

11 January, 2018

Response to a Petition Concerning Unauthorised Encampments in the Short Heath Ward

Ward(s) Short Heath

Portfolios: Cllr I Shires – Community, Leisure and Culture
 Cllr C Jones – Clean and Green

Executive Summary:

This report provides a response to a petition submitted to Council with regard to the Council protecting parks and playing fields in Short Heath against unauthorised encampments and to introduce an injunction on those sites.

Reason for scrutiny:

This matter is being brought to the Corporate Overview and Scrutiny Committee as part of the Council's petition scheme, it containing more than 500 signatures.

Recommendation:

That, the Committee note the actions undertaken and the current position in relation to the petition in the Short Heath ward.

Background papers:

There are no background papers to this report.

Resource and legal considerations:

The robust management of UEs has a significant impact on Council resources in terms of officer time within a number of service areas, including Community Protection, Money Home Job, Legal Services and Communications. In addition, there are the costs associated with clearing sites following the departure of UEs. These demands are significant, regardless of whether or not the site is covered by an injunction. The costs of engaging bailiffs to support the eviction process from injunction sites is particularly high and this is only partially offset by the lower clean-up costs associated with more speedy eviction from injunction sites.

Citizen impact:

An unauthorised encampment can have a significant impact on residents living in the vicinity. A programme of works is underway to secure sites against UEs which will reduce the risk of UEs. However, it is important to recognise that such security measures will not remove the risk completely. Consideration also needs to be given to the impact on residents of the measures proposed to ensure that the land can still be available to them for its intended purposes.

Environmental impact:

There have been significant amounts of fly tipping and waste left following some, but not all, UEs.

Performance management:

Whilst the process of securing possession of land on a site with an injunction can be speedier than on those sites that do not have such benefit, there is nevertheless an intensive demand on officer time.

Equality Implications:

Has an Equality Impact Assessment been carried out? Yes/No

The Equality Impact Assessment has looked at the impacts of unauthorised encampments on residents and occupants as well as looking at the impact of additional protective measures and any change in policy relating to the eviction process.

Consultation:

Officers from Community Protection and Clean and Green have been involved in the preparation of this report.

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1. Report

- 1.1 A petition was presented to Council on 13 November 2017 by Councillor Hicken requesting that the Council strongly secure the parks and playing fields and to secure an injunction on the sites to prevent them being used for unauthorised encampments.
- 1.2 This report has been prepared in response to the petition. It sets out the current processes for managing UEs and outlines measures being implemented and/or considered to protect the Council's parks and playing fields.

2 Managing Unauthorised encampments

2.1 Current Process of Managing an Unauthorised Encampment

2.1.1 The Authority has powers to deal with unauthorised encampments (UE) in the Criminal Justice and Public Order Act 1994 (CJPA). These powers provide a process which must be followed in order to do this. In addition, other provision in the Human Rights Act and through case law also impose duties and responsibilities on the Council as a Local Authority. Where an UE is on Council land or highway, the process can be summarised as:

- An assessment of the unauthorised encampment needs to be made to ascertain the size, location any health and safety risks to officers, the occupants of the UE. Officers also endeavour to ascertain the intentions of the occupants of the UE, although there is no obligation to tell us of that.
- A welfare assessment is undertaken to ascertain if there are any welfare needs which would prevent the occupiers of the UE from moving on from the land. Where there are needs, it may be necessary for arrangements to be made for these to be met.
- The full legal ownership of the land needs to be checked. In most cases, this requires manual reading of deeds packets by officers in Legal Services. Whilst it is often assumed that the Council owns land, there have been numerous occasions where there are leases in place, management trusts and other similar matters to be dealt with.
- Once these checks have been undertaken, officers serve a notice referred to as a section 77 notice which is a direction to leave the land. This usually happens on the same day as the initial visit to the site or the following day.
- **It is only when the occupiers of the land fail to comply with this notice that an application can be submitted to the magistrates' courts for an order to enable us to evict the occupants of the UE.** The Council is dependent on court availability for this hearing but locally, the courts do usually accommodate this in a very short time frame. At least 24 hours' notice must be given to the occupants of the UE of the hearing to allow them to seek legal advice and attend court if they wish to defend the application.
- Assuming the Court grant the application to evict, an order under S78 of the CJPA is issued and served on the UE. Again, they must be given time to pack up and leave before moving to a forced eviction if they fail to do so. In most cases, the UE vacates the site after this s78 notice has been served and prior to eviction.
- If the site is not vacated, then it may be necessary to evict the UE. This is a particularly high risk part of the process and, whilst mostly all other visits to

site are undertaken by Council staff without police support, this stage can only be undertaken with police presence. The level of resources needed varies according to the size of the UE, the manner and attitude of the families on site and the geography of the location. In most cases, this is undertaken by Council staff but, exceptionally, it may be necessary to engage court enforcement officers (bailiffs).

2.1.2 There is no set time frame or target for this process as there are many variables which can affect progress. However, it typically takes five working days from the first site visit to the site being vacated. As soon as possible after the site is vacated, officers from the Clean and Green Service attend to clear up any rubbish left behind.

2.1.3 Where a UE is on private land, it is the responsibility of the land owner to secure repossession of the land.

2.2 Injunctions

2.2.1 Through 2015 and 2016 there were increasing numbers of UEs in the borough with a rise in levels of anti social behaviour connected with them. There was also a noticeable pattern of certain families moving from site to site over a number of weeks. In 2016, a decision was made to make an application to the County Court for an injunction to assist the Authority in its management of unauthorised encampments (UE). **The sites selected were based on evidence of the number of UEs which had been on the site, the size of the camps, the impact on residents and business, clean up costs and resources to re-secure lawful possession of the land.** This application was innovative and was one of the first of this nature in the country to be secured and certainly the first in the West Midlands.

2.2.2 This application was successful and covers 18 named individuals and 12 sites in the borough.

2.2.3 One of the benefits of the injunction is that a UE can normally be moved from the site more quickly, assuming that there are no welfare issues that preclude eviction. **However, this is resource intensive in terms of officer time and draws them away from other high priority work.** It can mean most officers on the Community Protection team working in excess of 12 hours with no notice. In addition, there is the cost of engaging High Court Enforcement Agents (Bailiffs) and it is dependent on police support being available.

2.2.4 In 2017 additional emergency injunctions were obtained on the former Oak Park Leisure Centre and the new Active Living Centre land, to protect the general election. This was supplemented by a further injunction applying to 11 sites in November 2017. The sites being selected based on evidence as referred to in paragraph 2.2.1

2.3 Protective measures

2.3.1 In 2016, the administration made a decision to put additional protective measures on a number of high risk sites that had been previously been subject to unauthorised encampments. Because this work incurs costs that are not

accounted for within current budgets, a prioritisation process was undertaken using the criteria of number and frequency of UEs, size, impact on communities and business, clean-up costs etc.

- 2.3.2 In addition, after each UE, officers from Clean and Green services carry out a site assessment to determine whether measures could be employed to improve security. These may include stronger locks, repair of damaged perimeter fencing and bunding, although, it is not possible to make any site totally secure.
- 2.3.3 Before carrying out work on additional protective measures, checks must be undertaken to establish whether the works require planning permission, interfere with any rights of way, create any hazards to residents etc.
- 2.3.4 Following previous UEs on land at Bentley Haye, bunds have been installed at the entrance. Other sites are naturally less accessible, for example a steep slope at the entrance to Manor Farm play area. Where there is potential for access, the sites are being assessed along with all sites in the borough to determine if additional measures may be appropriate to restrict access and a process of prioritisation is being worked through.
- 2.3.5 The high burden of evidence required to secure an injunction for a given site, together with the very high cost of enforcing an injunction means that this approach needs to be reserved for a small number of sites that have been significantly impacted by UEs or that cannot be otherwise protected.