

Cabinet

24 March 2021



Title	Update on proposed injunction for unauthorised encampments
Purpose of the report	To note
Report Author	Jackie Taylor Group Head of Neighbourhood Services
Cabinet Member	Councillor Richard Barratt
Confidential	No
Corporate Priority	Clean and Safe Environment
Recommendations	Cabinet is asked to: Note the update provided in this report
Reason for Recommendation	Not applicable

1. Key issues

- 1.1 In July 2018 due to the increasing level of Unauthorised Encampments (UEs) in our parks and open spaces, a need was identified to apply for an injunction to protect all parks and open spaces within Spelthorne under s 222 Local Government Act 1972 and s 187B Town and Country Planning Act 1990.
- 1.2 A barrister was appointed by legal in early August 2018 and a full set of papers detailing all UE's back to 2015, including a full evidential statement outlining all events from start to finish, was provided.
- 1.3 We have had to overcome many hurdles in trying to get an injunction request through to the Court. The 1st was obtaining a full evidential statement from Surrey Police and full incident details of the UE's from their computer aided despatch messages. Plus vehicles on the UE sites, including the registered keepers of the vehicles. These details were necessary due to the nature of the injunction application, as we could not obtain an injunction solely against persons unknown. Any application put before the courts for an injunction requires named individuals and persons unknown.
- 1.4 After 9 months of trying to get the information, the Police stated that they could not release details of vehicles and keepers on UE sites due to GDPR rules. This decision was mainly based around the fact that Surrey Police do not own the data relating to the vehicles, as it belongs to the DVLA. Council Solicitors spent a considerable amount of time chasing the Police decision and then appealing the Police decision to no avail.
- 1.5 In light of this, Council officers approached the DVLA and explained the situation in detail and were able to apply directly to the DVLA in October 2019

for details of registered keepers of selected vehicles used in UE's from June 2017 to 2 October 2019 (normally DVLA policy only allows checks within the previous 6 months; this was waived due to the nature of the application).

- 1.6 Of the submitted checks, 60 returned current keepers, and all this information was submitted to the Barrister to enable the injunction application to list the named persons and then add persons unknown.
- 1.7 At the same time as this, several London Boroughs that had previously obtained injunctions through the judicial system were having these challenged in the High Court by lawyers representing the Gypsy, Romany, and Traveller Community (GRTC).
- 1.8 In January 2020, The Court of Appeal considered the appeal against the injunction granted to the London Borough of Bromley but at the same time widened the scope to look at all 38 Injunctions granted to other District and Borough Councils against unnamed persons. The appeal Judge decided that the injunction to restrain trespass on Council sites was disproportionate. The decisions behind this ruling were –
 - **The injunction was too wide and amounted to a boroughwide prohibition of encampment for entry/occupation for residential purposes in all accessible public spaces in Bromley.**
 - **The injunction was not aimed specifically at prohibiting antisocial or criminal behaviour, just entry and occupation.**
 - **There was a lack of alternative public sites in Bromley (transit sites).**
 - **The cumulative effect of such injunctions.**
 - **There had been no equality impact assessment or consideration given to Article 8 of the Human Rights Act 1998 (Right to a private life), rights of the gypsies or the best interest of the children.**
 - **There had been no engagement with the gypsy community.**
- 1.9 The Court of Appeal also accepted that that the ability to travel (and to stop on a temporary basis while travelling) was an integral part of the gypsy way of life and was also protected by Article 8 as above.
- 1.10 The Judge also commented on the absence of sufficient transit sites and the lack of any attempt to deal with the issue and without such sites unauthorised encampments would continue and these forms of injunction could well put local authorities in breach of both the Human Rights and the Equalities Act 2010, under which members of the GRTC have protected characteristics.
- 1.11 The Judge stated that any injunction application must include in evidence what other suitable and secure alternative housing or transit sites are reasonably available. If there is no alternative site, no proposal for such a site and no support for the provision of such a site, then that may weigh significantly against the proportionality of any injunction.
- 1.12 In relation to persons unknown on injunction applications, the court has also decided that they cannot litigate without more detail, so all unknown persons

must be fully described, and a final order can only be made against persons who have been identified and served with the relevant documentation.

- 1.13 As a result of the appeal decision in the case of the LB of Bromley v Persons unknown and the London Borough of Enfield injunction and the 38 other Borough and District Councils with injunctions, the Judge has invited that all of these be joined and that a directions hearing be listed for January 2021 to thrash out all the above issues.

2. Options analysis and proposal

- 2.1 There are no options as the judge has already made it known that any injunctions put before the courts at this time will be rejected until such time as the issues in the Bromley & Enfield injunctions have been resolved.

3. Financial implications

The cost of external Legal Advice to Spelthorne Council in relation to the injunction process to date currently stands at £9,900.

4. Other considerations

- 4.1 An equality impact assessment had been provided by Spelthorne officers as part of the court papers and this will need to be completely reviewed once the outcome of the January 2021 hearing is made publicly available.

5. Sustainability/Climate Change Implications

- 5.1 Not applicable

6. Timetable for implementation

- 6.1 The hearing date was set for January 2021, but at this stage there have been no reports on details of the hearing and the judge has given no indication as to when the outcome of the hearing will be made available. We would anticipate this to be the latter half of 2021.

Background papers:

Appendices:

There are none