

Aberdeen City Division, Police Scotland
Response to request for consultation in respect of Council Report Number
H&E/13/090 (Proposed introduction of byelaw regarding camping in designated
places)

I refer to your email of 17 April 2014 with regard to the above and the copies of the relevant report and appendix detailing the proposed byelaw. We thank you for the opportunity to comment further on behalf of Police Scotland.

I also refer to our original response in relation to this matter, submitted to you on 22 April 2013 and would refer you to the content therein as a further point of reference. A number of the concerns we raised in this response remain valid, although we note that Aberdeen City Council has taken positive steps to address others.

With regard to the draft of Report Number H&E/13/090, dated 14 May 2014, we make the following observations:

Section 1

We note the absence of the maps delineating the areas to be designated as sensitive. However, we also note the list of areas listed under the section titled 'Byelaw' and assume a position that these will be the areas referred to, subject to definition of lawful boundaries.

Sections 2, 3 & 4

No further comment is required on these sections

Section 5

In paragraph one, it is specified that *'Members will be aware that there are clear links between the work that the Council is undertaking in respect of short term halting sites for Gypsy/Travellers and the development of a byelaw.....'*

It remains our position, as previously stated, that the development of halting sites is an entirely separate issue from the development of a proposed byelaw and the two are not inter-related. Introduction of a byelaw is not necessary to progress halting sites in the area and we believe that this could potentially be open to misinterpretation by Members and should be revised.

We note the aims of the byelaw as stated in paragraphs 2 and 3 and understand the wish on the part of the Council to discourage encampments on areas which will attract most adverse reaction and negative impact. We would also agree that positive steps taken to minimise tensions in respect of unauthorised encampments has the potential to improve perceptions of and reaction to the wider Gypsy/Traveller community and assist in promoting good relations between those to whom the protected characteristics apply and those to whom they do not. This will assist the Council in meeting its obligations under the Equality Act 2010.

Within paragraph 4, we note the acknowledgement that '*....there are existing provisions in law for dealing with problem individuals/groups/sites....*', which you believe are not working.

We would highlight that the challenges faced in respect of unauthorised encampment by Gypsy/Travellers is not unique to the north east of Scotland, but is replicated nationally. However, we do acknowledge in general terms that the scale of the issue in the Aberdeen and Aberdeenshire areas in particular far exceeds that faced in other areas of the country.

We would argue that the current legislative provision is sufficient to address the issue, but the applicability of the legislation most relevant to unauthorised encampments is undermined by the lack of adequate authorised site provision in the area. Whilst not applicable to all, a number of other Local Authority areas have some form of halting site provision, which allows them to apply the legislation accordingly where circumstances dictate.

In terms of other crimes and offences which may be committed by individuals or groups, these will be dealt with by Police Scotland in the same manner as any other reported to us, be they directed towards or committed by Gypsy/Travellers. We would highlight that the normal rules of criminal law apply in terms of identification and corroboration.

We would therefore query the effectiveness of the byelaw, as proposed, other than specifying particular areas where encampments would be discouraged and an increase from a Level 1 to a Level 2 fine in terms of disposal upon conviction.

We note the references within paragraph 7 to the challenges arising from issues such as Fly Tipping, waste deposits and human excrement. We agree with the comments that these cause a nuisance and can constitute a health hazard.

With regard to the final paragraph of this section, we would highlight that Police Scotland have received very few criminal complaints in this regard and that these matters are generally addressed by Aberdeen City Council. However, we remain aware of the issues and concerns arising from such actions. We agree that if a byelaw is introduced as proposed, then the impact of these issues on the designated sensitive sites would be reduced. However, we remain concerned that this would merely move the problem on to private landowners.

Byelaw (including Appendix)

We agree with the position stated that prior to any decision being taken to progress the proposed byelaw to the Scottish Government, the Council must approve the wording of the byelaw, taking cognisance of their equality obligations.

Within paragraph 2, reference is made to the repeated or historical usage of some sites and the impact thereon. We refer to our observations in previous consultations that the progressive blocking off of sites formerly used by Gypsy/Travellers in the Grampian area has undoubtedly contributed to the current position of encampments being established in increasingly high profile areas. Further restrictions in this regard have the potential to compound this further, albeit we understand the position of the Council in seeking to

protect public amenities.

We further acknowledge that the proposed byelaw would have a preventative aspect in terms of the designated areas. However, it would not prevent the same issues arising in other areas, which are likely to be predominantly on private land. Similarly, whilst this would reduce the number of eviction processes that Aberdeen City Council undertakes, these processes could merely be deflected to private landowners to whose land the Gypsy/Travellers are most likely to migrate.

Whilst this carries clear cost and resource benefits to Aberdeen City Council, in terms of addressing the issue of unauthorised encampments and their impact as a whole, introduction of the byelaw therefore potentially makes limited contribution to the wider issues arising.

Within paragraphs 8, 9 and 10, we note the varying perspectives with regard to the need for the introduction of the byelaw. In particular, we would highlight that several responses allude to the need for adequate halting site provision in the area, a position which we would support. This also appears to be the perspective offered by the Gypsy/Travellers consulted on this matter.

We also agree with the position offered by some that introduction of the byelaw as presented has the potential to create variance in the level of service that Police Scotland can provide to our communities. This is at variance with our service values of Fairness and Respect towards all we serve.

With regard to the final paragraph, we would refer you to our earlier comments regarding the issues faced in the north east of Scotland, but would again add that the most significant contributor to the creation of unauthorised encampments is the lack of adequate authorised site provision in the area.

Turning to paragraph 5 and the specific wording of the byelaw, we would offer the following observations.

Paragraph 5 specifies that consultation has been undertaken with Police Scotland and states that Police Scotland would be responsible for enforcing the byelaw, as it would constitute a criminal offence. We acknowledge that criminal law falls with the remit of Police Scotland.

As to the wording of the byelaw as presented in the Appendix, we note that significant changes have been made to the terms of the byelaw and the provisions therein since previous consultations were directed to Police Scotland.

In particular, we refer to Section 2(1)(d) where reference is made to an offence having been committed by any person '*.....to refuse to leave a Designated Area, after being requested to do so either by a Council Officer or by a Police Officer.....*'.

Section 2(1)(e) makes further provision for an offence to be committed by any person who '*.....refuse(s) to provide their correct full name, date of birth and address and registration in any vehicle in which they have travelled to or within the Designated Area to a Council Officer or Police Officer.....*'

These sections raise a number of points, which the Council may wish to consider as part of their reflections on this matter.

As you will be aware, the Lord Advocate for Scotland has issued guidelines to Procurators Fiscal in relation to unauthorised encampment by Gypsy/Travellers. The guidance is that there should be a presumption against prosecution of Gypsy/Travellers for unauthorised encampment. To date, this has had applicability to Section 3 of the Trespass (Scotland) Act 1865, as this was the most relevant offence attributable to this matter.

Whilst acknowledging that consultation has been undertaken with local Procurators Fiscal, we would ask if consultation has been undertaken with the Lord Advocate to determine if these guidelines will also have applicability to the proposed byelaw? This will have great relevance to the effectiveness or otherwise of any byelaw introduced. Our understanding is that the guidelines apply to unauthorised encampment as a whole and not specifically to Section 3 of the Trespass (Scotland) Act 1865, although this requires further clarification.

There are circumstances under which the presumption against prosecution may be overridden by other public interest considerations in favour of prosecution such as: in circumstances where a suitable alternative stopping place has been identified and the Gypsy/Travellers have refused to relocate within a reasonable time; or where the use of a particular site, or the excessive size of the encampment, causes a road safety or public health hazard; or where the same Gypsy/Travellers have been repeatedly moved from the same site only to return. In these circumstances, it will also be relevant to consider what action may have been taken by the Local Authority to prevent further access.

Critically, it should be noted that it is the responsibility of the Local Authority to identify a suitable alternative stopping place. Other than in those exceptional circumstances to which Section 61 and 62 of the Criminal Justice and Public Order Act 1994 apply, the Police are not empowered to remove or clear sites except where legislation empowers them to do so, nor do they have power to direct Gypsy/Travellers onto or from any land. It is the responsibility of the Local Authority to advise Gypsy/Travellers to move to a designated site, or stopover/stopgap or Transit site.

We note that the proposed byelaw would seek a position whereby the Police have authority to require Gypsy/Travellers to leave a Designated Area. However, we believe that nothing within the byelaw would give us lawful authority to do so.

Even were a position to be reached whereby the Police were given powers to require a person to move from a Designated Area, nothing within the byelaw or any other legislative provision gives them authority to physically remove an encampment. Therefore, the byelaw would be no more effective in this regard than current legislative provision and would leave the Police in a position where they could potentially caution and charge residents of an encampment and report them to the relevant Procurator Fiscal, but could take no further action.

Similarly, the byelaw makes no provision for any person in breach of the byelaw to be taken in to custody. No person could therefore be detained or arrested unless some other Common Law or statutory provision was present or applicable.

Section 2(1)(e) creates provision for the requirement of personal details to be provided by a person reasonably suspected of committing an offence to '.....a Council Officer or Police Officer.....' Clearly, this is within the remit of a Police Officer, but would question the applicability of Council Officers to make this requirement of any individual under the terms of the byelaw. Where a person suspected of committing an offence refuses to provide their details, Police Officers may arrest them without warrant using Common Law powers. However, this could not be enforced by a Council Officer.

Critically, removal of the encampment would still require a civil eviction process on the part of the land owner (i.e. the Local Authority).

We also note that a new offence '*..... is deemed to have been committed for each period of 24 hours during which any activity listed in subsection (1) takes place*'

This raises the question of the applicability of 'failing to desist' from committing an offence, for which a person may be arrested and potentially put before a court on the next lawful day. If not already undertaken, consultation would be required with the Lord Advocate to identify the position of the Crown Office and Procurator Fiscal Service in this regard.

Impact

Paragraph 3 identifies the challenges associated to the creation of official halting sites in not only the Aberdeen City area, but nationally. Police Scotland remains committed to supporting our partners in this regard with a view to identifying long-term sustainable solutions to this complex area.

Paragraph 4 alludes to the Council having provided additional stopover facilities in the short term at Clinterty Caravan site. However, we would highlight that these provisions have been made only for groups of two or three Gypsy/Travellers at a time and only in particular circumstances, generally assessed by the Local Authority Gypsy/Traveller Liaison Officer. Clinterty is not offered as a suitable alternative halting site to the groups responsible for the behaviour that the byelaw seeks to address. Additionally, the site is permanently full, with tenancy agreements in place with residents, and therefore does not have capacity to meet the need of the area.

Management of Risk

We welcome the comments within this section of the risks associated to unrealistically raising public expectation that the byelaw will prevent all issues encountered in Aberdeen City. In particular, we note the recommended action with regard to the provision of alternative official accommodation.