures must also allow legitimate use of our amenities for larger vehicles including contractors. There is potential for loss of car parking income.
- 6.4 The continued lack of identified sites for Gypsy and Travellers both permanent and transit does expose the Council and the community to either an unwanted planning application(s) or a repeat of the Kites Nest Lane scenario. There is also the potential for challenge for failing to accord with the Local Plan. Such scenarios could cause the Council to incur costs and in the absence of providing such sites over many years may lead to success planning wise, even at appeal, for such groups.

7. Alternative Option(s) considered

- 7.1 We could develop a policy independent of neighbouring authorities but a joint approach is necessary for intelligence sharing and enforcement. A joint approach should reassure residents and businesses that we are working together and have a coordinated, prompt and effective approach to dealing with unauthorised encampments.
- 7.2 We could continue to simply 'move on' but this is not any sort of deterrent. The current approach does not address the responsibilities on this authority or key partners to do all it reasonable can to prevent crime and disorder.
- 7.3 During the recent Christmas/New Year situation calls were made by some members of the community for the Council to adopt the approach taken in Harlow. However, the case pursued by the Council was in the context of having had 107 unauthorised encampments in 18 months by the same group. It is very clear from the judgement that the circumstances were considered so extreme as to warrant the steps the Council took in that case. Those circumstances did not apply here.
- 7.4 There is some precedent in utilising preventative measures to prevent unauthorised encampments. The alternatives are to add to this list, include all WDC owned amenities, do some sites or do nothing further. The recent

incursions and increase in the number of illegal encampments suggest we need to do more though it is not feasible to so protect all of our land.

- 7.5 The Council could decide not to provide any sites, permanent or transit but the risks set out above suggest that, notwithstanding the difficulties of finding such sites, the risks set out in paragraph 6.4 above preclude Officers from recommending such a course of action.

Appendix 1 – Summary of Events Over Christmas/New Year 2016/17

1. The group that camped in the Warwick Racecourse Stables car park arrived on or around 9 December 2016. This group had moved originally from Bedworth and then from Newbold Comyn. They were served a Section 61 notice from Newbold Comyn by the Police.
2. It is the responsibility of the land owner to take the lead in evicting travellers, in this case Warwick District Council issued an order giving them 24 hours to leave threatening court proceedings if not. They did not leave so the Council made an application to the court under Part 55 of the Civil Procedure Rule. Unfortunately the County Court could not hear the case until 10 January.
3. With that delay and the fact that there were no reports of antisocial behaviour or criminality for that specific group, following a meeting between Police, WDC and Warwick Racecourse the Police considered it proportionate to let them stay on that site on the assurance they would vacate by 27th December as there was a racing event on 31st December. No Section 61 notice was given then.
4. Another group then camped on the main racecourse car park off Hampton Road. When they arrived there was a change in the criminality level from before. Police identified a link between the change in crime patterns and this particular encampment that replicated similar patterns at previous unauthorised locations. On this occasion there were also evidenced incidents of antisocial Behaviour (ASB) and violence towards racecourse staff. As a result a section 61 notice was issued by Police for that group to vacate the site.
5. They vacated the location on 23rd December but some only went as far as Tournament Fields (private property), but they were evicted from that location very quickly because a private landowner can use common law powers to regain vacant possession (i.e. within 24 hours) and others went back to Newbold Comyn but the previous S61 notice still applied and the group left within hours. They then proceeded back towards Warwick and on 24th December they set up camp by breaking into the car park of the Warwick Corps of Drums, immediately next to the first group. There were incidents of criminality, e.g. forced entry into the Corps of Drums Hall and also an attempt Burglary at the Motorcycle Training School.
6. Police issued another Section 61 order on that group. Since Police needed resources to implement the order with both groups still at their respective locations on 27th of January, a Section 61 order was issued to both groups on 28th and given three hours to leave. Both groups decided to stay in Warwick and a total 60 vehicles (caravans and lorries) were eventually parked on the car park adjacent to St Nicholas Park.
7. The Police were unable to physically block them and could have faced legal action on the basis of discrimination if they had tried. After considering all the options around managing this group and that they were determined to stay in Warwick until the New Year, at this stage the decision was made to issue Section 61 notice for the trespassers to vacate by 3rd January. By that time the majority had gone and have left the County.
8. At all locations there was a considerable amount of rubbish to clear up including human excrement.

Appendix 2

A SUMMARY OF AVAILABLE POWERS AVAILABLE TO LOCAL AUTHORITIES IN DEALING WITH UNAUTHORISED ENCAMPMENTS

The information set out below is designed to give an overview of the powers conferred on Local Authorities, in legislation, for managing and dealing with unauthorised encampments.

It is not a comprehensive account of the detail of legislation and nor does it go in to detail as to the exact procedure involved in exercising each power. However, it does provide detail as to the potential merits to each option of enforcement against trespass and seeks to explain the reasons certain powers are preferable in dealing with unauthorised encampments albeit providing an account of the limitations faced by such action.

1. Civil Orders for Possession in accordance with Part 55 of the Civil Procedure Rules (CPR 55):

As landowner Warwick District Council has the right to enjoy uninterrupted possession of that land. If trespassers encamp on the land and remain there without consent or licence, WDC as landowner has the power to apply to a County Court for an Order of Possession. This Order requires any person trespassing on land to vacate the land and deliver up vacant possession back to the landowner.

This is the power that Warwickshire County Council and Warwick District Council currently adopts to deal with an unauthorised occupation of their land. Below is an account of the procedure involved in seeking a possession order in accordance with CPR 55:

Process:

1. WDC usually receive immediate notification (from members of the public, Warwickshire Police) when a new encampment appears. Officers from the Private Sector Housing Team attend with the Police and seek to move the encampment, by request and negotiation, without the need to issue Court proceedings.
2. If that is futile, a Notice is issued requiring the trespassers to leave; Guidance suggests that a 24 hour notice period is ideal. Welfare checks **HAVE** to be carried out or any court action can fail. This requirement is even more pertinent following case law that emerged from the European Court of Human Rights from 2010 onwards. The sentiment of this case law is that an absolute right to possession is incompatible with an individual's Article 8 rights. Accordingly, a Local Authority, as part of the State and thus bound to the European Convention on Human Rights (by the domestic legislation transposing this) must consider the reasonableness of seeking possession and that includes regard for a trespasser's welfare requirements. If there are welfare issues, an application for possession may be deemed as unreasonable (and so fail) until the welfare issues have been dealt with.
3. During the Notice period, court papers are drafted (claim form, particulars of claim and witness statement) in anticipation that the encampment does not vacate land.

4. When the 24 hour period has lapsed, court papers are hand delivered to Court so that a date can be fixed for a hearing (this cannot be done until the Notice period has lapsed). The date relies on Court availability but there must be a minimum 2 clear days before trespassers are served with the Court papers and the hearing date in accordance with CPR 55.5.

The front desk at Warwick County Court (sitting at the Warwickshire Justice Centre in Leamington Spa) is only open from 10am – 2pm daily. If delivering by hand, papers have to be submitted during these hours. If, for whatever reason, the court papers are not ready to be submitted during this time span, the application can't be submitted until the following day.

It is also worth noting that District Judges for this type of application do not sit at Warwick County Court every day of the week which frustrates the time it takes for the Court to allocate a slot for the possession hearing.

5. Usually the applications are not challenged so the Court will grant an order for possession if welfare checks have been carried out, the correct Notice provisions have been complied with (the requirement to serve the issued Claim by attaching it to a stake in the ground on the land being trespassed on) and the trespassers have remained on the land.
6. WDC ensure that a possession order has more 'bite' by obtaining vehicle registration details of trespassers and including them in the possession order. As such, even though the Order is gained against 'Persons Unknown', we establish a means of identifying the trespassers. Accordingly, if the same vehicles return the Order can be re-served without the need to go through the Court application process again. The Order can only be re-served within a 3 month time frame though (Part 83.26 Civil Procedure Rules which allows an Warrant for Eviction to be applied for at any time within a 3 month period after the Order is granted). However, it does have a deterrent effect- if trespassers are aware that their vehicle registration details have been recorded in a Court Order, it deters them from returning to the land.

The advantage of this power is that the proceedings relate to the land itself. By seeking a possession order there is no need to identify the trespassers encamped on the land- the application is made against 'persons unknown'. Further, by using the County Court process the applicant Local Authority can obtain the services of a County Court bailiff if the trespassers refuse to vacate the land. The fee for this is £115 and once the application for a warrant is completed the onus for ensuring vacant possession is regained rests entirely with the County Court bailiff.

Further, Part 55 applications are presided over by a County Court Judge; accordingly you receive an allocated time slot for your application hearing. Applications that are heard by the Magistrates Courts do not have allocated time slots; parties are advised to attend Court at 10am and the matter can be called before the Court at any time between then and the end of the Court day. All non-Police related matters that go before the Magistrates Court are to be dealt with at Nuneaton County Court one day a week.

2. PART (5) CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994

Section 61 and 62 of the Criminal Justice and Public Order Act 1994

1. Where trespassers take occupation of land in six or more vehicles or where trespassers are threatening, abusive or insulting towards the occupier of the land or a member of the occupier's family/employee/agent *or* where the trespassers have caused damage to the land or property then the occupier of the land can request that a senior police officer direct that the trespassers leave land and remove any vehicles/property so deposited on the land. This can only occur if reasonable steps have been taken by the occupier of the land to request that the trespassers leave.
2. However, the power to request a senior police officer to direct trespassers to leave land can only be used in relation to land that is **not Highway land.** The Police also have their own Policies and Practices as to when this power will be deployed them meaning that it is not an option to regain vacant possession every time there is an unauthorised encampment on WDC owned land.

SECTION 62 A-E of the Criminal Justice and Public Order Act 1994:

1. This power enables an occupier of land being trespassed on to request that a senior police officer direct the trespassers to leave land they are occupying and remove any vehicles or property they have deposited on the land. A senior police officer can only direct trespassers off the land that they are unlawfully occupying if there is a suitable pitch available on a relevant caravan site by which to direct them to.

OF NOTE:

Section 225 of the Housing Act 2004 places an obligation on Housing Authorities to consider housing needs of Gypsies and Travellers resorting to their area and thus, this obligation is treated as a requirement for LHAs to consider the provision of stopping sites, transit sites and permanent sites for Gypsies and Travellers. Section 225 states:

- (1) Every local housing authority must, when undertaking a review of housing needs in their district under [section 8](#) of the Housing Act 1985 (c 68), carry out an assessment of the accommodation needs of gypsies and travellers residing in or resorting to their district.*

Section 77 of the Criminal Justice and Public Order Act 1994

1. Section 77 of the Criminal Justice and Public Order Act 1994 enables a Local Authority to issue a direction to trespassers that they leave land that they are unlawfully occupying.
2. This section provides that, if the trespassers return to the land after being directed to leave then they can be the subject of an arrest; in order to enforce by arrest the identity of the trespasser would have to be obtained at the point that the direction is issued
3. Obtaining such detail can be time consuming and fraught with difficulties especially as there is no means of guaranteeing that any detail provided is in fact accurate.

4. Despite the Police having the power to arrest trespassers that have disregarded a direction to leave land in accordance with Section 77 of the Criminal Justice and Public Order Act 1994 it is very unlikely that those in breach of the direction to leave land will attend Court further to the arrest to answer to a criminal charge of trespassing. Compelling attendance cannot be guaranteed and so this provision can have a very little punitive impact.

Section 78 of the Criminal Justice and Public Order Act 1994

1. Section 78 of the CJPOA 1994 gives Magistrates' Courts the power to make a removal order in circumstances where it is proved that persons and vehicles in which they are residing are present on land in contravention of a removal direction issued by a local authority in accordance with Section 77. Such an order will give a local authority the power to take the necessary steps to remove vehicles and property on the land.
2. A removal direction and subsequent order will apply to people residing on the land at the time of the direction and not to anyone who arrives after the direction has been given. So where more trespassers join the encampment, as is so frequently occurs, the local authority landowner will have to serve a direction under Section 77 again and go back before the Magistrates Court for a further removal Order.

This power is not the preferred option at present because primarily it does not apply to the land. What that means is, one Order against 'Persons Unknown' will not deal with regaining possession against further trespassers who join the group after the initial direction is served. Further applications to the Magistrates courts will be required which sits once a week in Nuneaton for non police related matters.

Further, if the land is not vacated after the service of the removal direction granted by the Magistrates Court then it is for the Local Authority itself to arrange means to remove the vehicles and property on the land. This would probably mean that either WDC Officers would have to remove the vehicles or private bailiffs would have to be instructed. A private bailiff charges in the region of £500 to be instructed with an hourly rate (around £100-£200) for their attendance.

Appendix 3 - INJUNCTIONS

There have been a quick succession of a select few Local Authorities who have pursued Injunctions to tackle unauthorised encampments after Kent pioneered the application of a High Court Injunction.

The contemplated use of a High Court Injunction to tackle unauthorised encampments is not a new one; it is a measure that both WCC and WDC have taken advice on from me periodically since around 2012. In particular, this involved exploring the use of Section 222 of the Local Government Act as a general power to instigate any legal proceedings (which would include submitting that this power allowed a Local Authority to seek an Injunction) to protect the residents of Warwickshire. It has always been concluded that such an Injunction would only realistically act as a deterrent rather than a feasible tool to be able to enforce with. The reason for this is because a breach of an Injunction is done by way of an application to commit to prison. The Civil Procedure Rules require that before an application for committal can proceed, the person you are taking the action against has to have been served with the injunction personally. Where 'Persons Unknown' are concerned you would have to satisfy the court that a particular individual is one of those 'Persons Unknown' who was involved in the behaviour that led to the need to seek an injunction, that they were aware of the existence of the injunction, that they had been served with a copy of the injunction and yet despite all this had evidenced a disregard by carrying out a prohibited behaviour detailed in the Injunction. Gathering evidence to establish the above would be extremely difficult if not impossible where trespassers are concerned. It is for this reason that I imagine the Court would not readily grant an Injunction against 'Persons Unknown'

The recent spate of Authorities who have obtained Injunctions have done so, from what I recall, against a group of named individuals but have included a 'catch all' 'Persons Unknown' Defendant. I will revisit the judgment but I think the Court was critical of the 'Persons Unknown' element. The named individuals were all persistent trespassers, were well known in the Local Authority area and had continually, over a significant period of time, trespassed solely within that area. I think they also clearly expressed that they would continue to do so, knowing the limitations of possession action. Evidence of this, coupled with the fact that the trespassers were named individuals who could easily be identified for enforcement purposes, would have made the application more compelling.

Nevertheless WDC have still discussed whether there was a reasonable chance of obtaining an Injunction, despite the limitations as an enforcement option but as a deterrent measure and made a commitment to keeping this under review.

Some of the recent Injunctions granted to Local Authorities to deal with unauthorised encampments were applied for under section 222 of the Local Government Act *and* planning legislation (Town and Country Planning Act 1990). It is planning legislation which provides specifically for applying for an Injunction against 'persons unknown'.

Such an Injunction can be granted for an actual or apprehended breach of planning control where it can be established that it is expedient and necessary to prevent/curtail the breach.

I am not a specialist in planning control. However, my understanding is that the application against trespassers would be made on the submission that the land they are trespassing on is of a particular category of use (say Newbold Comyn for

recreation) and trespassers are in breach of the permitted use by using it for residential purposes. On consulting with Gary Fisher at meetings exploring whether WDC could follow suit to the spate of recent High Court Injunctions granted to a few Local Authorities, it was unanimously agreed that such an argument (regarding change of use) would unlikely to have a reasonable prospect of success. Gary indicated that to successfully levy such an argument he would expect to see an intent to breach a permitted use by some form of development to facilitate the proposed new use. So, to establish that trespassers had the intent to purposefully breach the permitted use of the land to that of residential use for caravans for the purposes of Gypsy and Traveller accommodation, he would expect to see something like concrete being placed on the land to facilitate the breach. Such development of land in breach of permitted use is rare and given the transient nature of trespassers, even if the Court was satisfied that there had been a breach of planning control, it would be unlikely that it would be satisfied of the necessity of such a measure.

Lara Macnab

Appendix 4

Joint Approach Proposal from the Police & Crime Commissioner

- Establishing a code of conduct for each encampment with the Travellers
- Improved and informed communications with the local community whenever an encampment arrived.
- Identification of specific individuals within encampments in order to modify behaviour.
- An improved sharing of intelligence between agencies.
- Engendering an ethos/practice of shared decision making between agencies on the use of powers and the approach to be taken in relation to each encampment to ensure a county-wide consistent approach
- The provision of facilities – in order to avoid clear up costs
- Exploration of responses to Highway incursions
- Effectively manage the time of each incursion Preventative measures to deter incursions on public open spaces.
- Forced entry onto sites – the monitoring and collection of evidence to deal with perpetrators wherever possible.

Appendix 5 - WDC Sites proposed for Situational Measures and costs

Site name	Cost	Comments
Victoria Park	£330	Box
Beehive Hill Playing Fields	£1,000	Gate
Parliament Piece	£1,000	New gate and lock box
Riverside House	£1,000	Lock Box x3
Priory Park	£1,000	New gate and lock box
Crabtree Meadow	£1,000	Gate
Cumberland Crescent open space	£2,000	Gate and 20m Trip rail
Sydenham Central open space	£2,500	Trip rail 50m
Warneford Green	£2,500	Trip rail 50m
Castle Farm Recreation area	£3,000	Height Restriction Barrier
Myton Fields	£3,000	Height Restriction Barrier
Leam View	£3,000	Height Restriction Barrier
Townsend Meadow	£3,000	Height Restriction Barrier
Campion Hills	£3,000	Height Restriction Barrier
Edmondscote Track	£3,000	Height Restriction Barrier
Packington Place	£3,000	Height Restriction Barrier
St Mary's Land 4	£3,000	Height Restriction Barrier
Twycross Walk/Raynsford Walk/Stanton Walk p.o.s.	£4,000	20 trees
Whitnash Brook North	£4,000	20 trees
Bath Place	£4,000	Height Restriction Barriers and bollards
Priory Road	£4,000	Height Restriction Barriers and bollards
Eglamour Way/Othello Avenue, Whitnash	£5,000	Trip rail 100m
Land adj. Tachbrook Road/Warwick Gates	£5,000	Trip rail 100m
Newbold Terrace East open space	£5,000	Trip rail 100m
The Holt	£5,000	Gate and ditch
St Nicholas Park	£5,000	Height Restriction Barrier and CCTV
Myton Fields	£5,000	Height Restriction Barrier
St Mary's Land 3	£5,000	Height Restriction Barriers and bollards
Rosefield Street	£6,000	2 Height Restriction Barriers
Court Street	£6,000	Height Restriction Barriers
St John's Playing Fields	£7,500	rail 150
Abbey Fields	£8,000	Height Restriction Barrier and 4 metal field gates
Adelaide Bridge	£9,000	3 Height Restriction Barriers
The Chantry	£10,000	rail 200m
St Mary's Land 1 & 2	£10,000	Height Restriction Barriers and bollards
Hatton Park Public Open Space	£15,000	300 m metal Trip rail
Hatton Park Estate POS	£15,000	300 m metal Trip rail
	£173,830	