

Runnymede Borough CouncilSERVICES REVIEW BOARD26 July 2001 at 7.30 p.m.

Members of the Review Board present : Councillors P. J. Poole (Chairman), P.B. Tuley (Vice Chairman), Mrs. L.M. Gillham, E.C. Pattington and G.J. Thomas.

Members of the Review Board absent: None

Councillors Mrs. F.J. Barden, J.M. Edwards, J.R. Furey, Mrs. J. Norman, Mrs. E.E. Price, F.J. Tourlamain and G.B. Woodger also attended.

185. NOTIFICATION OF CHANGE TO REVIEW BOARD MEMBERSHIP

The Conservative Group had notified the Chief Executive Officer of its wish that Councillor K.J.T. Walmsley be removed from the membership of the Review Board and that Councillor G.J. Thomas be appointed in his place for a fixed period ending on the day after the meeting. Thereafter, Councillor Walmsley would be re-appointed.

The Chief Executive Officer had given effect to this request in accordance with Section 16(2) of the Local Government and Housing Act 1989.

186. TRAVELLER INCURSIONSPurpose of the Meeting

In accordance with a requisition by the Chairman following a request from Councillors Mrs F. J. Barden and G. B. Woodger, the Review Board gave consideration to policy and procedures in respect of gypsy or traveller incursions and examined the various courses of action available in response to such incidents. The Board received a detailed background report from Officers which addressed the legal framework, the measures in place to manage incursions, potential defensive mechanisms and the events surrounding a particularly large incursion in the Homewood Park area of Chertsey during May/June 2001. In order to assist with their deliberations the Board also received evidence from, and asked questions of, the following interested persons:

Mr P. Sims, Borough Technical Services Officer
 Mr B. Bennett, Assistant Solicitor
 Mr R. Fleming, Head of Leisure Services
 Mrs H. Hutchins, Social Services
 Chief Superintendent C. Crathern, Surrey Police
 Mr P. Hammond MP
 Councillor Mrs F. J. Barden
 Mr. C. Boyde)
 Mr. A. Brown) Local land owners
 Mr. L. Dodd)

The Legal Position

The Board recalled that the Borough had previously benefited from "designated" status, conferred on those local authority areas which had made adequate provision for authorised gypsy sites or, as in Runnymede's case, where it would not be expedient (owing to green belt constraints) to make further provision. Designation had meant that unauthorised camping in the Borough was illegal and provided for swift remedy through the Courts, compared to the majority of neighbouring areas which were undesignated. Unlawful incursions in Runnymede fell significantly following designation in 1989. Many local authorities, however, failed to make adequate provision for sites and in 1994 the then Government repealed both the duty to provide gypsy sites and the consequential powers of enforcement.

Members noted that gypsies were now expected to make their own provision through the planning process. Current Planning policy, as contained in the adopted Local Plan, precluded the development of new gypsy caravan sites in the green belt. The development of existing sites or new locations outside the green belt was normally only permitted where the site was exclusively residential, had safe and convenient access to a suitable highway, schools and other community facilities and the development would have minimal impact on the environment, character and appearance of the locality. Effectively this limited potential sites to urban areas where a proposed caravan site would have to compete with other land uses and be expensive to purchase. While gypsy organisations argued that Local Authorities should allocate specific sites, these could not be safeguarded against competing land uses which would probably offer the landowner a greater return. There were currently 41 authorised gypsy plots in Runnymede, located on a mixture of County Council and privately owned green belt sites in Lyne. Although demand for these pitches was high, biennial counts suggested that the number of gypsies in the Borough was relatively stable. There was no compelling evidence that additional sites were required.

Members noted that gypsy incursions into the Borough were a frequent event, occurring on average once a month. Most instances, however, involved only small family groups and no more than two or three caravans, often in discrete locations. The gypsies tended to stay for a few days before moving on and sometimes caused little actual harm, although their presence usually generated fear and a perception of crime among local residents. Large scale incursions were comparatively rare and usually linked to time-limited events such as weddings and funerals. Local Authorities and police forces seeking to remove unauthorised encampments were, however, constrained by a variety of statutory duties, Government guidance, practical considerations and the principles of 'common humanity'.

The Council had three options to regain possession of its land, namely the giving of a Direction to leave and, if not complied with, an Order of the Magistrates Court under Sections 77 and 78 of the Criminal Justice and Public Order Act 1994, an Order of the County Court or High Court, or the use of reasonable force at common law. The Magistrates Court procedures enabled the Council to direct travellers to leave the land as soon as the facts had been established. However, application then had to be made to the Court for an order enforcing the direction and any follow up Summons had to give the gypsies at least 24 hours notice of the Hearing. The procedures, used mainly against small groups of travellers, were cheap, relatively quick and allowed the Local Authority to retain control of the eviction process with the protection of a Court Order to lessen the risk of incurring civil liabilities. However, the Order only related to those travellers who had been served with the original direction.

The principal alternative route open to a Local Authority was an application to the County Court or the High Court for an Order of Possession. This applied to all trespassers, including those arriving after the notice of the Hearing had been served. The procedure usually entailed some delay since at least two days notice of the Hearing was normally required. The Council had no powers of enforcement and would have to request a warrant of eviction to be enforced by the Court Bailiffs if the travellers did not comply with the Order for Possession.

Local Authorities were also entitled to exercise the Common Law rights of landowners to use reasonable force to evict trespassers from their property. While this potentially provided for rapid action, Members noted that it presented a number of legal and logistical difficulties. Where a trespasser resisted, it might be necessary to use considerable force. The level of reasonable force required would be arguable and there was no legal protection for the Council against claims of assault, criminal or civil damage if the methods used were considered excessive. Furthermore, physical eviction required very large numbers of staff, contractors with heavy towing vehicles and the attendance of Police regardless of the method employed. The risk of violence and civil disorder, with overspill to surrounding areas, was great. Few contractors were prepared to undertake such work for fear of reprisals and Council staff would also be exposed to significant risk. An operation of this nature and expense would require further works to secure the site after eviction. In addition, if the Council physically removed caravans it required somewhere to take them. Unlike the Police, the Council had no powers of seizure, nor a practicable and secure storage facility. Vehicles could not simply be moved on to the highway since this would itself cause an illegal obstruction. In practice the Council was heavily dependent upon the travellers moving themselves. Forced evictions of this nature had only been attempted twice in Runnymede and on both occasions the gypsies moved once the tow vehicles arrived.

Members noted that the exercise of these remedies was further constrained by Government guidance which required Local Authorities to take careful account of their obligations under the Children's Act 1989, the Housing Act 1985 and the Education Act and to liaise with all those who would have statutory responsibilities in relation to the travellers, in particular having regard for those who might need or be receiving assistance from local health or welfare services. Authorities were advised to use their enforcement powers wherever the gypsies were causing a level of nuisance which could not be effectively controlled. Conversely, where this was not the case, it was suggested that basic services such as toilets, a refuse skip and drinking water be provided at the site. This was not currently the practice in Runnymede, although plastic sacks were issued for the disposal of refuse. Good practice guidance issued by the Government in 1998 had advocated a generally tolerant approach. The Government had, however, recently clarified this advice in order to confirm that Local Authorities were not obliged to tolerate all types of unauthorised camping regardless of the amount of criminal or anti-social behaviour associated with it. There was a clear distinction between situations where there were no criminal offences associated with the encampment and where anti-social or criminal behaviour was occurring. Further revisions to the guidance were expected next year following publication of an academic study of the issue.

The Human Rights Act 1998 also had implications for a Local Authority whichever procedure it chose to use. Under the legislation travellers had the right to enjoy their possessions and to respect for private and family life. Any interference with those rights had to be in accordance with the law and must constitute a proportional response to the incursion. It was noted that such considerations might indicate allowing a temporary stay of several days rather than immediate removal.

The Board was informed that the Police also had powers under Section 61 of the Criminal Justice and Public Order Act 1994 to direct persons to leave the land, provided that the occupier had asked them to leave and either that they were causing damage or abuse to the occupier, or had brought six or more vehicles onto the land. Failure to comply was an offence which could lead to arrest without warrant. The Police were also empowered to seize the vehicles in question. Although in principle action could be taken quickly under these powers the Police were under the same obligations as Local Authorities to observe Government advice and the Human Rights Act and would be presented with the same logistical difficulties in respect of a forced eviction.

Both the Council and Police were entitled, in certain circumstances, to use their enforcement powers in respect of private land. However, they were not under a duty to do so and, in any case, it would not necessarily be an advantage to the Landowner since the same constraints applied as in the case of an incursion on public land. Private landowners could themselves apply for a High Court Order for possession or take direct action. The Council would, however, be prepared to offer owners legal advice as to process and, if they had serious problems in acting themselves, might fund the cost of the appropriate legal action. Planning powers could be cumbersome and would only be used if the occupation was tolerated by the landowner or if the travellers owned the land.

Procedures in Response to an Incursion

The Review Board noted that the Council's response to a gypsy incursion on its land was guided by the procedures set out in a protocol agreed with the Police in 1997.

Officers were alerted very quickly to any incursion in the Borough. Local Authorities shared intelligence on gypsy movements with their neighbours and Safer Runnymede staff took messages from the public at any time of day and night. Senior Officers, Ward Members and the Police were normally aware of an incursion within hours. Planning Enforcement staff were on out of hours call out and responded to messages about gypsies at night by verifying their presence but, for safety reasons, would not enter the site until the following morning. At that time they would enquire about the reasons for the visit and its likely duration. In order to comply with the Council's duty to take account of the needs of the travellers before removing them from the site, questionnaires would be circulated seeking information on their health, education and general welfare (matters of "common humanity"). Although assistance in completing the forms was always offered to those who were illiterate, the questionnaires were invariably ignored. Nevertheless, Enforcement Officers notified Surrey County Council Education and Social Services staff responsible for providing specific support whenever a need was identified through the preliminary discussions.

Council Officers also liaised closely with the Police throughout an incursion. In instances where the Police had decided to act under their own powers Borough staff provided assistance as required but were content to leave the Police to manage the situation. In other cases a decision as to the appropriate response was reached following discussions between Planning Enforcement Officers, the Borough Technical Services Officer and Legal staff. If there were good reasons to believe that the group would move on in a short period of time and no damage or nuisance was being caused Government guidance required that no physical eviction be undertaken. Court action would also generally be abortive in the majority of cases as the gypsies tended to move on after one or two days. However, if there was evidence of damage and nuisance (as opposed to simply a perception of nuisance on the part of residents) and uncertainty about the likely length of stay, application would be made to the Courts for one of the remedies outlined above.

Defensive Measures

The Board noted that the Council maintained a list of sites across the Borough that were vulnerable to incursions and informed the relevant Officers or private landowners whenever it was known that gypsies were in the locality.

There were a range of defensive measures which could be used to prevent access to sites. These included height barriers, gates, fencing, ditches, bunding and physical obstacles such as concrete blocks, girders vertically embedded in the ground and parked vehicles. While these were capable of delaying entry to a site and might on occasion have a deterrent effect, gypsies often carried heavy duty cutting and towing equipment which enabled them to dismantle or remove most defences. The barriers were also frequently unsightly and effectively served to restrict access to the land for both the public and maintenance vehicles. It was extremely difficult to maintain access to parks and open spaces for the public without compromising the security of the site. Where defences were erected care had to be taken to ensure that they were not liable to harm the public. Similarly, it was not practical to employ security guards at every open space in the Borough. They were, in any event, often ineffective against large scale incursions.

Alternative Methods of Control

The Review Board gave consideration to a range of measures designed to enhance the Council's response to gypsy incursions. It was suggested that the Police and Council should vigorously pursue action against travellers who had committed criminal acts, contravened road traffic regulations, failed to display vehicle excise duty discs or breached local bylaws. Members noted, however, that enforcement of the criminal law by either the Local Authority or the Police was often impractical for minor non-arrestable offences owing to the difficulties inherent in bringing prosecutions against gypsies who were difficult to identify, of no fixed abode and unlikely to attend any subsequent Court hearings.

The Police constantly monitored unauthorised encampments for signs of criminality but it was often difficult to obtain sufficient evidence against an individual to secure a conviction. There were no powers to levy on the spot fines. Chief Superintendent Crathern emphasised that the Police only had limited resources to monitor compliance with the vehicle excise duty regulations but, despite some evidence offered to the contrary, the majority of travellers vehicles were properly taxed and insured. The Police were occasionally accompanied on site by Customs and Excise Officers who had powers of seizure if vehicles were filled with "red diesel".

The Board was informed that CCTV did not offer a solution since its coverage was predominantly restricted to main towns rather than the type of rural areas which attracted travellers. Legislation restricted its use for the monitoring of individuals but there was in any event anecdotal evidence that it failed to deter unauthorised encampments. Neither was the employment of private bailiffs an option as it would be contrary to Government guidance and raised questions of liability. In order for wheel clamping to be lawful warning signs would have to be displayed at such frequent intervals that they would be visually intrusive.

Members noted that contrary to Government advice the Council did not presently provide any facilities such as skips and toilets at unauthorised encampments. While there was a reluctance to offer services which might encourage travellers to extend their stay it was recognised that doing so would minimise the unpleasant and expensive task of cleaning the site after the gypsies had left. If a skip were to be provided but not used it would also be easier for the Police to utilise

their powers of eviction. It was emphasised that most of the rubbish left on site by gypsies originated from residents of the Borough who had employed them. The Board accepted that residents might sometimes be intimidated into employing travellers but was of the opinion that there would be fewer incursions if the gypsies were unable to gain work locally.

Philip Hammond MP informed the Board that he considered that the fear of crime engendered by the presence of gypsies was as significant a factor in eroding residents quality of life as crime itself. He was of the view that the existing legislation gave local authorities and the Police little freedom of action against travellers. This in turn led to a breakdown in public confidence as residents were unable to understand why a more vigorous approach had not been adopted. Mr Hammond was therefore prepared to lobby for changes in the legislation which would allow a more proactive response to unauthorised encampments, recognition of adequate provision of official sites, quicker Court decisions, provision for landowners and local authorities to recover costs and gain compensation from travellers and heavier penalties for fly tipping. Mr Hammond also sought to promote better inter-agency co-operation so that gypsies in receipt of benefits who had committed an offence could be more easily traced and prosecuted. While it was important to protect the genuinely vulnerable, he felt that those who broke the law should not be shielded from the consequences. Mr. Hammond was optimistic that the new Home Secretary would be receptive to such measures and proposed to apply for an adjournment debate in the House of Commons. Mr. Hammond advocated in the meantime a policy of "zero tolerance" which would deter travellers from visiting Runnymede.

The Geesemere/Homewood Park/Hillswood Incursion

The Review Board was informed of the sequence of events surrounding a gypsy incursion on land in Chertsey at Geesemere, off Guildford Road, Homewood Park and the Hillswood Business Park during May/June 2001. The incursion was the largest on publicly owned land in the Borough for more than 10 years and at its peak involved between 95 – 115 caravans.

Members noted that Geesemere had been the first area to be occupied, on 19 May. The gypsies had removed concrete posts and bollards in order to allow 15 – 20 caravans to enter the site. The trespassers were immediately asked to leave by enforcement staff. The gypsies were peaceable and reasonably well behaved. Although a formal direction was served, on 24 May, and a Magistrates Court Order obtained on the next available hearing day afterwards (29 May), they left without the need for forcible eviction on 2 June.

On 28 May, a different group of about 15 caravans broke into Homewood Park via the private Hillswood Business Park, sawing off wooden defensive posts at the perimeter. This group also initially appeared peaceable and well behaved but were asked to leave on their arrival. Between 55 and 65 further caravans arrived on 29 May. A further direction was served on the second group of travellers the following day and a Magistrates Court Hearing arranged. It was noted that when Homewood Park was constructed the majority of business park occupiers had wanted to preserve the open aspect of the land and were reluctant to agree to more extensive defences. The business park tenants had also discontinued the developers manned security point at the beginning of the access road.

A final very disruptive group of 10 to 15 caravans arrived on 31 May and broke through the Council's height barrier to occupy the area of Homewood Park adjacent to the car park off Stonehill Road. With the number of trespassers continually varying, the Council served County Court Summonses on 31 May in addition to the steps taken under the Magistrates Court procedure to ensure that any subsequent trespassers would be covered by the same Order. The County Court set a hearing date of 4 June. Officers made arrangements with the Police and (after some difficulty) a contractor, for an eviction on 4 June after service of the anticipated Order. The contractor's resources would have been inadequate for a rapid mass eviction but in the event the caravans left the Council's land on 2 and 3 June.

Although the original group of travellers at Geesemere were relatively tidy the later groups left very large amounts of debris littering most of the site. Much of this was garden refuse and tree prunings, illustrating that the gypsies had been employed by many local people during their stay. Councillor Mrs Barden reported that a number of trees had been uprooted, vehicles abandoned and the site soiled. The cost of reinstatement and clearance was £20,500 but a further £57,900 was incurred on works to substantially strengthen the perimeter defences and engaging security staff to guard against further incursions before the park was re-secured.

Conclusions and Recommendations

In the light of the evidence received the Review Board was satisfied that the response of both the Council and Police to gypsy incursions was as effective as possible taking into account current Government advice and the present legislative framework. Gypsy incursions in the Borough, though frequent, were generally on a small scale and managed successfully within tolerable timescales, through a combination of negotiation and Court action without recourse to potentially violent forced evictions. The Homewood Park encampment had been the only significant incursion on Council land for more than 10 years and had arisen through a unique set of circumstances. Contrary to public perception enforcement procedures in Runnymede compared extremely favourably with those in most other localities.

Nevertheless, Members expressed considerable concern at the constraints imposed on the actions of the Council and Police and, in particular, the difficulties in obtaining successful prosecutions of gypsies engaged in criminal behaviour. The Board concurred with Mr Hammond's view that the legislation in this area should be revised in order to give local authorities and the Police the flexibility to manage unauthorised gypsy encampments more effectively. It was felt that representations on the matter should be conveyed to the Government, both through the Local Government Association and other channels and in conjunction with Mr Hammond.

In the meantime Members felt that the opportunity should be taken to review the existing protocol for the management of gypsy incursions, broadening it into a multi-agency agreement of the type being developed elsewhere in the country. It was recommended that the revised document should formalise links with all relevant statutory agencies including the Education and Social Services Departments of Surrey County Council as well as the Police. Contingency arrangements for large scale incursions such as the one experienced at Homewood Park should also be included. Finally, Members emphasised the need to make the public aware of the legislative and practical constraints under which the Council and Police operated and persuade local residents and businesses not to encourage the presence of travellers by providing them with employment. It was proposed that an information leaflet be produced to this effect.

RESOLVED that –

the following recommendations be presented to the Corporate Management Committee and, subsequently, the Council for consideration:-

- i) the existing protocol to guide actions in the event of traveller incursions be reviewed and broadened into a multi-agency agreement with contingency arrangements to manage large scale encampments;**
- ii) representations be made to Government, through the LGA, the MP, and other appropriate channels, seeking changes in the legislation in order to enhance the enforcement powers of local authorities and the Police in respect of traveller incursions; and**
- iii) a leaflet be produced to inform residents and local businesses of the constraints presently imposed upon the Council and Police in managing such incursions and discourage the practice of employing travellers engaged in unlicensed activities.**

Chairman

(The meeting ended at 11.08 p.m.)