

UNAUTHORISED TRAVELLER ENCAMPMENTS ON COUNCIL OWNED LAND
POWERS AVAILABLE TO LOCAL AUTHORITY

ADVICE

Introduction

1. I am asked in this case to advise Chorley Borough Council in relation to the powers available to it to deal with unauthorised traveller encampments on Council owned land.
2. The Council has recently encountered an increase in this problem in relation to Council owned land in Chorley town centre and, in particular, town centre car parks.
3. The Council's response to date has been to deal with the matter by undertaking a welfare assessment before giving the travellers a direction to leave the land under section 77 of the Criminal Justice and Public Order Act 1994 ("the 1994 Act"). This is then followed by seeking an order from the magistrates' court under section 78 requiring the removal of any vehicle or other property which is present on the land and any person residing in it.
4. The Council's experience has been that the travellers tend not to comply with the section 77 direction but that they usually vacate the land in question, or move to another piece of Council owned land, after the Council has resorted to the magistrates' court under section 78 but before the case is heard. If the travellers move to another piece of Council owned land, the process starts over again.
5. However, since January 2019 there have been two separate encampments within the town centre where the Council has obtained a court order pursuant to a complaint under section 78 of the 1994 Act and, following service of the same, the travellers have failed to vacate the land. The Council has therefore instructed bailiffs to enforce the order and the travellers have subsequently moved to a different piece of Council owned land.

6. The Council is conscious of the strain on its resources in the persistent removal of travellers from its land and would wish to discourage illegal encampments in the future. The police are reluctant to use their powers to remove the traveller encampments given the demands on their resources. In light of the above the Council intends to review its response to traveller encampments dependent on the powers available.
7. Against that background I am asked three specific questions:
 - (1) Whether the Council is able to use common law powers to remove traveller encampments on its land using reasonable force if necessary.
 - (2) Whether the use of a community protection warning and subsequent community protection notice, pursuant to the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”) would be appropriate for the removal of traveller encampments.
 - (3) Aside from the current default position of issuing a complaint under section 78 of the 1994 Act and the options referred to at points 1 and 2 above, what other powers are available to the Council for the removal of travellers from its land and the merit in utilising such process, if any.

Common law powers

8. In Halsbury’s Laws of England it is stated that if a trespasser peaceably enters or is on land, the person who is in, or entitled to, possession may request him to leave, and if he refuses to leave may remove him from the land using no more force than is reasonably necessary and that, if a trespasser enters with force and violence, the person in possession may remove him without a previous request to depart¹. By contrast, in Clerk & Lindsell on Torts it is stated that it is unlikely that a landowner may use force to turn out a trespasser under his remedy of self-help².
9. No doubt the Council is faced with cases where travellers do not vacate the land simply on being asked to do so. In practice, the question would therefore come down to whether the Council could use reasonable force to expel the travellers. Given the differing views

¹ Volume 97, Tort, Trespass to Land, paragraph 588.

² 22nd edition, chapter 19 (trespass to land and dispossession), paragraph 19.20.

expressed in relevant texts, the legal basis for using reasonable force cannot be regarded as free from doubt.

10. Aside from that, the use of force as a self-help remedy is clearly inadvisable for all landowners. It is yet more inadvisable for a public authority landowner than others given (a) the requirements of public authorities to comply with human rights and equalities obligations and to take account of their welfare responsibilities and (b) the statutory powers that are conferred on authorities to deal with unauthorised encampments (such as under the 1994 Act).
11. The present government guidance document "*Dealing with illegal and unauthorised encampments - A summary of available powers*" (March 2015) does not mention self-help as a remedy available to local authorities. While this silence contrasts with the view expressed by the ODPM (as was) in its 2004 document "*Guidance on Managing Unauthorised Camping*" which stated in paragraph 6.5 that "*the Government believes that local authorities should always follow a route which requires a court order*", it certainly cannot be taken as any encouragement for local authorities to resort to self-help.
12. I do not think that it would be wise to consider self-help as an appropriate response.

Community protection warning and notices

13. I am far from convinced that a community protection warning and notice under Part 4, chapter 1 of the 2014 Act would be an appropriate power for the *removal* of unauthorised traveller encampments from Council owned land. Where a council has specific statutory powers to deal with a particular issue (such as under section 77 of the 1994 Act in the case of unauthorised encampments taking the form of residence in vehicles on land without consent) it would not be appropriate in my view to utilise a more general power. I also do not see that utilisation of the community protection warning and notice procedure would, even if it was otherwise appropriate to use it, yield any advantage to the Council in terms of the speed or efficacy of the removal process given the extra requirements (compared with section 77 of the 1994 Act) of this remedy, the need for a prior warning and the appeal procedure. I have not been able to find

anything in the relevant Home Office guidance (up-dated December 2017) on anti-social behaviour orders, including community protection notices, which contemplates their use in the removal of unauthorised traveller encampments.

14. I italicised the word “*removal*” in the preceding paragraph because that reflected the terms of the question asked but also in order to foreshadow the point that it could be that there is a role for a community protection notice where the same group of travellers has been removed from one site in the town centre but has thereafter persistently set up an unauthorised encampment at other different sites in the same area. That could then be regarded as unreasonable conduct having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality (section 43(1) of the 2014 Act) so that a notice could then be directed (section 43(2)) at stopping the further repetition of the same conduct. This would not apply if the problems that the Council is encountering are the same but the traveller groups in question differ.

Other powers³

15. As for other powers, an alternative to the use of sections 77 and 78 of the 1994 Act is the institution of possession proceedings in the county court under Part 55 of the Civil Procedure Rules 1998. I am not aware of this power having any particular advantage over the use of sections 77 and 78 of the 1994 Act. Most authorities use the procedure in the 1994 Act. A claim for possession still involves the preparation and institution of legal proceedings and its utility will be dependent on the speed of the court’s ability to consider the claim and the time needed for the legal procedures to be completed.
16. The Council could also seek a pre-emptive injunction in the courts. I dealt with this matter in detail in an advice to the Council of 4th August 2016, which covered both the legal principle and practical merits of such a remedy. I do not repeat here what I said there but attach my previous advice for convenience of reference⁴. I simply add that

³ The full range of powers is considered in “*Dealing with illegal and unauthorised encampments - A summary of available powers*” which I refer to in paragraph 11 above. The main text above deals with the principal powers which are of any real practical relevance to the Council in present circumstances.

⁴ Since my last advice further reported cases where an injunction has been granted include *Basingstoke and Deane BC v Loveridge* [2018] EWHC 2228 (QB) and *Rochdale MBC v Heron* [2018] EWHC 859 (QB).

seeking an injunction would be resource intensive, imposes quite a high evidential burden, may involve delay in court processes and cannot ensure success given the inherently discretionary nature of the court's jurisdiction in respect of injunctions.

17. I mention finally, although I am sure that the Council is already aware of this, that last month the Government published its response to the consultation it carried out in 2018 on powers for dealing with unauthorised development and encampments. Various measures are promised (such as stronger police powers, a package of support for local authorities and new good practice guidance to support them in their use of powers to deal with unauthorised encampments). If and when these initiatives are taken forward, they will need to be factored into the Council's review, or any further review, depending on the timing of matters.

18. I trust that I have now dealt with the questions raised in my instructions. If I can assist further, my Instructing Solicitor should not hesitate to contact me.

Kings Chambers
36 Young Street
Manchester M3 3FT

Alan Evans
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Chris Moister
Head of Legal, Democratic and HR Services
Chorley Borough Council
Town Hall
Market Street
Chorley
PR7 1DP