

KENNET DISTRICT COUNCIL

REGULATORY COMMITTEE – APRIL 21ST 2005

EMERGENCY PROCEDURE FOR DEALING WITH GYPSY/TRAVELLER SITES ON LAND IN THEIR OWNERSHIP

Report by Ted Howles, Planning Services Manager

1.00 PURPOSE OF REPORT

- 1.01 The purpose of this report is to set out a procedure for the council to follow when responding to reports of unauthorised gypsy/traveller sites being set up in the district on land that they appear to have acquired. Reports about gypsy/traveller sites on land that they do not own will continue to be dealt with by officers from the council's Environmental Health and Protection Services under existing procedures.

2.00 FINANCIAL IMPLICATIONS

- 2.01 The procedure will involve occasional out of hours work by council employees. At this stage, it is envisaged that a payment scheme similar to that in place for Building Control Surveyors will need to be agreed. This is a fixed sum payable only when an officer attends a call out. The current figures are £123.61 weekday, £186.42 weekend/bank holiday, plus overtime for the number of hours worked.

3.00 STAFFING IMPLICATIONS

- 3.01 No additional staff will be required.

4.00 LEGAL IMPLICATIONS

- 4.01 The procedure will require amending the Scheme of Delegation to the Planning Services Manager in relation to the issuing of any temporary stop notice (TSN).

5.00 INTRODUCTION

- 5.01 There has been a great deal of press coverage in recent months concerning the establishment of unauthorised gypsy/traveller sites. The issue has centred on occasions where a gypsy/traveller has purchased land and then developed it as a gypsy/traveller site without the benefit of planning permission. Traditional enforcement proceedings have been seen by some as unacceptably slow in responding to these situations, particularly where the site has been established over a weekend. Whilst there have been no such unauthorised developments of this nature in Kennet, the Regulatory Committee resolved at their meeting on 25th November 2004 to produce an

emergency procedure to deal with this eventuality. Since then, and partly in response to nationwide concerns, the Government in March 2005 gave local planning authorities powers to issue a temporary stop notice, with the aim of speeding up enforcement. They have also issued new draft advice on planning for gypsy and traveller sites. These have been taken into account in the preparation of this procedure.

6.00 BACKGROUND

6.01 Any procedure needs to take account of the current planning policies on gypsy and traveller provision.

6.02 Both the adopted Wiltshire Structure Plan and the Kennet Local Plan 2011 contain policies dealing with caravan sites for gypsies. In the Wiltshire Structure Plan, the relevant policy is DP16. This states:

Special consideration should be given to bona fide proposals to provide caravan sites for gypsies. Such proposals should not be considered against other policies for towns and villages, due to their particular requirements. Suitable sites may be found both within and outside settlements. They will need to have a minimum impact on adjoining land uses and the natural and built environment, be well located to meet the needs of occupants and permitted business activities and provide acceptable access and services.

6.03 In the Kennet Local Plan 2011, the relevant policy is HC45. This states:

6.04 *Proposals for gypsy sites, within or outside existing settlements, will be considered against the sustainable development, design and landscape policies of the Plan to ensure that the proposal has minimum impact on character, appearance and amenity of the area and it is well located on the major road network.*

6.05 *Where the proposal is located within a Special Protection Area for Birds, a candidate Special Area of Conservation, the North Wessex Downs Area of Outstanding Natural Beauty, a Site of Special Scientific Interest or a National Nature Reserve or the Avebury World Heritage site, planning permission will only be given where the local planning authority is satisfied that there will be no adverse impact on these designated areas and that it is not possible to locate the development elsewhere.*

6.06 National policy guidance is set out in DoE Circular 1/94 'Gypsy Sites & Planning'. However, this is under review and the most recent guidance is set out in the draft revision of this circular, entitled 'Gypsies & Travellers' published in December 2004. The consultation period on this closed on March 18th 2005.

6.07 The draft advice in 'Gypsies & Travellers' acknowledges that the advice in Circular 1/94 has failed to deliver adequate sites for gypsies and travellers in many parts of England over the last ten years. It sets out that a new direction is necessary to ensure that their accommodation needs are addressed with the same consideration as is given to the accommodation needs of other

sections of the community. It seeks to increase significantly the number of gypsy and traveller sites with planning provision in order to address under-provision. It requires that where there is an assessment of unmet need for gypsy and traveller accommodation in the area, development plan documents should identify suitable locations for gypsy and traveller sites, although site specific allocations should only be made if the authority control or own them or there is a realistic likelihood that they will be made available for that purpose. In addition, they should set out fair, reasonable realistic and effective criteria for suitable locations in site provision policies.

- 6.08 In rural areas (such as Kennet), authorities are urged to consider including a 'rural exception policy' where there is a lack of affordable land to meet local gypsy and traveller needs. In areas with nationally recognised designations, such as the AONB, conservation areas, Sites of Special Scientific Interest (SSSIs) and Registered Parks and Gardens, permission should only be granted where it can be demonstrated that the objectives of the designation will not be compromised by the development. However, it states that sites on the outskirts of built-up areas may be appropriate and that sites may also be found in rural or semi-rural settings. Rural settings, where not subject to special planning constraints, are acceptable in principle and local authorities should be realistic about the availability of alternatives to cars in accessing local services.
- 6.09 Local planning authorities are advised that they should not refuse private applications on the grounds that they consider public provision in the areas to be adequate, or because alternative accommodation is available elsewhere or because the applicant has no local connection. Applications should only be refused where they do not comply with planning policies.
- 6.10 It can be seen from this that any procedure adopted by the council cannot operate as a blanket requirement for enforcement action across the district on each occasion. There may be occasions where it is not expedient to take enforcement action because the site may be unobjectionable in planning terms.
- 6.11 Furthermore, the council must, in dealing with unauthorised gypsy encampments, at all times act in a fair and humane fashion. The council must consider the balance between the rights and needs of gypsies in deciding whether or not unauthorised encampments can be tolerated and when and how to use its planning enforcement powers. Individual consideration must be given to each case and any special circumstances that may come to light must be taken into account. In making decisions in regard to the use of its planning enforcement powers, the council must take account of considerations of common humanity and must give due consideration to the national and local planning policy outlined above, as well as the responsibilities which rest with the council, including those contained in the Human Rights Act.

7.00 RECOMMENDED PROCEDURE

- 7.01 If a complaint about the setting up of an unauthorised gypsy/traveller site is received, an environmental health officer (EHO) will visit the site in the first instance. If the complaint arises out of normal office hours the complainant should ring the council's emergency number and the local authority incident officer (LAIO) will visit the site. The EHO or LAIO will need to establish:
- Whether the land is being occupied by caravans/mobile homes;
 - If any building operations are underway;
 - If the site is in the ownership of those occupying it.
- Only if the site is in the ownership of those occupying it will the procedure set out below apply.

- 7.02 If it is established that the landowner is establishing an unauthorised site, the EHO/LAIO shall:
- Contact the council's planning enforcement officer (PEO) and a senior planning officer (SPO) to advise them of the situation and request their attendance; (contact details of the relevant officers will be added to the Kennet Incident Manual)
 - Make a note of the extent of any works evident on site; a record of any conversations with the owner and a record of the number of caravans/mobile homes on the site.

- 7.03 The PEO shall interview the landowner, with a view to obtaining details of:
- The ownership of the site;
 - The landowners intentions;
 - Any special needs of the current occupiers of the site
- He should also advise him/her of the fact that the development is unauthorised and that any further increase in use or works is carried out at their own risk and may be subject to enforcement action. If the site is in an area covered by a particular designation, he should advise him of the designation and the potential implications.

- 7.04 The PEO shall discuss his findings with the senior planning officer (SPO). The SPO shall consider whether there is a need to serve a temporary stop notice (TSP). A TSP shall only be served where he considers that the use of the land as a caravan site is contrary to the planning policies of the development plan and will cause harm to interests of acknowledged importance. Examples where such action could be appropriate include:
- Sites of Special Scientific Interest; Special Protection Areas for Birds, Candidate Special Areas for Conservation where an encampment endangers a sensitive environment or wildlife;
 - Grounds of ancient monuments or listed buildings, battlefields, registered gardens, sites of potential archaeological interest, Avebury World Heritage Site, conservation areas, where encampments could damage the ground works or the purpose for the designation of these areas;
 - A site where pollution from vehicles, or dumping or from poor sanitation could damage ground water or water courses;
 - Where the site is exposed to unacceptable levels of air pollution;

- Within the North Wessex Downs Area of Outstanding Natural Beauty, where it can be demonstrated that the objectives of designation will be compromised by the development.

7.05 The TSP shall be used to prohibit the stationing of any additional caravans/mobile homes on the land and any other development associated with using the site for further caravans and any further work developing the site. It shall only require the prohibition of the use of the site by any caravan already stationed on the land and occupied as a main residence where the risk of harm to a compelling public interest arising from the use is so serious that it outweighs any benefit to the occupier of the caravan in the stationing of the caravan for the period for which the notice has effect.

7.06 The SPO shall ensure that the TSP is served upon any person who appears to be carrying out the activity prohibited by the notice; anyone who seems to be an occupier of the land to which the notice relates, or anybody who appears to have an interest in the land. He shall also ensure that a copy of the notice is displayed on the site. An emergency pack of documents will be produced for the planning officers to use on site without the need to visit the office.

7.07 As soon as possible, or if the incident is out of hours, on the following working day, the SPO and PEO shall meet with the council solicitor to review the events and with an agenda that shall include:

- Identification of the housing needs of those on the site;
- Whether a Planning Contravention Notice (PCN) should be served;
- What form of notice may be appropriate to obtain details of landownership, if not already known;
- Discussion of whether any TSN should be replaced by a formal enforcement notice and stop notice;
- Whether any injunctions are required.

The PEO shall revisit the site to check on its state. Such visits shall thereafter be repeated and recorded no less than once a week.

7.08 In situations where a TSP has been served, a report on the action taken to date, with a recommendation as to what further action to take shall be prepared for the next meeting of the Regulatory Committee. If the timescales involved in serving formal notices do not coincide with the committee timetable, the Planning Services Manager, in consultation with the Council's Solicitor, and the Chairman of the Regulatory Committee shall be authorised to take whatever steps are considered necessary under the planning acts to rectify any breach of planning control.

7.09 In situations where no TSP has been served, a report on the action taken to date shall be prepared for the next meeting of the Regulatory Committee.

8.0 CONCLUSIONS

8.01 Government policy on planning for gypsy and traveller sites is currently changing to take account of the housing needs of this sector of the population. The powers open to a local planning authority to prevent the establishment of

unauthorised sites in locations where they are inappropriate are limited. The council is more likely to succeed with enforcement action against an unauthorised gypsy/traveller site if it has carried out an assessment of needs in its area; and if necessary provided an authorised site. This will be examined as part of the work being undertaken on the Local Development Framework. However, in the short term the procedure contained in this report may help ensure that the council acts to the best of its abilities in the difficult task of addressing the establishment of unauthorised sites on land bought by gypsies/travellers.

9.0 RECOMMENDATION

9.01 It is recommended that the committee:

- 1) Adopt the procedure outlined in this report for dealing with unauthorised gypsy/traveller sites on land in their ownership;**
- 2) Change the Scheme of Delegation to the Planning Services Manager by including in the scheme the powers of the PSM (and other officers delegated by him) to serve a temporary stop notice where required to prohibit the use of land as a caravan site and other associated operational development on such a site.**