

The Use of Section 61 Powers in Relation to Unauthorised Encampments

SUMMARY

- 1.1 Derbyshire Constabulary has prepared a report (see section 4 of this report) from Derbyshire Constabulary on the use of Section 61 within the city. Chief Superintendent Jack Atwal will provide an overview of this report to members of the Board.

RECOMMENDATION

- 2.1 To ask questions, discuss the contents of the report and make any comments and recommendations as appropriate.

REASONS FOR RECOMMENDATION

- 3.1 The Council has a statutory responsibility review or scrutinise decisions made, or other actions taken, in connection with the discharge by the responsible authorities of their crime and disorder functions make reports or recommendations to the local authority with respect to the discharge of those functions.

SUPPORTING INFORMATION

- 4.1 The establishment of an unauthorised encampment can raise many concerns with the landowner and neighbouring members of the settled community. Some of these concerns are unfounded, and may be based on ignorance and prejudice; however there still remains a significant number of encampments that cause high levels of anti-social behaviour and disproportionate disruption to the community into which they move.
- 4.2 Police Powers in relation to unlawful encampments are mainly governed by S61 Criminal Justice and Public Order Act 1994.

With each unauthorised encampment consideration should be given to the use of S61 powers.

S61 can be summarised as follows:

- 2 or more persons have entered land as trespassers with a common purpose of residing on the land.
- Reasonable steps have been taken by or on behalf of the landowner or person responsible for the land.

AND

- Damage has been caused to the land or property on it.

OR

- Any person trespassing on the land has used threatening abusive or insulting words or behaviour towards an occupier, a member of his family or an employee or agent of his.

OR

- There are 6 or more vehicles (including caravans).

4.3 Police Policy

The police will visit any unauthorised encampment and consider whether police action is appropriate. Before the police can take action they must also consider national and local policies. These include the College of Policing's Approved Professional Practice and Derbyshire Constabulary's Operation Benz operational order. Both documents outline a range of factors that need to be considered and includes aggravating factors that could allow the use of Section 61 powers.

4.4 S61 considerations:

- Local amenities are deprived to communities or significant impact on the environment.

This could include, for example, forming an encampment on any part of a recreation ground, public park, school field, village green, or depriving the public use of car parks. The fact that other sections of the community are being deprived of the amenities must be evident before action is taken.

- There is local disruption to the economy.

Local disruption to the economy would include forming an encampment on a shopping centre car park, or in an industrial estate, if it disrupts workers or customers, or agricultural land, if this results in the loss of use of the land for its normal purpose.

- There is other significant disruption to the local community or environment.

This might include where other behaviour, which is directly related to those present at an encampment, is so significant that a prompt eviction by police becomes necessary, rather than by other means.

- There is a danger to life.

An example of this might be an encampment adjacent to a motorway, where there could be a danger of children or animals straying onto the carriageway.

- There is a need to take preventative action.

This might include where a group of trespassers have persistently displayed anti-social behaviour at previous sites and it is reasonably believed that such behaviour will be displayed at this newly established site. This reasoning will take on greater emphasis if the land occupied is privately owned, as the landowner will be responsible for the cleansing and repair of their property.

The mere presence of an encampment without any aggravating factors should not normally create an expectation that police will use eviction powers. This should be communicated to the public, landowners, local authorities, and other agencies. If a decision is made to use police powers to evict then the rationale for the decision should be clearly set out and recorded.

4.5 **Encampments On Private Land**

If the encampment is on private land, then it falls initially on the landowner to take steps to remove them. There is a common law power for landowners to use reasonable force to remove anyone moving onto their land. They have to give them notice of their intent to re-occupy the land and a reasonable amount of time to get off.

What happens in practice is that landowners employ bailiffs who serve the notices and then can remove them if they refuse to go. Landowners should be advised to contact a bailiff company as soon as possible. The Bailiffs will give the travellers a written notice telling them how much time they have to move off. This can be as little as a few hours. In practice the travellers will usually move by the time they have been given to go.

4.6 **Encampments On District and City Council Land**

If the encampment is on council land, it will fall initially on the council to take steps to have the travellers removed. Council officials will initially visit the site to issue notices to each caravan telling them that they are on Council Land and that the council will be taking steps to have them removed. This visit will normally be done with Police Officers in attendance, and the Council will make a request for police attendance. The council will also issue a copy of their toleration policy, which is similar to the Police Code of Conduct document.

Before any removal action can be taken by the Council, welfare checks have to be undertaken re health and education. This will be undertaken by the Health & Education authorities, and may take a few days to complete. When all Health & Education checks are complete, Council Officials will attend the site again and issue direction to leave forms to the travellers. One has to be issued to each caravan, and one attached to the land itself. This will give them a specified time in which to leave the land.

If the travellers fail to leave the land, the council will go to the local magistrates court

to obtain an order for removal of persons and vehicles. The travellers may attend this hearing to contest the order. Once the order is issued, the travellers will be given a period of time to leave, usually 24 hours. After this time the council may enter the site and remove any vehicles or caravans still remaining. This will be done with the assistance of a bailiff company. Police will be in attendance at this time to prevent any breaches of the peace.

4.7 **Encampments On County Council Land Or On A Highway.**

The procedure in this case will be very similar to that undertaken by the district council, but will be undertaken by the County Council.

4.8 **Incidents of unauthorised encampments.**

During the last 12 months there appears to have been an increase of unauthorised encampments setting up in the City and South Derbyshire.

The main sites continue to be Pride Park estate, the Cattle Market and Derby East policing section.

Beat Area	Area	Number of Encampments
DE01	Alvaston	17
DE02	Sinfin/Osmaston	7
DE03	Boulton	0
DE04	Chellaston	1
		Total = 25

The majority of the above encampments at DE01 are concentrated on the Ascot Drive estate and the Pride park estate.

As per the policing policy of Op Benz, all unauthorised encampments have been visited and had a Section 61 considered and an assessment completed. Section 61 has been used/criteria met on a number of occasions and travellers have been moved on.

- 4.9 The police will continue to use Section 61 when the criteria is met however any use will be proportionate, justified, legal and necessary. Any evictions from sites require planning, resources and logistics considerations and these can take days depending on numbers of vehicles/caravans and persons to be evicted.

Police action alone will not resolve unauthorised encampments and a number of the above statistics are the same persons being moved from one site to another.

OTHER OPTIONS CONSIDERED

- 5.1 None

This report has been approved by the following officers:

Legal officer	N/A
Financial officer	N/A
Human Resources officer	N/A
Service Director(s)	Tim Clegg
Other(s)	Clare Harrison – Senior Democratic Services Officer

For more information contact:	Jody Shelton 01332 643652 e-mail: jody.shelton@derby.gov.uk
Background papers:	None
List of appendices:	Appendix 1 – Implications Appendix 2 –

IMPLICATIONS

Financial and Value for Money

- 1.1 None arising from this report

Legal

- 2.1 The Crime and Disorder Act 1998 established a list of Responsible Authorities which must work together to address local issues.
- 2.2 The Police and Justice Act 2006 requires every local authority to have a Crime and Disorder Committee, with the power to:
- Review or scrutinise decisions made, or action taken, in connection with the discharge by the Responsible Authorities;
 - Make reports or recommendations to the Responsible Authorities and Co-operating Bodies.

Personnel

- 3.1 None arising from this report

Equalities Impact

- 4.1 None arising from this report

Health and Safety

- 5.1 None arising from this report

Environmental Sustainability

- 6.1 None arising from this report

Asset Management

- 7.1 None arising from this report

Risk Management

- 8.1 None arising from this report

Corporate objectives and priorities for change

- 9.1 Our aim is to work together so that Derby and its people will enjoy a thriving sustainable economy, good health and well-being and an active cultural life.