SPELTHORNE
MEANS BUSINESS

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Our ref:
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Date: 24 May 2018

Dear Sir

Unauthorised Development and Encampments Consultation

Thank you for your invitation in April 2018 to participate in the consultation relating to unauthorised development and encampments.

Below are the responses submitted on behalf of Spelthorne Borough Council for your consideration.

Question 1:
What evidence is there of unauthorised development and encampments in your community, and what issues does this raise for the local community?

Unauthorised Encampments
Spelthorne has seen a number of instances of unauthorised encampments.

In 2016 – 14 unauthorised encampments
In 2017 – 17 unauthorised encampments
In 2018 – thus far 3 unauthorised encampments

We have attached data to this response letter (Appendix 1) which outlines some of the details.

The costs of dealing with these matters includes:

	2016 - £	**2017 - £**
Direct costs	21,900	37,150
Front line staff	3,810	4,640
Legal costs	(not recorded)	8,875
Total	**25,710**	**50,665**

Unauthorised Developments
Where we have experienced unauthorised developments, these have not, in the main, been the responsibility of the GRT community. We have experienced a mixed collection of cases mostly in the settled community where residents have exceeded their rights under the general development order or a planning permission. These are dealt with under normal enforcement powers and we do not have a data set regarding GRTC which would be of use to the consultation in this regard.

Question 2:
We would like to invite evidence of unauthorised encampments which have occurred in the last two years, as follows:

(a) the number of instances where trespassers have occupied land without authorisation, including the location and scale of the encampment.

(b) whether the land in (a) required cleaning or repair once the encampment had left, and if so, what was the cost?

(c) how was each unauthorised encampment encouraged to leave, how long did it take, and was the local authority able to move them on; or did the police become involved?

Please see the attached response at Appendix 1 which provides the detail.

Question 3:
Do you think that the existing powers made available to local authorities to remove unauthorised campers from land are effective?

Generally, no. Trespass per se is not illegal and the weaknesses in the law are exploited by those determined to trespass. There is a view from those working on the ground with GRT communities that this is a "game". Encampments are established knowing what the procedure is, knowing that they will be moved on. Those in the encampments try to extend their visits as long as they can before local authorities use enforcement methods to remove them from site. This is waste of public money; it is an annual process and as a society we need to find a way to deal with it. Not only that but this annual cycle of encampments and enforcement causes significant disruption to the settled community. It diverts resources away from other enforcement and environmental work that the Council should be doing. There are firms of bailiffs who profit from the continued removal of trespassers from one site to another.

Powers under the Criminal Justice and Public Order Act 1994 are used to move unauthorised encampments. Where this happens, those people (mostly) move after it becomes clear that force is to be deployed. They are banned from returning to that site for three months by the terms of the Court Order, but they often move only a short distance to another site for the process to start all over again. Hence why we say this is a "game". After a number of repeat incursions, the Council might be in a position to apply for an injunction. However, in the meantime, considerable disruption and cost has arisen.

Stronger powers are needed to ensure that those involved in unauthorised encampments are banned from a wider area and for a longer period of time. We suggest it is appropriate to ban those involved in an unauthorised incursion from going on to any other site in the borough for three years. Where they do so there should be a power of arrest.

DVLA must be required by law to provide information to local authorities to enable them to quickly respond to unlawful encampments. Most people involved in unlawful encampments do not participate in the welfare checklist process and enforcement officers rarely have a full set of names and addresses. The only identifiers that are useful are vehicle registration plates and enforcement officers should be allowed to look behind that data to find out details of registered keepers.

Question 4:
Do you think local authorities could improve their use of existing powers?

Possibly yes. We understand from other local authorities that there are mixed experiences in trying to deal with these situations. The response from the local authority also relates to the co-operation which they can expect from their local Police (see answer to question 6 below for further comment on this point).

This Council has used Community Protection Notices under the Anti-social Behaviour, Crime and Policing Act 2014 against those encampments where there has been anti-social behaviour to the clear detriment of residents. We consider that this law applies to the GRT community as it applies to the settled community.

This power has proved effective when dealing with anti-social behaviour such as fly-tipping, use of noisy quad bikes and generators etc. The powers available under that Act for confiscation of equipment involved in such behaviour (after appropriate warnings have been given and court processes have authorised it) has proved to be a valuable tool to tackle such behaviour. We think it improves community cohesion if we can effectively deter anti-social behaviour in the community as this can then lead to less anxiety about the unlawful incursion in the settled community.

The guidance under the Anti-social Behaviour, Crime and Policing Act 2014 does not however deal with encampments which we feel discourages local authorities from considering this power. The current guidance about powers to address unlawful encampments also does not advise on the circumstances where this power could be used. We think this is on omission which should be rectified, in both sets of guidance.

The fundamental point here is that, notwithstanding the lack of sites which are available to the GRT community, in this area, regionally and nationally, which might be a relevant factor to unauthorised encampments, crime and anti-social behaviour cannot be tolerated. The evidence supplied with our consultation response shows it is not a minority of encampments which are engaged in crime or anti-social behaviour, it is the majority (25 instances out of 34 detailed in our evidence which is 74%). This needs to be recognised and tackled head on.

Question 5:
What other powers may help local authorities deal with unauthorised encampments?

Seizure of equipment used in anti-social behaviour (motorcycles, quad bikes, tipper trucks, generators) has proved to be a useful deterrent in our experience. We recommend that this approach is endorsed nationally and that it is reflected in guidance. Guidance will need to deal with the sensitive issue of caravans and vehicles which are necessary to tow caravans off the site in compliance with a direction from the Police or local authority. There is an existing power for the Police to confiscate vehicles in defiance of a section 61 Order, but we believe that power is underutilised. We suggest that you seek evidence about its use from Police forces nationally.

Guidance should also be amended to direct Police and local authorities to deal with criminality and anti-social behaviour using the full range of powers at their disposal as they would in the settled community. Residents see repeated anti-social encampments as a failure by the Police and local authorities to keep public order. This is a serious criticism and should be addressed as it has consequences for community cohesion. In this Council we believe that we respond well to allegations of anti-social behaviour though we have expressed our frustrations to the Police about some of the limitations they feel they are under.

For this reason, we also say that it is not solely the issue of local authority powers which is the relevant factor, it is also the ability of the local Police to respond. Please see the response under question 6 below.

Question 6:
Do you consider that the current powers for police to direct trespassers to leave land are effective?

No. This is partly a commentary on the powers under the Criminal Justice and Public Order Act 1994, and partly a commentary on the way that these powers are deployed by the Police. We would recommend that the Minister should review the law.

On the face of it, the powers would seem sufficient, though the arbitrary number of vehicles under section 61 (six or more vehicles) is an unnecessary threshold; the powers should be available for an encampment of any size if the trespassers have caused damaged or used threatening or abusive behaviour towards the occupier.

We have found, and our evidence substantiates that the Police are only willing to use powers in a minimum of cases. This is claimed to be for reasons of resources: Notwithstanding that an encampment meets the criteria under the law, if the Police have explained to us that if they exercise their powers then they believe that the encampment will move to another location in the County and they will have the same problem there. Their response to this conundrum is to do nothing unless it is absolutely necessary. This is wrong. It undermines public confidence in the Police to police. Residents do not accept the logic of such an approach. As such there is a serious matter of public policy at stake and the Police need to be empowered and resourced to deal with these encampments. The law should be amended, if there are subsequent unlawful encampments after a direction has been given (not just re-entry to the same site) then the Police should have powers to arrest.

This Council would support the introduction of a criminal trespass law as introduced in Ireland under their Housing (Miscellaneous Provisions) Act 2002 and explained in your consultation document.

Section 62A of the Act is irrelevant in practice where insufficient transit sites are available. Please see our response to question 19 below. If more sites can be provided then this power may be or greater relevance.

We would suggest that the Minister makes enquiries with the Police nationally to establish how many times Police powers are used (and under which power), how many times confiscation is used and how many prosecutions are undertaken in consequence of these powers.

Question 7:
Would any new or revised powers that enable police to direct trespassers to leave land make it easier to deal with unauthorised encampments?

Please see the answer to question 6 above.

Question 8:
Do you consider that the government should consider criminalising unauthorised encampments, in addition to the offence of aggravated trespass? If so how should a new offence differ, and what actions and circumstances should it apply to?

Please see answer to question 6 above.

We have found that aggravated trespass occurs when incursions take place on public open space, parks, sports pitches and playing fields and so on, which then prevents lawful users from using the park etc as they would usually.

We have not had any experience of Police willing to use powers in relation to aggravated trespass, though in one instance in 2017 the Police attended at a private sports club to move travellers on:

The facts here were that the Council exercised a section 78 Order to remove trespassers on public open space (Police had declined to use their powers), the trespassers then went to the private sports club

and were told immediately by the Police to move on. The trespassers then moved onto other public open space, the Police again declined to use their powers at that place. In each location, members of the public would have been deterred from using the land for leisure as they wished by reason of the incursion. The Police left the matter to the local authority where it was public open space; instances one and three. This was to the considerable public dissatisfaction of residents in the first and third locations where there was significant anti-social behaviour associated with the incursions.

The consistent use of current powers by Police would be a welcome first step. Surrey Police operate a workflow which in the view of this Council is designed to reduce their attendance and involvement in unlawful incursions. Representations have been made directly to the Police and Crime Commissioner for Surrey on this point. The workflow can be provided if required – please contact the author.

Question 9:
What barriers are there to the greater use of injunctions by local authorities, where appropriate, and how might they be overcome?

The primary hurdle to overcome in the use of injunctions is the requirement to demonstrate to the Court that this is not just a one-off instance of unlawful trespass, criminality or anti-social behaviour. The Court has a discretion not an obligation to exercise its ability to issue an injunction, it must therefore be persuaded that this is a serious issue, not an isolated one.

For instance, one of the encampments listed in our supplied evidence was an encampment which had been moved from the neighbouring borough. That borough had to substantiate the use of Criminal Justice and Public Order Act on a number of occasions before it was able to apply to the High Court for a borough-wide ban on that group. When that injunction was sought, the trespassers moved into Spelthorne and the whole "game" started again so that this Council could gather evidence to make the same application to the High Court.

What is evident is that the same groups are moving around the Country to different areas and may be involved in repeated unlawful encampments. A national database should be established so that local authorities and the Police can feed into it and draw evidence from it in order to deal with the most persistent trespassers. We suggest that the DVLA is the most appropriate agency to control this database since vehicle number plates are a prime identifier and the database will need to reflect when vehicles are traded on from one party to another.

Question 10:
Do you have any suggestions or examples of how local authorities, the police, the courts and communities can work together more successfully to improve community relations and address issues raised by unauthorised encampments?

No, unfortunately not. The issue will not be resolved until there are sufficient lawful sites to ensure that unlawful encampments can be dealt with swiftly and effectively. This means permanent pitches and transit sites. This is not, in our opinion, a district level matter. It is a national or regional approach which is required. In this area this means the County Council and unless they take the lead, the present situation will continue of boroughs moving problems from one area to another. The County Council and the Police need the resources to be able to achieve the aspirations of national policy and the law.

Question 11:
Are there ways in which court processes might be modified in a proportionate way to ensure that unauthorised encampments can be addressed more quickly?

Locally, in Surrey we have a reasonably good response from the Courts. We are however nervous about taking this for granted as the Court Service shrinks and resources reduce. We have established some local protocols to ensure that issues relating to unlawful incursions can be dealt with quickly.

It would be welcomed if Courts could be directed in guidance to establish such local protocols with local authorities for swift response (where they do not currently exist).

Question 12:
In your view, what were the advantages and disadvantages be of extending the IPO process to open land?

The Council has no experience of using this process and cannot offer any useful advice in this area.

Question 13:
Are you aware of any specific barriers which prevent the effective use of current planning enforcement powers?

As regards barriers to resolution of unauthorised development: the issue is with PINS.

Residents are infuriated with the length of time that the planning enforcement process takes. This is not a local issue, it is a national issue. It is a combination of NPPF expectations and the resources available to PINS to process cases swiftly.

Residents are confounded that people who build in defiance of lawful right or permission are invited to regularise the position and given the opportunity to appeal against enforcement notices. When the ensuing appeals to PINS take a long time to resolve, it is the reputation of the Council and the whole planning process which is diminished in the eyes of residents. Councils have limited opportunities to enforce effectively whilst there are outstanding appeals, therefore this is the matter which must be resolved urgently.

As a matter of public policy, all appeals against planning permission with an associated appeal against enforcement notice should be given the highest priority by PINS and an expectation that these will be resolved as quickly as possible, with the resources available to make this happen. The same theory should apply to any subsequent appeals from PINS decisions. The Secretary of State should consult separately on the changes necessary to make this happen.

The same comments also apply to Courts and applications for prosecutions and injunctions – there must be a faster way of dealing with these cases.

Question 14:
If you are all if you are aware of any specific barriers to effective enforcement, are there any resourcing or administrative arrangements that can help overcome them?

Covered in the answer to question 13 above.

Question 15:
Are you aware of any specific barriers which prevent the effective use of temporary stop notices? If so, do you have any do you have a view on how these barriers can be overcome?

The Council uses Temporary Stop Notices. The main problem arises when work takes place in defiance of that Temporary Stop Notice. At present the options are to prosecute, seek an enforcement notice and possibly seek an injunction. All of these take time and the offender can “play the system” for time. This leads to frustration for residents.

We suggest that the law needs to be amended to allow local authorities to take direct action immediately with the power to confiscate materials and equipment where it appears to them that a TSN is being breached. This puts the risk onto the developer to ensure that works are being undertaken in accordance with a relevant permission. It will also give confidence to residents that the Council is able to do something when works take place in breach of a TSN.

To illustrate with a recent example: A plot of land in the green belt was given permission for stables with clear conditions to prevent fences, walls and gates being erected without the permission of the Council. When work started to build a substantial brick wall with gate supports, residents reported this and the Council promptly served a TSN. In defiance of this, the developer, during the subsequent weekend, on the morning of the Royal Wedding, went onto complete the brick wall. The residents reported this, only to be told that nothing can be done. The developer has now been invited to regularise the position with an application and if this is refused permission, an enforcement notice will be served. He will also be prosecuted for breaching that TSN, however the opportunity for the Council to demolish that wall will not arise until the developer's appeal rights have been exhausted. The contempt of residents in such circumstances is directed at the Council not the system.

A far better outcome would be for the Council to have interrupted the development and then let the developer face the time trouble and expense of regularising the position.

The system is weighted in favour of the offender, not the neighbour who has to live with it. It must change for the public to have confidence in the law and the public bodies which administer it.

Question 16:
How do you think the existing enforcement notice appeals process can be improved or streamlined?

See answer to question 13 above. We suggest the validation and start date needs to occur as soon as possible and for all the timescales to be expedited.

Question 17:
How can government make existing guidance more effective in informing and changing behaviour?

Guidance should have a clear outcomes focus and be applicable to all public bodies to ensure that there is no silo mentality. We suggest that the outcomes should be as follows:

(a) Sufficiency of permanent and transit sites for GRT communities
(b) Tolerance of lawful choices made by GRT communities
(c) Intolerance of unlawful encampments
(d) Obligation to enforce law and order on all communities equally
(e) Risk of acting outside the law to be passed onto the developer or trespasser not the public bodies or the neighbours
(f) All legal processes to be expedited

Question 18:
If future guidance was issued as statutory guidance would his help in taking action against unauthorised development and encampments?

Yes. If it is directed to all public bodies and in accordance with the principles we suggest, then it would be a useful way to deliver safer communities and community cohesion.

Question 19:
Are there any specific barriers to the provision of more authorised permanent and transit sites? If so, is there any action that the government could help could take to help overcome those barriers?

Spelthorne borough is small and very constrained.

- Spelthorne is six miles long and two-and-a-half miles wide with an area of 5,100 hectares. It is relatively densely populated with a population of 98,902 (mid 2016 estimate).
- Approximately 65% of the borough is part of the metropolitan Green Belt.
- 7% of the urban area is liable to flood in a 1:100 year event and 35% in a 1:1000 year event.
- The area around Stanwell Moor and northern Stanwell is affected by noise from Heathrow and housing development in some areas is restricted to replacement dwellings only.

Finding space for any residential development is not easy and land prices are high. Given the relatively low density to which sites are built, there is a very limited number of sites where it is viable to deliver such uses. One of the ways we will be seeking to meet the housing need through the new Local Plan is by increasing densities in Staines town centre. This type of development will not be suitable to accommodate traveller pitches.

Green belt sites are likely to have lower land prices but all types of residential development are inappropriate development and should not be approved, except in very special circumstances. Similar circumstances apply across Surrey and many of the Home Counties.

Perceptions of the GRT community from the settled community can mean that there are a large number of objections to planning applications, another barrier. Transit sites in particular can have negative associations with the settled community.

The provision of transit sites is best achieved at a regional level, in our case across Surrey. The eleven districts and boroughs have begun to work together to address these issues but the Government could do more to support local authorities to work at this level, perhaps with additional funding for county level co-ordinators.

Question 20:
What impact would extending local authority, police or land owner powers have on children and families and other groups with protected characteristics the public authorities must, in the exercise of its (sic) functions, have due regard to under their public sector equality duty?

The Council asserts that poor outcomes for GRT communities are not linked to unauthorised incursions or unauthorised development. This is a complex topic which involves; the cultural environment of GRT communities, the relationship with settled communities over many centuries and the nature of public service provision. We take it that the Council is not being asked to comment on such wider matters.

The Council accepts that it has its role to play in ensuring better outcomes for GRT communities, but this will not be delivered by ignoring the law of the land and the expectations of the settled community to enforce the law on GRT communities as it is enforced on the settled communities.

Public bodies will continue to review their enforcement decisions according to the Public Sector Equality duty on a case by case basis.

Question 21:
Do you expect that extending the powers referred to above would have a positive or negative impact on the health or educational outcomes of Gypsy, Roma and Traveller communities? If so, do you have any evidence to support this view, and/or suggestions for what could be done to mitigate or prevent any negative impacts?

We suspect it will be neutral but we have no evidence to offer on this point. The evidence we have provided demonstrates that unlawful incursions are a spring and summer time activity. Most of the people involved will have other accommodation or pitches for the winter months which will assist them in meeting their health and educational needs.

Question 22:
Do you have any other comments to make on the issue of unauthorised development and encampments not specifically addressed by any the question above?

No.

Yours faithfully

Councillor Ian Harvey
Leader of the Council

Daniel Mouawad
Chief Executive