

MEMORANDUM OF UNDERSTANDING FOR TRAVELLER ENCAMPMENTS (Min 291/99)

1 SUMMARY

- 1.1 This report recommends that the Council agrees to sign the Memorandum of Understanding with Essex Police regarding the unauthorised occupation of land by travellers.
- 1.2 Managing unauthorised encampments is a discretionary issue.

2 INTRODUCTION

- 2.1 A recommendation of the "Travellers in Essex" report was that Police Authorities introduce a consistent county wide approach in the use of their powers under the Criminal Justice and Public Order Act 1994. In response, the local division of Essex Police, with the aid of Essex County Council's Gypsy Services Manager, has drafted the appended Memorandum of Understanding regarding the unauthorised occupation of land by Travellers.
- 2.2 Compared to some other Essex Authorities, there are relatively few unauthorised encampments in the Rochford District.

3 COMMENT

- 3.1 The Memorandum of Understanding is essentially an operational agreement that spells out the responsibilities of the local authority and the Police and the circumstances in which various types of action will be taken.
- 3.2 The report clarifies in a memorandum what is already put in to practice when unauthorised encampments occur. It is considered advantageous for the Council to sign the memorandum.

4 CODE FOR TRAVELLERS IN ESSEX

- 4.1 The Memorandum of Understanding relates to any land in the District.
- 4.2 Land in Local Authority ownership is covered by the Code for Travellers in Essex, which allows gypsies remain on public land for up to 28 days if they abide by the terms of the Code. Rochford considered and adopted the Code in March 1995. A copy is appended to this report.

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- 4.3 The Code appended to the Memorandum of Understanding is a summary and it is felt that this should be replaced with the latest version of the full Code to avoid ambiguity.

5 CRIME & DISORDER IMPLICATIONS

- 5.1 The Memorandum of Understanding states that the Police will use their powers to evict encampments where there is serious or continuing crime, serious or continuing threatening, abusive, insulting or violent behaviour, or potential public disorder. Action will also be taken where there is serious disruption to normal every day life within the community or serious disruption to the operational activity of businesses or local authorities.

6 LEGAL IMPLICATIONS

- 6.1 The Memorandum of Understanding may lead to an increase in the need for enforcement action to evict encampments. Eviction through Court action by this Authority may be necessary, however the majority of encampment evictions are secured by persuasion from Essex County Council's Gypsy Liaison Officer.

7 RECOMMENDATION

It is proposed that the Committee **RESOLVES**

- (1) To agree to the Memorandum of Understanding subject to the full version of the Code for Travellers in Essex replacing the summary currently included in the report.

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Background Papers:

Travellers in Essex Report by the Essex Chief Executive's Association

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MEMORANDUM OF UNDERSTANDING BETWEEN ESSEX POLICE AND THE LOCAL
AUTHORITY REGARDING THE
UNAUTHORISED OCCUPATION OF LAND BY TRAVELLERS

INTRODUCTION

1. The purpose of this document is to recognise the operational constraints of both the Local Authority and the Police and develop an agreed understanding of the circumstances when it would normally be appropriate for the Local Authority or the Police to take action.
2. Both the Local Authority and Essex Police respect the right of individuals to pursue different lifestyles, however, the standard of behaviour expected of individuals or groups pursuing such alternative lifestyles are the same as those expected of the settled community. It therefore follows that the approach of both the Local Authority and the Police in dealing with issues that arise from the presence of travellers should be fair, but reflect what both bodies would do if other members of the community started behaving in the same way
3. Therefore peaceful, non-confrontational occupation of land should normally be dealt with as a civil matter by the Local Authority as landowners or other private landowners.
4. However, for circumstances involving certain criminal activity and serious disruption to every day life within the community it would normally be more appropriate for Essex Police to use their powers to remove trespassers from land.

BASIS OF UNDERSTANDING

5. The Local Authority accepts that the Powers available to the Police under the Criminal Justice and Public Order Act 1994 are discretionary and the Act does not impose an absolute duty. The Local Authority also accepts that the appropriate standard of evidence should be available to support potential Police action. The Local Authority further accepts that the exercise of Section 61 remains at the ultimate discretion of the Police as the operational independence of the Police should be preserved and that in making decisions of whether or not to use Section 61 the Police will need to have regard to other operational exigencies that prevail at any given time.

6. Essex Police accepts that the Powers available to the Local Authority under the Criminal Justice and Public Order Act 1994 are also discretionary and do not impose an absolute duty. Essex Police further accepts that because of the advice in DOE Circular 18/94 and the penalties for non compliance with Section 77 proceedings being prosecutions through the Magistrates Courts or applications through the Magistrates Court for Orders to enforce removal, that the remedies available to the Local Authority under the Criminal Justice and Public Order Act 1994 are more protracted and constrained in their application and hence less effective than the remedies available to the Police.
7. Due to the procedural difficulties and timescales involved in Section 77 proceedings of the Criminal Justice and Public Order Act 1994, where unauthorised occupation of land owned by the Local Authority occurs, the Local Authority will normally choose to seek repossession through civil proceedings.

FACTORS TAKEN INTO ACCOUNT IN DECISION MAKING PROCESS

8. When considering what action to take in relation to an unauthorised occupation of land the Local Authority and police will liaise about the particular circumstances of the encampment. Such liaison will in the first instance be between officers of Environmental Health and the Section Inspector or the Divisional Response Inspector.
9. Not only will this include basic information such as location, land ownership and number of caravans, but also the welfare circumstances of the travellers if known and any information about the likely duration of stay and intentions of the travellers.
10. The Local Authority supports the Association of Essex Councils "Code for Travellers in Essex" (See Appendix 1).
11. The Local Authority in liaison with ECC Gypsy Liaison Officer would normally be responsible for taking action in relation to groups of Travellers attempting to occupy land in accordance with the Code. Conversely the Police will normally be responsible for taking action where unauthorised occupation of land by Travellers gives rises to:-

- (i) serious or continuing crime
- (ii) serious or continuing threatening, abusive, insulting or violent behaviour
- (iii) potential public disorder
- (iv) serious disruption to normal every day life within the community
- (v) serious disruption to the operational activity of businesses or local authorities

Statements (i), (ii) and (iii) are matters which the Police are experienced in dealing with and would follow the same considerations as the Police would normally make in coming to a conclusion about whether action was appropriate in such circumstances. Statements (iv) and (v) although important, are more general in nature and by way of illustrations some examples of interpretation where the Police will normally be responsible for taking action are given below:-

- (a) The occupation of School grounds or playing fields in term time.
- (b) If organised community activities could not take place, for example Shows, Village Fetes, Sporting fixtures etc.
- (c) If community facilities, such as children's play areas are denied to local residents for use. However, if part of a large public open space were to be occupied by travellers and they were not on sports pitches, did not affect the use of buildings or children's play area disruption of low level community use such as dog walking would not be sufficient reasons to take action under Section 61.
- (d) The occupation of car parking spaces essential to a business or local authority.
- (e) Evidence to support eviction on the grounds of criminal behaviour would normally be of a standard that would enable the exercise of Police powers of arrest for that behaviour.
- (f) The presence of travellers gives rise to an attributable rise in crime and disorder or the Police have reasonable grounds to believe that there will be a rise in crime and disorder due to their presence.

Operational considerations relating to eviction proceedings and the steps to be followed if the authority and the Police fail to agree about the most appropriate course of action are outlined in Appendix 2.

This Memorandum of Understanding will be subject to regular review in the light of operational experience.

APPENDIX 1

SUMMARY OF THE AEC "CODE FOR TRAVELLERS IN ESSEX"

Groups of not normally greater than 3 caravans (and in some circumstances 6 caravans) will be tolerated for upto 28 days provided that:-

- (i) The occupation of any land shall not have a serious effect on the amenities, or otherwise cause nuisance to, the occupants of any adjacent property.
- (ii) No damage shall be caused to any property, fences, trees, etc. on that or adjacent land.
- (iii) The behaviour of the travellers to other people shall be acceptable, i.e. no intimidation especially involving abusive or insulting language or actual violence.
- (iv) There shall be no dumping or inappropriate disposal of household, human or trade waste especially where this constitutes a hazard to public health, nor any ~~stick~~ piling of materials.
- (v) No fires shall be lit on any land other than for cooking or washing purposes.
- (vi) Vehicles shall be parked, and any animals kept, in such a manner so as to cause no inconvenience or affect on the safety of users of the adjacent or nearest highway.
- (vii) The occupation of local authority or statutory authority land or agricultural land shall not impede its necessary operational use or, insofar as park and or other public open space is concerned, shall not detract from the authority value.

APPENDIX 2

OPERATIONAL CONSIDERATIONS FOR EVICTION PROCEDURES

1. Whichever approach to eviction is taken, the Local Authority and Police will support each other in terms of resources and equipment but subject to their legal duties and powers.
2. It is acknowledged that the Police cannot act as bailiffs unless specifically authorised in a court order. Details about the following need to be agreed:
 - contact/call out
 - vehicle removal/storage
 - lodging of gypsies/travellers not arrested (particularly children)?
 - Availability of specialist equipment, e.g. bolt croppers
3. The nature and timing of the enforcement of a S.61 notice will be an operational matter for the Police although the Local Authority will normally be consulted.
4. The use of S.61 will normally be a response to an incursion onto land within the previous 48 hours. S.61 will not be used for established encampments unless circumstances suddenly and significantly change.
5. The decision to exercise S.61 (in accordance with its legal requirements and the Memorandum of Understanding) will be taken by the Duty Response Inspector or Section Inspector. The decision to exercise S.61 on the grounds given at 11(f) will only be made by the Divisional Intelligence Co-ordinator.
6. The enforcement of S.61 will always be referred to the on-call command team member for approval of the nature and timing of enforcement.
7. In the event of failure to agree on the use of S.61 between the Local Authority and the inspector, the dispute will be escalated to Deputy Chief Executive of the Local Authority and the on-call member of the command team.

8. The ultimate dispute escalation will be to the Chief Executive of the Local Authority and the Divisional Commander. The Local Authority will always reserve this right to raise concerns about policing with the Chief Constable or the Police Authority.

THE CODE FOR TRAVELLERS IN ESSEX

Subject to the satisfactory assessment of the following factors, Essex authorities will not normally pursue an order for the removal of vehicles from any land on which they are stationed for a period of up to 28 days:

1. The "gypsy" status of occupants of the caravans. For the purposes of this Code "gypsy" means persons of nomadic habit of life, whatever their race or origin, who wander or travel for the purpose of making or seeking their livelihood and does not include persons who move from place to place without any connection between their movement and their means of livelihood and does not include members of an organised group of travelling showmen or of persons engaged in travelling circuses, travelling together as such.

Travellers, other than gypsies as defined above, will be moved on subject to their welfare needs being assessed.

2. The number of caravans involved. The maximum number normally acceptable will be 3 caravans in any one group although slightly larger groups may be permissible in locations remote from residential or commercial properties.
3. The distance between groups. The minimum acceptable distance between groups of travellers shall normally be half a mile.
4. The occupation of any land shall not have a serious effect on the amenities, or otherwise cause nuisance to, the occupants of any adjacent property.
5. No damage shall be caused to any property, fences, trees etc, on that or adjacent land.
6. The behaviour of the travellers to other people shall be acceptable i.e. no intimidation especially involving actual violence or the use of abusive or insulting language.
7. There shall be no dumping or inappropriate disposal of household, human or trade waste especially where this constitutes a hazard to public health, nor any stockpiling of materials.
8. No fires shall be lit on any land other than for cooking or washing purposes.
9. Vehicles shall be parked, and any animals kept, in such a manner so as to cause no inconvenience or affect on the safety of users of the adjacent or nearest highway.
10. The occupation of local authority or other statutory authority land or agricultural land shall not impede its necessary operational use or, insofar as parkland or other public open space is concerned, shall not detract from its amenity value.
11. Once the agreed period of occupation has elapsed then the distance moved must be at least two miles from the site occupied. Re-occupation of the same site must not take place within three months.

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