

Report To:	SCRUTINY PANEL A	Date:	12th MARCH 2020
Heading:	SCRUTINY CONSIDERATION OF DRAFT UNAUTHORISED ENCAMPMENT PROTOCOL		
Portfolio Holder:	CLLR JOHN WILMOTT		
Ward/s:	ALL		
Key Decision:	NO		
Subject to Call-In:	NO		

Purpose of Report

To provide an update to Members in respect of the Unauthorised Encampment Protocol that was approved in January 2019 following Scrutiny Panel A consideration.

To advise Members of recommended changes to the Protocol, the reasons for these proposed changes and to seek approval of the revised Protocol.

Recommendation(s)

Panel Members are requested to:

- Note the information contained in this report.
- Consider the proposed changes to the Unauthorised Encampment Protocol.
- Approve the revised Unauthorised Encampment Protocol attached at appendix A.

Reasons for Recommendation(s)

The Protocol has been operational for 12 months. To ensure continuous development and improvement it is important that we review and update the Protocol, reflecting on our experiences and lessons learnt during the past year.

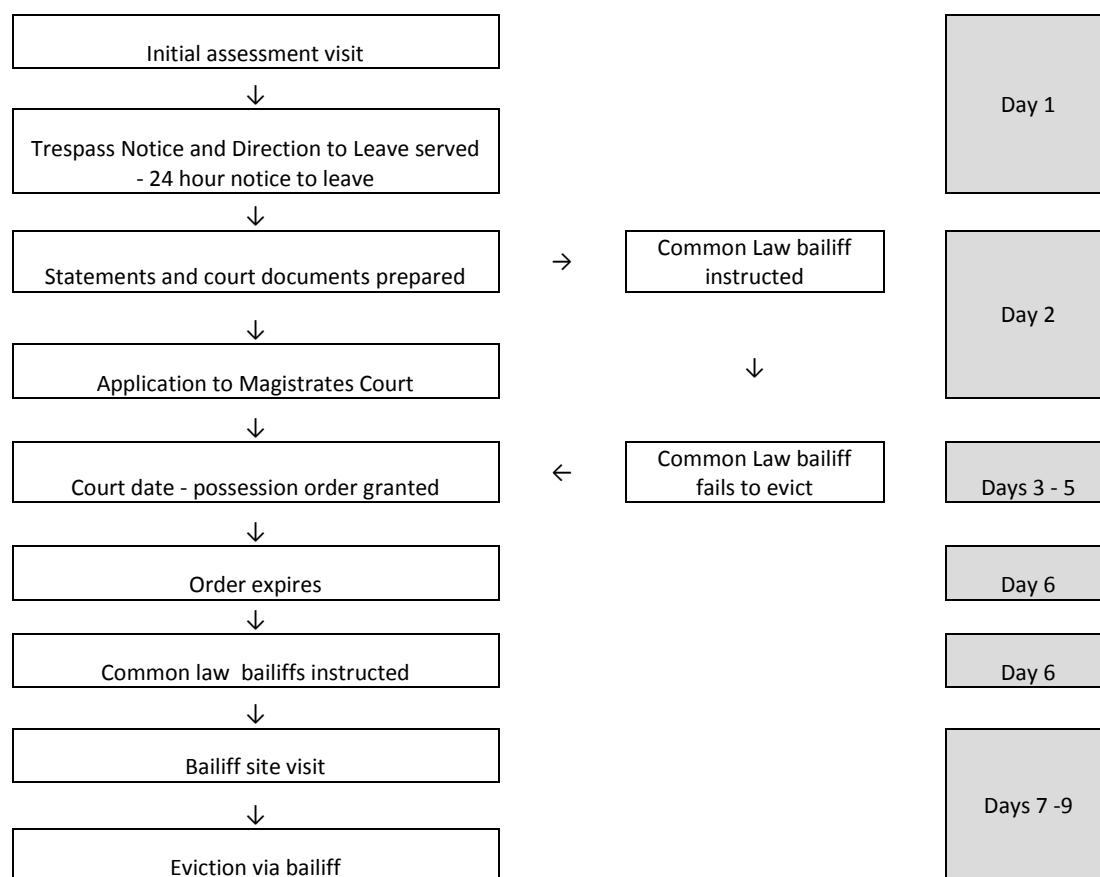
Alternative Options Considered

To not review the Protocol. This was rejected because there is a need to make minor changes based upon our experience of the last 12 months.

Detailed Information

A Protocol for managing unauthorised encampments was implemented in January 2019 following consideration and comment from Scrutiny Panel A. As part of their recommendations Members asked the Protocol be reviewed 12 months after implementation.

The Protocol established a default process for dealing with unauthorised encampments on ADC land, a summary of which is as follows;



To cover all possible scenarios the Protocol identified a need to issue both Trespass Notice and a Direction to Leave on the occupiers on day 1. Both of these set out a need for the occupiers to leave by a given time and date.

The benefit of serving both was that officers could then decide on the most appropriate course of action should the occupiers fail to adhere to the instruction to leave and court action was needed to move them on.

The Direction to Leave is served on known vehicles whereas the Notice relates to any unauthorised person occupying the site. Assuming no other vehicles join the encampment the Protocol assumes possession will be pursued through the Magistrates Court, utilising the Direction to Leave.

Alongside court action the Protocol states that common law bailiffs will be instructed to remove the encampment. The idea being that this would take place between the Notice being served and a Court Order being secured.

Since the implementation of the Protocol in January 2019 the Private Sector Enforcement Team has dealt with 22 unauthorised encampments, including 10 on ADC land and 12 on private land. By comparison there were 15 encampments in 2018/19 and 21 in 2017/18. There were more encampments on ADC land last year compared to previous years but this figure is skewed somewhat by one group of travellers who moved between 4 ADC sites over a short period of time.

Soon after the Protocol was implemented it became apparent that serving 2 instructions on day 1, the Direction to Leave and Trespass Notice, could be confusing as each came with their own set of instructions. This could have potential implications for any legal action the Council intended to take. In response to this there was a slight change of approach with just the Direction to Leave being served on day 1.

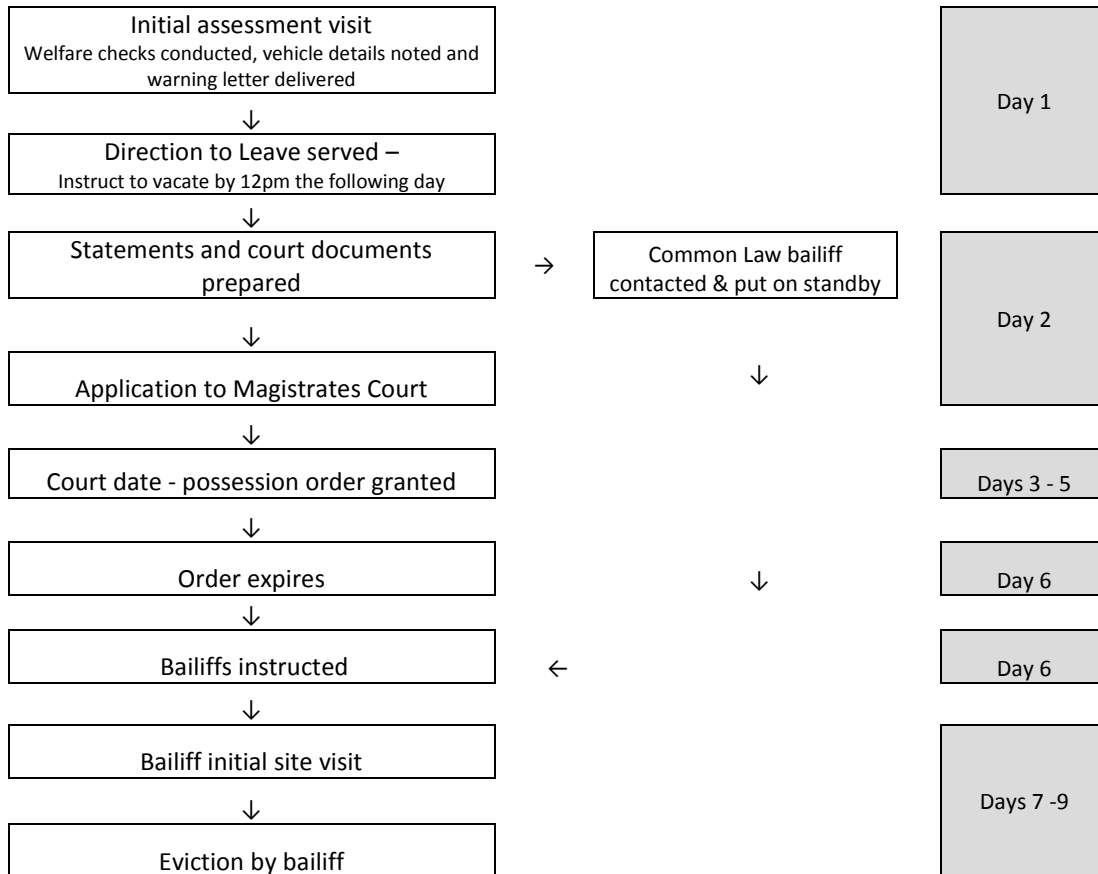
In most cases the threat of court action was enough to move the encampment on. Where court action was needed, the process of applying to court and obtaining an order happened within the space of a few days meaning there was relatively little benefit in instructing common law bailiffs to act in the intervening period.

Of the 10 encampments on ADC land 9 moved after the initial Direction to Leave was served (and before court action was taken) and 1 moved after a court order was secured and bailiffs were instructed.

Whilst most encampments were moved on in a quick and orderly manner problems were experienced at one particular site. On this occasion a Direction to Leave was served on day 1 but then at different times over the course of the next day or so other vehicles joined the encampment. Court action was delayed as new Direction to Leave notices had to be served on vehicles joining. The encampment was on a high profile site, one used for leisure purposes by local residents. During their stay the behaviour of the occupants was increasingly challenging and aggressive. In view of the circumstances, whilst court action was being pursued common law bailiffs were instructed to attend (without a court order) and use reasonable force to move the encampment on. This action failed and the encampment stayed until a court order was obtained and bailiffs could move them on.

Following recent conversations with our Legal Services Team it was agreed that where there is evidence to believe other vehicles may join the encampment, rather than serve a new Direction to Leave the original Direction and its accompanying covering letter can be used as a basis to pursue possession action through the County Court (as opposed to the Magistrates Court). Although the County Court process takes slightly longer, time will be saved by not having to re-serve Directions.

The revised Unauthorised Encampment Protocol, attached at appendix A, includes a new, simplified default procedure for dealing with encampments on ADC land, this is summarised overleaf.



In addition to removing reference to serving a Trespass Notice the new procedure also removes reference to common law bailiffs being instructed to evict the occupants on every encampment before a court order is sought. The court process or threat of action has brought a speedy solution in most cases. Within the revised Protocol it has been stated that common law bailiffs can be considered on a case by case basis and will be instructed to remove an encampment (without a court order) when the site is high profile and/or there are significant problems associated with the site, such as ASB.

Most other elements of the Unauthorised Encampment Protocol remain unchanged. In respect of factors such as meeting the welfare needs of occupiers, communicating to Members, officers and local residents and managing the encampment whilst on site, these are working well and so few changes have been suggested.

Looking more broadly at the issue of unauthorised encampments, the Government is currently consulting on increasing Police powers to evict gypsy and travellers. With any additional powers there could be an expectation that local authorities will need to be in a position to offer encampments 'move-on' options elsewhere within the district. The idea on these 'negotiated stopping' sites; that is alternative sites which are in out of the way locations, that would be suitable for encampments to stay at for a short period of time, may need to be given further consideration.

In addition, colleagues in Planning are leading on a Gypsy and Traveller Accommodation Needs Assessment. This is being conducted on a countywide basis.

Finally, local authorities are increasingly considering injunctions to prevent encampments, these can be on designated sites or districtwide. The matter is contentious and is currently being tested through the courts. At this point in time the Council is not in a position to apply for an injunction on any of its sites but it is something that is being monitored and will be considered in future.

Implications

Corporate Plan:

The revised Protocol is in keeping with the following Corporate Plan purpose

- The Council exists to serve the communities and residents of Ashfield.
- We will provide good quality, value for money services.

Legal:

The draft Unauthorised Encampment Protocol has been developed in collaboration with Legal Services. Powers relating to unauthorised encampments including the power to issue a Direction to Leave Notice derive from the Criminal Justice and Public Order Act 1994. The power to seek possession derives from Part 55 of the Civil Procedure Rules.

Finance:

Budget Area	Implication
General Fund – Revenue Budget	N/A
General Fund – Capital Programme	N/A
Housing Revenue Account – Revenue Budget	N/A
Housing Revenue Account – Capital Programme	N/A

Risk:

Risk	Mitigation
Unable to recover possession of ADC owned land	The Protocol clearly sets out a step by step process that will ensure recovery of ADC land.

Human Resources:

None

Environmental/Sustainability

The revised Protocol minimises the number of officer site visits thereby doing what is possible to reduce carbon from car usage.

Equalities:

The Protocol takes into account the needs of the occupiers including the requirement to conduct welfare checks and consider possible exemptions to

Other Implications:

None

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