

ABERDEEN CITY COUNCIL

COMMITTEE Council

DATE 1 May 2013

DIRECTOR Pete Leonard

TITLE OF REPORT Proposed Byelaw regarding Camping in Designated Areas

REPORT NUMBER: H&E/13/039

1. PURPOSE OF REPORT

This report seeks agreement on the principle of attempting to establish a Byelaw to prevent camping on sensitive areas (such as public parks) and on the draft wording of the offence to be created thereby.

2. RECOMMENDATION(S)

- (a) Agree the wording of the draft proposed Byelaw offence contained within the body of this report; and
- (b) Request that the Convener for Housing & Environment writes to the Scottish Government to seek Ministerial approval for Byelaws creating such an offence.

3. FINANCIAL IMPLICATIONS

In as far as handling Unauthorised Encampments is concerned, definitive costs are difficult to estimate, given the ad-hoc nature of temporary encampments. None of these costs are currently built into budgets but are currently being met from budgets held by Housing & Environment on a reactive basis.

So far this financial year, the Gypsy Traveller Liaison Officer/Site Manager has handled 8 encampments. Over the last two years, we have had 86 such encampments on both Council and private land. Approximate clean up and legal costs amount to £20,000. Staff time and associated resources are not so easily quantified however.

There would be some costs in establishing the Byelaw, namely the installation of signage (supply and erection) for the identified areas and costs for the newspaper advertisement which is required to be placed as part of the Byelaw procedures under the Local Government (Scotland) Act 1973.

4. OTHER IMPLICATIONS

Legal – There is a procedure to be followed for making Byelaws, as set out in Appendix 1 of this Report. The Council has a continuing obligation to designate places where Gypsies/Travellers may camp, and failure to designate sufficient places may be a consideration for the Scottish Government. Even if a Byelaw is approved by the Scottish Government, this may prove difficult to enforce with regard to payment of fines, particularly when dealing with people without any fixed address.

5. BACKGROUND/MAIN ISSUES

Despite a review of our Policy which included a review of the Good Neighbour Code (which intimated that we would move for immediate eviction for any encampments arising on sensitive areas) and upgrading the Clintery site (including the creation of 4 Short-term plots), Aberdeen continues to experience Unauthorised Encampments on an unprecedented scale. These encampments invariably generate high profile attention and considerable controversy as to the rights of the settled community and the rights of Gypsies/Travellers. The camp sizes have grown over the last 4 years and we now require sites which are suitable for a large family group. Work has begun on the establishment of Short-term Halting Sites to assist with the inadequate provision within Aberdeen and the North East generally. This is crucial as, like any other local authority, Aberdeen City Council has a duty to respond to the needs of Gypsies/Travellers who come into the local authority area. By moving to a position of developing Short-term Halting Sites, not only will this increase site provision within the City but it should assist in the challenges being faced with Unauthorised Encampments. Developing Short-term Halting Sites should assist the taking of prompt action in order to move people on from unauthorised sites, encourage support from the Police and help the Council to present a stronger case in court. A court is more likely to grant a decree for eviction if it is satisfied that a suitable alternative site is available.

In the meantime and at the time of writing this report, the city currently has 8 encampments comprising 70 caravans. Our intelligence and evidence suggests that this is a year long problem now and not purely seasonal as in the past.

Section 201 of the Local Government (Scotland) Act 1973 permits a local authority to make byelaws “for the good rule and government” of the whole or any part of their area and “for the prevention and suppression of nuisances therein”. However, a Byelaw cannot be promoted under this Act for a purpose already provided for under other legislation. The purpose of promoting a Byelaw is to deal with the particular nuisances that are generated when such instances when Unauthorised Encampments arise. The Procurator Fiscal has been

consulted on this proposal and although wouldn't support a city wide Byelaw – due to the lack of alternative site provision in accommodating Gypsies/Travellers, has suggested that we target sensitive areas where we have intelligence and evidence of previously used 'hot spot areas'. Over the last two years, there have been 36 such Unauthorised Encampments on these areas and we are restricted to what we can do in terms of applying current legislation. The problems with such encampments, and the cause of many complaints from the public, are the assembly of rubbish, increased fly tipping, the associated damage and environmental and health risks, the prevention of public recreation and the disruption to events in our Public Parks.

Therefore, in an effort to prevent Unauthorised Encampments in our Public Parks and overnight camping generally as this will apply to all groups, it is proposed to create a Byelaw to introduce the following offence.

Draft Proposed Byelaw Offence;

“Any person who-

- (a) set ups, parks, occupies or uses a caravan or camper van,*
- (b) sleeps outdoors at any time between the hours of 10.00pm and 6.00am, or*
- (c) sleeps in a vehicle, or occupies a vehicle in circumstances whereby it is reasonable to infer that that person intended to sleep in that vehicle, at any time between those hours,*

within a designated place shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale”.

The definition of “designated place” would require to list the public parks (or parts thereof) to which the offence applies. These areas feature as part of our current Good Neighbour Code for Managing Unauthorised Gypsy/Traveller Sites. They are deemed unsuitable for occupation and therefore we move for immediate eviction when such situations arise.

Hazlehead Park
Lochinch Park
Westburn Park
Duthie Park
Stewart Park
Seaton Park
Calder Park
Bay of Nigg
Kingswells Park and Ride
Riverview Drive

Carnie Woods
Aberdeen Exhibition Centre
Queens Links
Kings Links
Alan Douglas Park
Eric Hendrie Park

All Public Car Parks/Playing Fields/Golf Courses

The byelaws would require detailing a number of other matters and may require defining terms such as “caravan” and “camper van”. These matters can be considered at a later date.

6. IMPACT

Public – this report will generate significant public interest given the previous attempts to address this contentious issue.

7. BACKGROUND PAPERS

None

8. REPORT AUTHOR DETAILS

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Appendix 1

MAKING A BYELAW

Drafting and Consulting

Byelaws must be made in accordance with the procedure set out in S202 of the Local Government (Scotland) Act 1973. In terms of best practice, it is prudent to carry out extensive preparatory work prior to commencing the formal procedure for creating byelaws. This includes determining the legality and scope of the proposed byelaw. An early dialogue with the Scottish Government is also essential in order to canvass whether the basic principle of the proposed byelaw is likely to be supported. It is generally a good idea to submit an early draft to the Scottish Government for comment. This can often be the lengthiest part of the process, however it is generally worthwhile insofar as it provides an opportunity for early reconsideration and adjustment of the extent of the proposed byelaw in order to ensure Scottish Government approval. It is also important to commence consultation with relevant stakeholder groups over the proposed draft.

Once the consultation exercise is complete, the draft byelaw will require to be approved by an appropriate meeting of the Council. Thereafter, it requires to be signed by a Proper Officer of the Council and sealed with the Council's Common Seal in order for it to be authenticated. The byelaws will not take effect unless and until they are confirmed by the Confirming Authority (Scottish Ministers).

Confirming the Byelaw

Byelaw Confirmation Process

At least one month before an application for confirmation of the byelaw is made (to the Scottish Ministers), notice of the intention to apply for confirmation must be published. This must be in a newspaper circulating in the area to which the byelaw is to apply, or in another manner that the Scottish Ministers determine sufficient. This notice must include details of the place where a copy of the byelaw may be inspected and the party to whom objections should be submitted (normally the Scottish Ministers). It should also detail the deadline for submission of objections. Generally, the Council makes a copy available at Council offices such as the Customer Service Centre in Marischal College. Access should be made available to the public during reasonable hours without payment.

Any person may make an objection to the draft byelaw within the one month notice period. Objections must be in writing and must be submitted within the applicable time period.

Once the notice period has expired, the Council may then apply to the Scottish Ministers for confirmation of the byelaw. The Scottish Ministers will assess the subject matter and extent of the byelaw and will give consideration to any objections lodged in response to the notice. The Scottish Ministers may, if they consider it necessary, hold a local inquiry or cause one to be held.

The Scottish Ministers have the power to confirm, modify or refuse the byelaw. Where a byelaw is confirmed then the Scottish Government shall fix the date on which the byelaw will become operational. Upon receipt of the confirmation of the byelaw, the Council is required to publish a further notice advising that the byelaw has been confirmed and the date it comes into operation. As with the original notice, this must be in a newspaper circulating the area the byelaw is to effect.

A register of all byelaws must be kept at the Council offices (usually in the Legal Department) and must be open for inspection by the public.