



Frequently asked questions about unauthorised encampments

Is the council required to move unauthorised encampments when they are on council land?

If an unauthorised encampment is on Hart District Council land, the council has the power to move the vehicles on but is not required to do so.

The council can only evict the unauthorised campers subject to complying with Human Rights legislation and other legal procedures.

Failure to comply with this legislation would render the council liable to challenge in the courts, potentially proving costly and, quite probably, resulting in a lengthy stay for the encampment.

Is the council able to move unauthorised encampments on private land?

If an unauthorised encampment is on private land including Parish or Town Councils land it is primarily the landowner's responsibility to deal with the eviction.

The council will offer advice on the eviction process if asked by the landowner.

What if the landowner is content to allow an unauthorised encampment to remain temporarily?

Unless the landowner has already obtained planning permission or is a farmer and the campers are helping with temporary labour, such as fruit picking, the landowner could be in breach of planning law and the laws dealing with the licensing of caravan sites.

What if the landowner will not take action to remove the unauthorised encampment?

If the landowner will not take appropriate action to remove the encampment, and it is a breach of any planning or licence requirements, the local planning authority may take action against the landowner to require the removal of the caravans. Court action would likely follow if the landowner does not comply.

What can I do if I own land and I do not want an unauthorised encampment on it?

Trespass on land is a civil matter and prevention of trespass is the responsibility of the landowner. If you don't want to tolerate encampments for a short period of time, you may want to consider whether any physical steps could be taken to prevent access to your land.

What about Gypsies and Travellers who buy their own land and set up an encampment on it?

Any individual who wants to live on a piece of land needs to obtain planning permission and Gypsies and Travellers are no different. If planning permission is not granted and caravans are set up on a piece of land, even if it is privately owned, then it can be classed as an unauthorised development and the local planning authority can deal with it under normal planning powers.

What legislation can be used when dealing with unauthorised encampments?

The main legislation that relates to unauthorised encampments is: Section 61, 62, 62A-E, 77 and 78 of the Criminal Justice and Public Order Act 1994; the Human Rights Act 1998; and the Race Relations Act 1976.

This legislation is bound by various interpretations from the courts (case law) and guidance notes from the Government, which do not allow for racial discrimination or tolerate anti-social or criminal behaviour.

Legislation is set and amended by the Government, as a borough council we must follow all legislation which is set and have no authority to change it.

What are the powers can the council use?

Section 77 (of the Criminal Justice and Public Order Act 1994) allows the council to require the unauthorised campers to leave, the request to leave is in the form of a direction to leave served by the council.

Before the council can use section 77 and serve a direction to leave it has a legal obligation to make welfare enquiries and take these into account prior to making the decision to use the power.

All decisions by the council must be proportionate and in accordance with the Human Rights Act.

If after the council has issued a direction to leave the unauthorised campers remain on the land, the council may apply to the Magistrates' Court under Section 78 (of the Criminal Justice and Public Order Act 1994) for a court order requiring the unauthorised campers to leave the site.

If the unauthorised campers do not leave the site after a court order has been served the council is authorised to remove the property on the site to a safe place.

Can the council move an unauthorised encampment immediately without using section 77 and 78?

While it may appear quicker to try and remove an unauthorised encampment without following relevant legal procedures such as conducting welfare enquires and serving directions to leave, this could lead to lengthy court action, considerable cost and public criticism and delay the eviction process.

Why does the council have to take into account the Race Relations Act and the Human Rights Act when dealing with Gypsies and Travellers?

Race relations legislation recognises Gypsies and Travellers as a specific racial group.

With regards to human rights, the issue that council must take into account is whether the interference with Gypsy/Traveller family life and home is justified and proportionate.

Why don't the police take the lead role in evicting the unauthorised encampment?

Trespass is not a criminal offence, it is a civil matter and as such the police are not responsible for dealing with the encampment.

The police however work very closely with the council to help manage unauthorised encampments and, when appropriate, will take action to deal with problems that may arise.