

Negotiated Stopping Policy and Temporary Transit Agreement

Report of the Corporate Portfolio Holder

Recommended:

- 1. That the Negotiated Stopping Policy and Temporary Transit Agreement set out in the Annex to the report be approved and adopted from the date of any injunction order granted as described in paragraph 2 of the report.**
- 2. That authority is delegated to the Head of Legal and Democratic Services in consultation with the Corporate Portfolio Holder and Leader to finalise the wording of the Policy and Schedules, including inserting the provisions of any injunction order made.**

SUMMARY:

- This report presents a proposed “Negotiated Stopping Policy and Temporary Transit Agreement” for consideration.
- It is proposed that the Policy is approved and adopted alongside any injunction granted by the court prohibiting unlawful encampments within the Borough.

1 Introduction

- 1.1** Test Valley Borough Council intends to apply to the High Court for an Injunction Order prohibiting unauthorised encampments and associated nuisances in certain areas of the Borough.
- 1.2** It is proposed that the Negotiated Stopping Policy and Temporary Transit Agreement as shown in the Annex to the report is approved to supplement and function alongside any injunction obtained.

2 Background

- 2.1** This report and the Policy shown in the Annex to the report seeks to tackle, in part, the escalating issue of problematic unlawful encampments in the Test Valley Borough Council Area.
- 2.2** Since the start of 2018, there has been a marked increase in both the number and complexity of unlawful encampments experienced across certain areas of the Borough.
- 2.3** A large number of these unlawful encampments have been accompanied by anti-social and sometimes criminal behaviour including nuisance, intimidation and threats, the loss of use of community open space and sports pitches, deposit of household and human waste, criminal damage and Fly-Tipping.

- 2.4 Increasingly, unlawful occupiers have taken to breaking into sites to take up occupation, causing criminal damage in the process.
- 2.5 The Council will tackle this problem by applying to the High Court for an injunction order under section 222 of the Local Government Act 1972 and/or section 187B of the Town and Country Planning Act 1990, prohibiting unauthorised encampments and deposit of controlled waste across the areas of the Borough where there is evidence of this unlawful behaviour.
- 2.6 These areas comprise the urban area of Andover and environs and the Alma Road Car Park in Romsey. A significant weight of evidence has been gathered to present to the court demonstrating the scale and nature of the problem experienced within the Borough. This report does not deal with the issue of the injunction application itself, which the Head of Legal and Democratic Services has delegated authority to pursue.
- 2.7 It should be noted that Council applies for an injunction order as a last resort, since court action on the part of the Council and private landowners and action by the police have had no impact on the regularity or nature of the incursions and it is apparent that nothing short of an injunction will bring a halt to the unauthorised encampments, associated nuisances and criminal behaviour.
- 2.8 It is appreciated that an injunction order in the terms sought will impact on the members of the Gypsy and Traveller Community. It is also of note that Test Valley Borough Council does not have a Gypsy and Traveller transit site. Neither does Hampshire County Council have a site to which such groups may be directed. Therefore, to work in tandem with any order obtained, it is recommended that the Council adopts a Negotiated Stopping Policy and Temporary Transit Agreement affording an opportunity for those who wish to stop on Council-owned land to request permission to lawfully do so. This would provide a mechanism for tolerated well-behaved and sensibly-sized encampments on appropriate sites.
- 2.9 The draft Policy and Agreement proposes that requests to 'stop up' must be received prior to taking up occupation of land. The Policy further provides that once a request is received, the Council would assess whether the proposed site is suitable including (but not limited to) consideration of whether the presence of vehicles would interrupt local amenities, whether the site is in a residential area, a nature reserve or the like, near to a highway so as to present a hazard and also taking into account the size of the encampment.
- 2.10 If the site/encampment is deemed to be unsuitable then the request will be refused.
- 2.11 As part of the request process, applicants would need to provide full contact details and to sign an Agreement undertaking that they (and any others at the encampment site) will not deposit or unlawfully dispose of any waste, will not allow any open fires or burning of material, will not urinate or defecate in the open, will not play loud or amplified music and will not use motorised vehicles which may present a nuisance or hazard.

- 2.12 The Agreement will also require the occupiers to leave the site by a given date and time, to leave it site clean and tidy and to remove all waste and gas canisters. The Agreement provides that any breach of its terms will cause the agreement to be terminated immediately and require immediate vacation of the land.

3 Corporate Objectives and Priorities

- 3.1 Adoption of the attached policy in conjunction with an injunction under section 222 of the Local Government Act 1972 and/or section 187B of the Town and Country Planning Act 1990 will contribute to the corporate priorities of growing the potential of the Borough's towns, communities, people and the local environment.

4 Options and Appraisal

- 4.1 The options are either to adopt the Policy alongside any Injunction obtained or not. It would be most likely be disproportionate for an order to be made in the absence of a dedicated transit site or other provision, such as is proposed. For that reason, adoption of the Policy, shown in the Annex to this report, is the recommended option.

5 Risk Management

- 5.1 An evaluation of the risks indicate that the existing controls in place mean that no significant risks have been identified at this time.

6 Resource Implications

- 6.1 No significant resource implications of adoption of the policy are identified.

7 Legal Implications

- 7.1 If the policy is adopted there will be an expectation that the Council complies with it, unless there is good reason to depart from it.

8 Equality Issues

- 8.1 Many members of the Gypsy and Traveller Community will have protected characteristics in accordance with the Equality Act 2010. It is also acknowledged that this Community and its way of life will be impacted by any order made.
- 8.2 The Council must also have due regard to the Public Sector Equality Duty in accordance with section 149 of the Equality Act 2010 which provides that a public authority must, in the exercise of its functions, have due regard to the need to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Act;
 - (b) advance equality of opportunity between persons who share a relevant characteristic and persons who do not share it; and

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

8.3 Due consideration must also be given to Articles 8 and 14 of Part 1 of the Human Rights Act 1988 which, respectively, enshrine the right to respect of private and family life and prohibit infringement of Convention rights by discrimination on any grounds including grounds of race, language, religion, national or social origin, birth or other status.

8.4 The Council therefore needs to balance the rights of the Gypsy and Traveller Community and the settled community in seeking the injunction order which is deemed necessary to curtail the problems we have experienced. In mitigation of the impact on the travelling community, the geographic area of the injunction application is limited and encompasses the areas with well-evidenced history of impact.

8.5 The Policy proposed would provide further mitigation and balancing and support the proportionality of an injunction order in these circumstances.

9 Other Issues

9.1 None identified.

10 Conclusion and reasons for recommendation

10.1 It is therefore recommended that in the event that the Court sees fit to grant an injunction order prohibiting unauthorised encampments within those areas of the Borough where unlawful encampments and their negative impacts have most regularly been felt that the policy shown in the Annex to the report is adopted to work in tandem with the order.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
None			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	1	File Ref:	N/A
(Portfolio: Corporate) Councillor T Tasker			
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Report to:	Cabinet	Date:	17 June 2020