

## **Police oppose criminalising unauthorised encampments and call for more sites**

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On the 5<sup>th</sup> November 2019, the Government launched a consultation on increasing police powers to evict Gypsies and Travellers from unauthorised encampments and the criminalisation of trespass (Home Office, 2019). This announcement came after the Government consultation from April-June 2018 on 'Powers for dealing with unauthorised development and encampments'. Below we outline research we have carried out which specifically looks at the responses of Police Forces, Police and Crime Commissioners and other police bodies to the 2018 consultation.

### **Key Findings**

We contacted all 45 Police Forces and 40 Police and Crime Commissioners in England, as well as three police bodies<sup>1</sup> with a Freedom of Information Request asking (a) whether the organisation had responded to the Government's April 2018 unauthorised encampment consultation, (b) for information on whether they considered current powers for police effective, (c) if new laws would make it easier 'to deal with' unauthorised encampments and (d) if the Government should consider criminalising trespass. We found that:

- 20 police responses were submitted to the Government's April 2018 consultation<sup>2</sup>.
- 75% of police responses felt current police powers were sufficient and/or proportionate.
- 84% of police responses did not support the criminalisation of unauthorised encampments<sup>3</sup>.
- 65% of police responses said that lack of site provision was the real problem.

### **Recommendations**

- The Government should switch from an enforcement approach to unauthorised encampments to a site provision approach.
- The Government should abolish proposals to criminalise trespass and reverse plans to strengthen police powers to evict.
- The Government should reintroduce pitch targets and a statutory duty for local authorities to meet the assessed need for Gypsy and Traveller sites.
- The Government should adopt a definition of a Traveller in planning terms that incorporates all Gypsies and Travellers who need a pitch to live on.
- The Government should ring-fence funding for local authorities to build Gypsy and Traveller sites.

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<sup>1</sup> The Association of Police and Crime Commissioners, the National Police Chiefs Council and Sussex Police Gypsy and Traveller Advisory Group

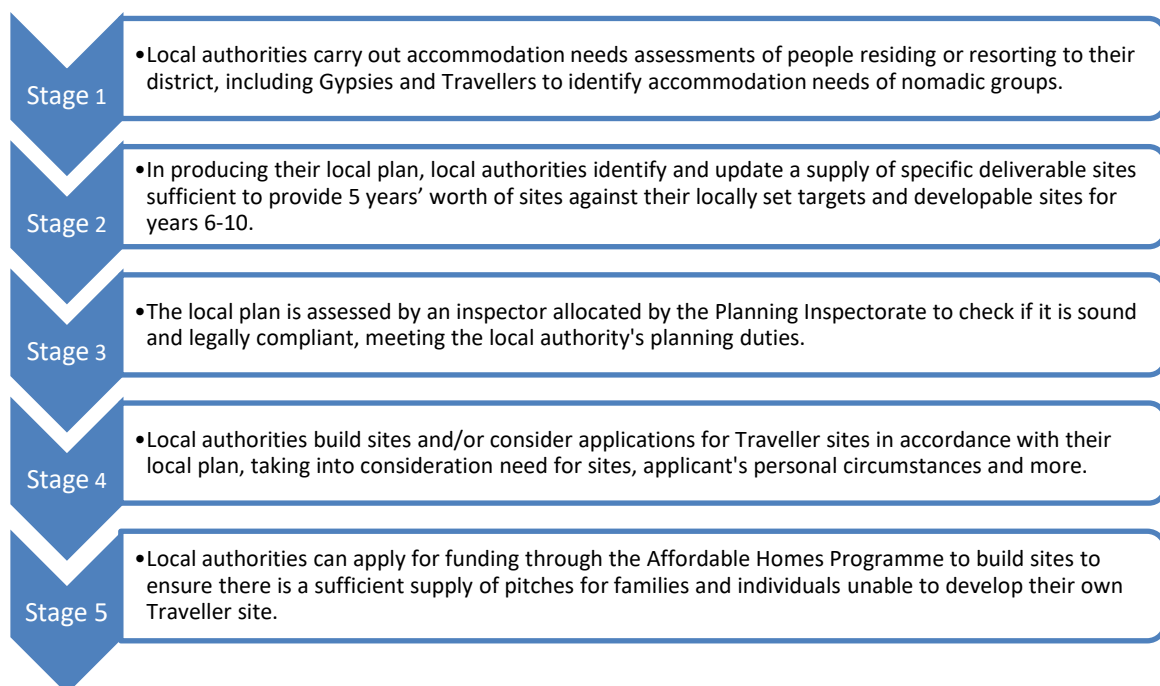
<sup>2</sup> A number of consultation responses were joint responses from more than one organisation. For the purpose of this research, we have counted individual Police Forces/Police and Crime Commissioners and Police bodies as one response.

<sup>3</sup> One police response did not answer questions 6,7 or 8 of the consultation.

## Introduction

There is a recognised national shortage of sites for Gypsies and Travellers (Cromarty et al, 2019). As a result, Gypsy and Traveller households are more likely to experience housing deprivation than any other ethnic group (De Noronha, 2015). Many families do not have a place to stop or call home, which has serious health and social implications for Gypsy and Traveller families, many of whom cannot access basic amenities such as water and sanitation and experience difficulties in accessing services such as education and healthcare. Due to the lack of available pitches, families are forced to camp in public spaces, which can exacerbate relationships with the settled community and may place Gypsy and Traveller families at higher risk of experiencing hate crime.

The Government's January 2019 Traveller Caravan Count reported 2,811 caravans on unauthorised sites (MHCLG, 2019a), yet the identification of land where Gypsy and Traveller sites can be located is painfully slow. The figure below lays out the theory of how planning policy for Traveller sites should work:



However, in practice we know that there are issues at every stage:

- Stage 1** – Research shows that not all local authorities carry out an assessment of need for Gypsy and Traveller accommodation and there is often a substantial undercount with the flawed planning definition for 'Traveller' meaning not everyone who should be considered within an accommodation assessment for Traveller pitches is (FFT et al, 2016).
- Stage 2** – Many local plans are not compliant with government planning policy (MHCLG, 2015) because they do not identify a five year supply of specific deliverable sites against their locally set targets. Our research found that only 10 out of 66 local authorities in South East England were compliant with this planning duty (FFT et al, 2016).

- Stage 3 – Despite local authorities’ failures to meet planning duties around Traveller sites, inspectors frequently neglect to properly address this during examination.
- Stage 4 – Applications for Traveller sites are usually met with widespread hostility by neighbouring communities, politicians and the media. Applicants are often subject to torrents of abuse and racism. The majority of applications are turned down at the first stage.
- Stage 5 – Since the launch of the Affordable Homes Programme in 2016, not one single permanent affordable Traveller pitch has been approved in England (Hansard, 2019).

### **Background to the ‘Powers for dealing with unauthorised development and encampments’ consultation**

In April 2018, the Ministry of Housing, Communities and Local Government, the Home Office and the Ministry of Justice launched a consultation on ‘powers for dealing with unauthorised development and encampments’ (MHCLG, 2018). The consultation was heavily criticised by the Equality and Human Rights Commission (EHRC) who highlighted that the exercise itself, “may be contrary to the Government’s responsibilities under the Equality Act 2010” (EHRC, 2018).

Despite the equality and human rights issues raised by the EHRC and others during the consultation process, the Government’s response to the consultation (MHCLG, 2019b) focused on enforcement, rather than provision. On the 5<sup>th</sup> November 2019, the Government launched a further consultation on proposals to strengthen police powers to evict Gypsies and Travellers under section 61 and 62A of the Criminal Justice and Public Order Act 1994 and the criminalisation of trespass<sup>4</sup>.

Following the Government’s response to the initial consultation, we sought to build understanding of the views of police bodies on increasing police powers to evict Gypsies and Travellers and the criminalisation of trespass, as their role is pivotal to this, both in the exercising of their current powers, and in any future role in the implementation of these proposals. As this information was not available in the Government’s response to the consultation we conducted research in order to ascertain police views and participation in the consultation.

### **Methodology**

We began our research by submitting a Freedom of Information (FOI) request to the Home Office asking how many police bodies responded to the consultation and how many were in support of the criminalisation of unauthorised encampments. In the Home Office response on the 8<sup>th</sup> July 2019, we heard that 16 police bodies responded to the consultation, however, the Home Office would not answer the question about how many support the criminalisation of trespass, stating;

*“...after careful consideration we have decided that some of the information you have requested is exempt from disclosure under sections 35 and 41 of the FOIA. These provide that information can be*

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<sup>4</sup> The suggested amendments are as follows: 1) Amend section 62A of the Criminal Justice and Public Order Act 1994 to permit the police to direct trespassers to suitable authorised sites located in neighbouring local authority areas. 2) Amend sections 61 and 62A of the Criminal Justice and Public Order Act 1994 to increase the period of time in which trespassers directed from land would be unable to return from 3 months to 12 months. 3) Amend section 61 of the Criminal Justice and Public Order Act 1994 to lower the number of vehicles needing to be involved in an unauthorised encampment before police powers can be exercised from 6 to 2. 4) Amend section 61 of the Criminal Justice and Public Order Act 1994 to enable the police to remove trespassers from land that forms part of the highway.

*withheld which relates to formulation of Government policy and information provided 'in confidence' and the public interest falls in favour of maintaining the exemptions."*

As a result, we submitted FOI requests to all 45 Police Forces, 40 Police and Crime Commissioners in England and to 3 additional police bodies in order to find out which had submitted to the 2018 consultation and what their views were on increasing police powers to 'deal with' unauthorised encampments<sup>5</sup>. Our FOI request questions are included in Appendix 1.

## **Findings**

We found that:

- 20 police responses were submitted to the Government's April 2018 consultation<sup>6</sup>.
- 75% of police responses felt current police powers were sufficient and/or proportionate.
- 84% of police responses did not support the criminalisation of unauthorised encampments<sup>7</sup>.
- 65% of police responses said that lack of site provision was the real problem.

In analysing the findings, there were three key themes which emerged. Firstly, that police respondents were overwhelmingly against the criminalisation of unauthorised encampments. Secondly that the vast majority of police respondents felt that current powers available to them were sufficient and allowed for a proportionate response. Finally, that a significant number of police responses highlighted that the real problem was the lack of sites for Gypsies and Travellers to live on.

In response to the 2018 consultation question, 'Do you consider that the Government should consider criminalising unauthorised encampments, in addition to the offence of aggravated trespass?' 84% of police responses said 'no'. For example, the National Police Chiefs Council and the Association of Police and Crime Commissioners said,

*"We believe that criminalising unauthorised encampments is not acceptable. Complete criminalisation of trespass would likely lead to legal action in terms of incompatibility with regard to the Human Rights Act 1998 and the Public Sector Equality Duty under the Equality Act 2010, most likely on the grounds of how could such an increase in powers be proportionate and reasonable when there are insufficient pitches and stopping places?"*

Further to this, Cambridgeshire Police Force said,

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<sup>5</sup> 5 police forces and 1 Police and Crime Commissioners failed to respond to the FOI request within the statutory time limit set by the Freedom of Information Act 2000. There were two other submissions from police bodies. However, they did not answer Q6, 7 or 8 so were not included in the data set.

<sup>6</sup> A number of consultation responses were joint responses from more than one organisation. For the purpose of this research, we have counted individual Police Forces/Police and Crime Commissioners and Police bodies as one response.

<sup>7</sup> One police response did not answer questions 6,7 or 8 of the consultation.

*“Not if this included Gypsy Travellers – this would be criminalising a culture and lifestyle and contrary to the Human Rights Act 1998 and would not facilitate the Gypsy way of life (Chapman v UK (2001) 33 EHRR 339.”*

In response to the question, ‘Do you consider that the current powers for police to direct trespassers to leave land are effective?’ 75% of police responses stated that existing police powers under the Criminal Justice and Public Order Act 1994 are either sufficient or allow for a proportionate response to encampments. For example, West Yorkshire Police Force said,

*“Certainly locally, police powers to remove trespassers under s.61 are effective. The time that would be considered ‘reasonable’ is assessed on an individual basis and has been a short a timeframe as two hours...the powers we have are adequate and enable a swift and effective response where necessary.”*

In response to the question, ‘Would any new or revised powers that enable police to direct trespassers to leave land make it easier to deal with unauthorised encampments?’ over half of responses stated that Section 62A of the Criminal Justice and Public Order Act 1994<sup>8</sup> was less effective due to a lack of available pitches in their respective local authorities. For example, Hampshire Police Force said:

*“Section 61 is available to police in Hampshire but not section 62 due to a lack of site provision. This then reduces our options under the CJPO Act. However, simply utilising section 61 without adequate site provision elsewhere ‘passes the buck’ to another local authority and police area and does nothing for the health and educational needs of the families being moved on.”*

The response to the same section of the consultation by solicitor firm Community Law Partnership said:

*“The idea that the police powers under CJPOA 1994 ss61, 62 and 62A could be strengthened is beggar’s belief! The police can give extremely short timescales for an encampment to leave e.g. half an hour or an hour typically. If the Gypsies and Travellers concerned do not leave, they can be arrested and their caravans (i.e. their homes) can be impounded.”*

Throughout the police responses to the consultation, we noticed a recurring theme. In total, 65% of police responses highlighted that the real problem is the lack of Traveller sites. For example, Warwickshire Police and Crime Commissioner said,

*“The only effective way to tackle the growing problem of unauthorised encampments is to ensure there is adequate transit and permanent provisions nationally. This must be a priority and will require revisiting current planning legislation.”*

Further to this, Surrey Police said:

*“Revised powers does not tackle the root cause of site provision.”*

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<sup>8</sup> A police power to remove trespassers by directing to an alternative available site

In agreement, the National Police Chiefs Council and Association of Police and Crime Commissioners said:

*“The lack of sufficient and appropriate accommodation for Gypsies and Travellers remains the main cause of incidents of unauthorised encampment and unauthorised development by these groups.”*

### **Recommendations**

- The Government should switch from an enforcement approach to unauthorised encampments to a provision approach.
- The Government should abolish proposals to criminalise trespass and reverse plans to strengthen police powers to evict.
- The Government should reintroduce pitch targets and a statutory duty onto local authorities to meet the assessed need for Gypsy and Traveller sites.
- The Government should adopt a definition of a Traveller in planning terms that incorporates all Gypsies and Travellers who need a pitch to live on.
- The Government should ring-fence funding for local authorities to build Gypsy and Traveller sites.

### **Conclusion**

The effects of accommodation insecurity on Gypsy and Traveller families are long-term, compounding and detrimental to health, education and employment. Our research has clearly illustrated that police bodies in England do not support the criminalisation of trespass to address unauthorised encampments. We found that police bodies consider the chronic shortage of Traveller sites to be the real problem and are overwhelmingly in support of increased site provision. This must be the focus of any governmental work on addressing the existence of unauthorised encampments.

### **About us**

Friends, Families and Travellers is a leading national charity that works on behalf of all Gypsies, Roma and Travellers regardless of ethnicity, culture or background.

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**Appendix 1 – Freedom of Information Request Questions to Police Forces, Police and Crime Commissioners and police bodies**

- 1) Did your Police Force / Police and Crime Commissioner’s office submit evidence to the consultation ‘Powers for dealing with unauthorised development and encampments’ in 2018?
- 2) If your Police Force / Police and Crime Commissioner’s office submitted evidence to this consultation, could you please provide us with your full responses to questions 6, 7, and 8, as they are stated within the consultation?

These were:

- Question 6 - Do you consider that the current powers for police to direct trespassers to leave land are effective?
  - Question 7 - Would any new or revised powers that enable police to direct trespassers to leave land make it easier to deal with unauthorised encampments?
  - Question 8 - Do you consider that the Government should consider criminalising unauthorised encampments, in addition to the offence of aggravated trespass? If so, how should a new offence differ, and what actions and circumstances should it apply to?
- 3) Can you also provide us with an e-copy, or hard copy, of your full consultation submission to this consultation?

## References

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