

Committee: Overview and Scrutiny Commission

Date: 24 November 2015

Committee: Cabinet

Date: 7 December 2015

Wards: All Wards.

Subject: Traveller Protocol

Lead officer: Chris Lee, Director of Environment and Regeneration

Lead member: Councillor Andrew Judge, Cabinet Member for Environmental Sustainability and Regeneration

Contact officer: Howard Joy, Property Management and Review Manager

Recommendations:

- A. That Cabinet agree the draft protocol which will be amended to reflect the partners safeguarding responsibilities with any changes being delegated to the Directors of CSF and E&R in consultation with the relevant cabinet members.
- B. That, in reviewing the draft protocol, Cabinet take into account the discussion and recommendations made by the Overview and Scrutiny Commission at its meeting on 24 November 2015, set out in section 3 of this report.

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. This report asks Cabinet to agree the replacement of the existing joint protocol agreement between Merton Borough Police and The London Borough of Merton with the revised protocol which is attached as Appendix A to this report.

2 DETAILS

- 2.1. The Traveller Unauthorised Encampment Protocol is a document that sets out and explains the policy and operational response by the local authority and the borough police to traveller encampments within the London Borough of Merton.
- 2.2. The current protocol came into force on 28th May 2010. It is however prudent to periodically review the protocol to consider opportunities for improvement such as action under other legislation, to reflect experience of using the existing protocol, to accommodate changes within the Council, and to consider any updated guidance from Central Government, and to compare protocols of other boroughs.
- 2.3. Legislation used under existing protocol. The Criminal Justice and Public Order Act 1994 and DOE Circular 18/94. The existing protocol implements a

procedure under The Criminal Justice and Public Order Act 1994 and Circular 18/94.

- 2.4. Following the carrying out of welfare assessments a Direction Notice is served under Section 77 requiring the travellers to leave the land and to remove any vehicles or property. The legislation allows the procedure to be used on any land forming part of a highway, any other unoccupied land or any unoccupied land without the consent of the occupier. The legislation introduced and highlighted obligations upon Local Authorities to carry out welfare assessments before serving a Direction Notice. This has been supported by case law. The welfare assessments include housing need, health needs and the health, wellbeing and education needs for any children. In addition local authorities should consider ways of minimising nuisance during unlawful encampments such as provision of refuse bins and collection and supply of drinking water and toilets. Upon receipt of all the necessary welfare assessments a decision is taken as to whether there are reasons why a Direction Notice should not be served at the present time.
- 2.5. If a Direction Notice is not complied with the Council can apply to the magistrates' court under Section 78 for an order requiring the removal of the trespassers and their property from the land.
- 2.6. The Police also have powers to serve notice under Section 61 under The Criminal Justice and Public Order Act 1994 and Circular 18/94 where there are six or more vehicles on the land or where the unauthorised occupiers have caused damage to the land or property on the land, and/or they have used threatening, abusive or insulting words or behaviour to the occupier, a member of his family or his employee or agent. The police do not require a court order but do need to consider the welfare needs of the unauthorised occupiers.
- 2.7. Alternative action may also be available to remove unauthorised encampments under Common Law, civil court proceedings, Traffic Management Orders, injunctions, and under bye laws;
 - Common Law. The Common Law allows any landowner to remove trespassers from their land by asking the trespasser to leave within a reasonable period. If the trespasser does not comply with the request the common law allows the landowner to use reasonable force. The landowner could use certificated bailiffs to implement this action. The weakness in addition to the cost of the bailiffs is that there are legal limitations on their actions so that possession through this route cannot be guaranteed and if the bailiffs act outside their powers the landowner may also be committing a criminal offence and/or be liable should the bailiffs use excessive force.
 - Court proceedings under Part 55 of the Civil Procedure rules. This allows landowners to obtain a court order quickly and cheaply. Theoretically an order for possession could be obtained for non-residential land after the service of two days' notice upon the trespassers. Unlike under the Common Law court bailiffs would enforce the order and so this procedure does not expose the landowner to the risks from the common law action. Unlike action under The Criminal Justice and Public Order Act 1994 and DOE

Circular 18/94 welfare assessments are not required. Court proceedings under Part 55 of the Civil Procedure rules therefore have the potential to provide a conclusion more quickly but the difficulty is that the order can only be obtained from the County Court or the High Court. The demands upon these courts for court hearings and enforcement mean that it is unlikely that an order could be obtained more quickly than from the Magistrates Court

- Traffic Management Orders (TMO). These are currently available for the removal of unauthorised encampments within the Council's pay and display car parks as PCN's can be issued for non-payment of car parking charges and for parking outside or across bays. These could be strengthened by amending the TMO for every car park to prevent unauthorised encampments through a combination of time limiting parking and charging. Enforcement is the difficulty as there is unlikely to be an easily located chargeable address and removal of the vehicle would not remove the associated caravan. There is also concern over officer safety as the issuing of PCN's is often confrontational. The Police are unlikely to have the resource to support the service of PCN's. The effectiveness of this process is therefore questionable and offers no advantage over the process under The Criminal Justice and Public Order Act 1994 and Circular 18/94.
- Injunctions. These are available as was confirmed by the injunction obtained by Harlow Council from the High Court in March 2015. However this was a unique set of circumstances. There had been a concentration of travellers within a confined space over a seventeen month period – 109 unlawful encampments, 80 vehicles and 280 individuals. This in turn led to consequential circumstances of unlawful encampments, namely fly tipping, anti-social behaviour and damage to land being exacerbated. Encampments on this scale have not been experienced in Merton and an injunction would only be likely to be available on encampments of similar scale and consequential impact. The volume of resource required to support an application to the High Court should also not be underestimated. Officers of Harlow Council confirmed that they had kept meticulous records of the arrival and departure of travellers, including details of vehicle registrations, together with records of all anti-social behaviour (ASB) incidents, including abuse to members of the public, loose dogs, photographs of the disruption left by the incidents of fly-tipping damage to land and other associated residues which caused a concern to public health. The witness statement and bundle of exhibits in support of the application amounted to 1,900 pages.
- Bye Laws. While the use of bye laws can be very effective as a means of removing unauthorised encampments quickly from certain types of land, normally Pleasure Grounds, Public Walks and Open Spaces the bye laws in this borough do not have suitable wording to cover unauthorised encampments and to amend the bye laws is a time consuming and lengthy task.

2.8. Guidance from the Department for Communities and Local Government (DCLG). The DCLG issued a Guide "Dealing with illegal and unauthorised

encampments” in March 2015. This set out a summary of available powers”. While helpful it did not add to our knowledge or offer any more effective method of removing unauthorised encampments than are outlined above.

- 2.9. Protocols of other Boroughs. The protocols of the London Boroughs of Lambeth, Sutton, Croydon and Richmond have been considered as was the protocol for the Royal Borough of Kingston upon Thames. Where the unauthorised occupation is of parks or greenspaces and the byelaws have appropriate wording action is progressed under the byelaws. For unauthorised occupation of any other land action is taken under the Criminal Justice and Public Order Act 1994 and DOE Circular 18/94.
- 2.10. Conclusion. In conclusion the best means of removing unauthorised encampments by the Council within Merton remains the Criminal Justice and Public Order Act 1994 and DOE Circular 18/94. Having reviewed the legislation the review will consider our procedures for obtaining an order under this legislation.
- 2.11. Experience of using the existing protocol is that the protocol generally works well. The working relationship with the police is good and the formal legal notices that action under the Criminal Justice and Public Order Act 1994 and Circular 18/94 requires are served promptly by the council as are requests for welfare assessments. Hearing dates at the magistrates court are also obtained promptly and the subsequent Removal Order is served promptly. When the police are able to serve notice under their powers within this legislation they are also served promptly and they enforce their notice as quickly as their resources allow.
- 2.12. Experience has shown that the main areas that offer opportunities for shortening the process lie in obtaining welfare assessments and the need in the current protocol for a consultative meeting. Delay has often resulted in larger encampments as more travellers move onto the land and increased clean up costs after they have gone.
- 2.13. As confirmed within paragraph 2.4 above welfare assessments are necessary for the Council to seek an order from the magistrates’ court. It is therefore imperative that these be obtained as quickly as possible to ensure the process is completed as soon as possible. Under the existing protocol these assessments are provided by the teams with the expertise in the particular welfare concern e.g. Housing Needs for housing welfare, MASH for children’s welfare, Sutton and Merton Community Services for children’s health and Traveller Education Service for children’s education. Experience has been that the timescale for completion of the welfare assessments can vary dependent upon the demands upon that particular team at the time (NB some teams are not available during the school holidays).
- 2.14. The purpose of the consultative meeting under the existing protocol was to consider the circumstances of the encampment together with reports, representations and any other relevant information that will be used to inform the decision on whether or not police or local authority powers should be used to remove the travellers from the site. Attendees would include the police, the Council (Legal, Housing Needs, Social Services (young persons and older persons), Traveller Education, Highways, Environmental Health, Property Management and Review, Press Office) and partners (NHS Sutton

and Merton). Local residents would be represented by one ward councillor and the travellers would also be invited. The logistics of arranging the meeting not least finding a suitable venue proved unworkable and caused delay in the process. There was also the concern of confrontation by the attendance of the travellers and the local residents' representative. The consultative meeting has not been held for over one year and no concerns or delays have been experienced.

- 2.15. The main changes within the Council are that the responsibility for welfare assessments for children's welfare now lies within the Multi-Agency Safeguarding Hub (MASH). The main changes within partners are that the responsibility for children's health now lies with Sutton and Merton Community Services. It has proved very difficult to engage with Sutton and Merton Community Services both in this review and in obtaining welfare assessments.
- 2.16. As stated in paragraph 2.9 above, protocols from other boroughs have been considered. The main distinction between these protocols and the one for this Council is that specialist officers do not have the responsibility for welfare assessments. In these other boroughs the assessments are made by the officers making first contact with the unauthorised campers who complete a simple form. This greatly reduces the timescale for obtaining the welfare assessments to the standard necessary for court.
- 2.17. To address the concerns identified within paragraphs 2.12, 2.13 and 2.14 above and to ensure the process was as efficient as possible the Continuous Improvement Team were commissioned to complete a LEAN review of the process.
- 2.18. The outcome of the LEAN review is contained within the document "Travellers Unauthorised Encampments Protocol Review" (Appendix 11.3). The review confirmed that the principle opportunities for improving the process were in completion of welfare assessments as quickly as possible while protecting the Human Rights of the occupiers and ensuring that the needs of any vulnerable people, especially children are properly understood and protected.
- 2.19. The review identified the following main items for improving the current process:
 - (i) Whenever possible, the officers first visiting the encampment should collect all the evidence and assess welfare needs and concerns. Other teams should be involved only if concerns are raised.
 - (ii) The officers first visiting the encampment should investigate the travellers' housing needs via a questionnaire. Officers should also distribute an information leaflet. Both questionnaire and leaflet should be prepared by Housing Needs Team. Housing Options/Needs should no longer be required to visit the encampment.
 - (iii) The officers first visiting the encampment should gather all available information on health and wellbeing of the travellers and submit it to the MASH and the Health Authority/Sutton and Merton Community Services.

(iv) The MASH and the Health Authority (Sutton and Merton Community Services) should then organise the appropriate welfare assessments and visit the travellers within the agreed time.

(v) For the purpose of the protocol, the assessments should merely inform if there are any welfare issues that might cause the action for removal to be delayed.

(vi) The new Protocol should maintain the existing turnaround times for the assessments which is a maximum of two working days from notification, but ideally within one.

(vii) The consultative meeting should be held only if the welfare assessments identify any concerns.

(viii) The meeting should be a professional's only meeting. Stakeholders may submit in writing any relevant evidence, data, views, and arguments.

- 2.20. Summary. Under the revised protocol which has taken the best practice from the protocols of other boroughs, the officers of the council who are the first to visit the encampment will complete a questionnaire addressing the welfare needs of the unauthorised occupiers, they will also distribute an information leaflet prepared by the Housing Needs team. The completed questionnaire will be supplied to the MASH and the Health Authority/Sutton and Merton Community Services. The MASH and the Health Authority/Sutton and Merton Community Services have forty eight hours to advise the officers of the council who are the first to visit the encampment if there are any welfare issues that might cause the action for removal to be delayed. If not the service of the section 77 Direction Notice and application to the magistrates' court under section 78 will be progressed and the Removal Order enforced without further delay. The consultative meeting which is a professional's only meeting will only be held if welfare concerns are confirmed at the initial assessment or within forty eight hours of MASH and the Health Authority/Sutton and Merton Community Services being notified. The decision of the consultative meeting could be to delay/not delay the service of notice by the police or the council or to delay the process for those affected by the welfare concerns only. Copies of the existing process and revised process are attached (appendices 11.1, 11.2 and 11.3).
- 2.21. The local authority has a range of duties in relation to our work with travellers encampments including specific duties regarding children and vulnerable adults and their safeguarding and well-being. The draft protocol is under review to ensure that the proposed changes appropriately balance these safeguarding duties with our responsibilities to take action when necessary against encampments. This work is underway and there will need to be some changes to the draft to ensure these particular duties are appropriately reflected.
- 2.22. The Police have confirmed that they will take prompt action under Section 61 of The Criminal Justice and Public Order Act 1994 and DOE Circular 18/94 where their powers allow them to do so.

3 REFERENCE FROM THE OVERVIEW AND SCRUTINY COMMISSION

- 3.1 The commission welcomed the opportunity for pre-decision scrutiny of this draft protocol at its meeting on 24 November 2015.
- 3.2 Members expressed concern at the difficulties that officers had experienced in engagement with Sutton and Merton Community Services and the lack of response to the Commission's subsequent request for a response to the points made in the report regarding its role. The Commission noted that the health welfare assessment service had been re-commissioned and there would be a new provider from April 2016, thus providing an opportunity for a fresh start.
- 3.3 Members commented on the anxiety and disruption that Traveller encampments cause to local residents and welcomed the faster process set out in the draft protocol. They commented on the importance of communication to ward councillors, especially in relation to the council's conflicting responsibilities, and thanked the Property Management team for being proactive in regard to this in the past.
- 3.4 The Commission has recommended that Cabinet consider making the following changes to the draft protocol:
- To include, in the text and in the flowchart, the responsibility to provide regular updates to ward councillors about unauthorised encampments and progress being made towards removal, as well as explaining the council's responsibilities in regard to safeguarding the welfare of Travellers.
 - More use of bullet points and concise text in the protocol to make it easier for officers to follow the process.

4 ALTERNATIVE OPTIONS

- 4.1. The alternative is to continue to use the 2010 protocol.

5 CONSULTATION UNDERTAKEN OR PROPOSED

- 5.1. The Metropolitan Police and the departments of the Council.

6 TIMETABLE

- 6.1. Implementation upon Cabinet approval.

7 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 7.1. These have been included within the main body of the report.

8 LEGAL AND STATUTORY IMPLICATIONS

- 8.1. There is no statutory requirement to carry out periodic reviews of the protocol

9 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS.

- 9.1. In carrying out welfare assessments the Council has regard to its obligations under the Equalities Act 2010 and the Human Rights Act 1998.

10 CRIME AND DISORDER IMPLICATIONS

- 10.1. These have been included within the main body of the report.

11 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 11.1. Contained within the context of the implementation of the new protocol.

12 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- 12.1. A joint protocol agreement between Merton Borough Police and the London Borough of Merton 2015.
- 12.2. Protocol Flow Chart – A Guide (A joint protocol agreement between Merton Borough Police and the London Borough of Merton. 28th May 2010).
- 12.3. Travellers Unauthorised Encampments Protocol Review (LEAN Review). September 2015.

13 BACKGROUND PAPERS

14 DOE CIRCULAR 18/94

- 14.1. DCLG. “Dealing with illegal and unauthorised encampments. A summary of available powers”. August 2013
- 14.2. DCLG. “Dealing with illegal and unauthorised encampments. A summary of available powers”. March 2015