



CRIME AND DISORDER SUB-COMMITTEE

Subject Heading:

Update report on LB Havering application for unlawful encampment injunction

SLT Lead:

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The subject matter of this report deals with the following Council Objectives

Communities making Havering
Places making Havering
Opportunities making Havering
Connections making Havering

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SUMMARY

Residents, business owners and landowners have experienced an increasing number of unauthorised encampments across Havering in recent years.

The Borough has suffered significant and prolonged issues as a direct result of each unauthorised encampment, including fly tipping, anti-social behaviour, criminal damage and violent behaviour, and compounded by the environmental impact and health risks arising from the majority of such illegal incursions.

RECOMMENDATIONS

That the Sub-Committee receive and note the contents of the report.

REPORT DETAIL

1. Environmental / Economic Impact

- 1.1 Significant expense has been incurred by the council and private land owners in relation to legal and clear up costs.
- 1.2 Responding to these incidents is necessary to generate cumulative opportunity and costs in terms of officer time, and the cost to the council of removal of fly tipped material from illegal encampments which can amount to tens of thousands of pounds.
- 1.3 Additional costs are often associated with the removal of abandoned caravans, where laden with hazardous and bulky waste such as oil and gas canisters, and tyres.
- 1.4 Furthermore costs are regularly incurred on installation of target hardening measures to prevent unlawful incursions such as wooden posts and concrete barriers.

1.5 Unauthorised Encampment Protocol

Council Planning Enforcement Officers are primarily responsible for dealing with reported incursions in line with the Unauthorised Encampment Protocol. Firstly, determining land ownership, and undertaking an initial assessment to confirm whether there is an unauthorised encampment and if so, subsequently arranging a welfare assessment to identify any welfare issues that need to be addressed, before taking enforcement action.

2. Enforcement Powers

- 2.1 Private land owners are able to take action under Common Law to remove trespassers from their land in which private bailiffs are instructed. On Council owned land enforcement action can be undertaken through the service of **Section 77 Notices under the Criminal Justice and Public Order Act 1994** (CJPOA) which empowers local authorities to direct individuals to remove their vehicles and belongings and to leave highway land, or any land occupied without the consent of the landowner, whether owned by the local authority itself or by any other public or private landowner.
- 2.2 A Notice is served under this enactment by local authority officers – usually in the company of police officers – requiring the trespassers to vacate the land by a certain date. If not complied with, as is often the case, the council

has to make application to the Magistrates Court for an order under **Section 78 of the CJPOA**.

- 2.3 Whether individuals leave land following service of a notice under section 77 CJPOA or prior to enforcement of an order under section 78 CJPOA, if they proceed to illegally occupy another site within the borough this process has to be recommenced, a time-consuming process entailing further costs.

3. Police powers

- 3.1 Police have additional powers under **section 61 of the CJPOA** to direct unauthorised campers to leave a site without reference to the courts, if the landowner or his agent has asked them to leave by a particular date and time and they have failed to do so.
- 3.2 However, to invoke this power one of the three following conditions has to be met :
- the unauthorised campers have caused damage to land or property thereon;
 - they have used threatening, abusive or insulting words or behaviour to the occupier, a member of his family or his employee or agent;
 - there are six or more vehicles on the land.

4. Unauthorised Encampment injunctions

- 4.1 In line with neighbouring authorities in Barking and Dagenham and Redbridge the Council has issued a Part 8 Claim form for an injunction, an application notice for an interim injunction and a without notice application for alternative service of the evidence.
- 4.2 The without notice application for alternative service has been granted by Mr Justice Phillips in the Queens Bench Division, High Court of Justice.
- 4.3 The interim injunction application is listed before a judge on 10th September, 2019.

Full details of the unlawful encampment injunction are published on the Council website: www.haverling.gov.uk/encampmentinjunction.

- a. 260 vulnerable sites, including parks and open spaces have been identified across Havering, requiring deployment of almost 600 injunction notices to ensure that this preventative measure can be made legally enforceable for at least 3 years at the date of next hearing (which is yet to be determined by the Court).
- b. Officers from across the Environment Directorate have been working additional hours to complete this considerable logistical undertaking to ensure service of all notices to enable application for an interim injunction to be obtained at the High Court on 10th September.

c. Application has also been made for injunctions against 105 named individuals. Legal Services have instructed bailiffs for the service of these notices.

5. Update to the Crime and Disorder Committee on application to the High Court on 10th September

5.1 Rob Harper, Interim Enforcement Group Manager for Neighbourhoods will present a verbal update to the Crime and Disorder Committee meeting on 10th September to confirm the outcome of the Council's application for an interim unauthorised encampment injunction at the High Court on the same day.

IMPLICATIONS AND RISKS

Financial implications and risks:

A broad estimate of costs of the injunction could be up to £200, 000 or more if the proceedings are contested. This will include legal fees, process server costs and officer investigation time etc.

If an injunction order is granted by the Court the Council will not incur costs to place further bollards in public car parks etc. and clearing of sites for fly-tipping and waste. For example the clear up costs from 2016 to date has been confirmed by the cleansing team as £162, 467.30.

Legal implications and risks:

As set out in the body of the report, the Council has dealt with unauthorised encampments by following the legal process under Section 77 and Section 78 of the Criminal Justice and Public Order Act 1994. However these powers have proved ineffective as the travellers once served will move from site to site. In any event the powers do not prevent the associated problems with these encampments such as the fly tipping, criminal damage and anti social behaviour. Therefore a Borough Wide Injunction is now necessary. Neighbouring Boroughs such as London Borough Redbridge have also obtained the same order therefore there is a risk further unauthorised encampments will continue should there be no order in place.

If the Order is granted the Council will request for a Power of Arrest to be attached so that any breach will be contempt of court and any named or unnamed individuals may be liable to be sent to prison. The Council's enforcement team will need to liaise with the Metropolitan Police to agree the arrangements for enforcement of any Order granted.

The application has been carefully prepared to consider The Human Rights Act 1998 and the Equality Act 2010 however the Court will balance this against the significant impact of the encampments and associated problems in the Borough before making a decision. An EQIA has been completed prior to issue of the proceedings.

If the application for the injunction is defended there is a possibility each individual or a group will collectively arrange legal representation. In this instance the case will be carefully reviewed at each stage of the proceedings.

Human Resources implications and risks:

Under 300 sites have been served across the whole borough in order to ensure the service requirement for the injunction has been completed. Officers across different departments have arranged a co-ordinated approach and an external process server has been briefed should assistance be required. The costs of this has been considered and agreed by the service.

Equalities implications and risks:

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.