

**Development Control Committee – 10 December 2008****UNAUTHORISED ENCAMPMENT AT BOURTON LANE, LITTLEHEMPSTON.****Report of Head of Planning and Building Control**

**Statutory Powers:** The Town and Country Planning Act 1990,

**Purpose:**

To determine the expediency of taking enforcement action against occupiers of an unauthorised encampment on land under the ownership of Devon County Council.

**Financial Implications:**

None at the time of writing this report. Financial implications will depend on the response of those served with an Enforcement Notice and whether it becomes necessary to take further action to evict occupiers from the site.

**RECOMMENDATIONS**

**That the DEVELOPMENT CONTROL COMMITTEE be RECOMMENDED that;**

- (i) Prior to commencing enforcement action an immediate welfare and needs assessment is undertaken that will enable the District Council to consider any special or extenuating circumstances that may be put forward to support continued tolerance of the unauthorised encampment
- (ii) Subject to the considerations of recommendation (i) that delegated authority is granted to the Head of Planning and Development Control to proceed with enforcement action with a recommended 18 month compliance period that would seek to prevent the unauthorised encampment from becoming immune from such action due to the 10 year time limitation and in consideration that this particular site location conflicts with the adopted Structure Plan, Local Plan policies and Local Development Framework (LDF) Core Strategy policy relating to unsustainable development in open countryside, visual impact, its unsuitability as a location for a Gypsy/Traveller site and an inadequate road network.

**Background**

1. On the 15<sup>th</sup> March 2006 an item was taken to Development Control Committee to determine what action be taken against an unauthorised traveller encampment at Bourton Lane, the Committee resolved that;
  - (i) In light of Government guidance on unauthorised camping and the low level of nuisance caused, no enforcement action be taken at the current time. If there is a significant increase in the scale of unauthorised camping or nuisance occurs which amounts to demonstrable harm making it expedient to take action in accordance with Planning Policy Guidance 18 – Enforcing Planning Control, then the matter should be reviewed;

- (ii) Devon County Council be urged to use their land ownership powers to remove the unauthorised encampment. In the event that they are unprepared to take such action they make suitable provision for disposal of foul and other waste;
- (iii) That towards the end of the 10-year period when the site would become lawful (2010) a further report be prepared. This is likely to recommend that the site be cleared to prevent the possibility of the site gaining further permanence through the introduction of static caravans or other large made structures.

### **Current Review**

2. Littlehempston Parish Council wrote to the District Council in June and October 2008 continuing to express concern about the Bourton Lane encampment, and Cllr Pennington wrote to the Head of Planning and Building Control requesting the matter be included in the next available Development Control Agenda.
3. Since the previous report of March 2006, although there has not been a “significant increase” in the scale of the unauthorised encampment, there have been changes of occupants at the site. At the last site visit in November it was noted there is a small increase of vehicles and caravans from that identified in 2006 but generally the site occupies the same parcel of land.
4. Devon County Council have not taken any action to remove the unauthorised encampment on their land and no provision has been made for any services or for the disposal of foul or other waste.
5. The encampment is situated on highways land and the County Council can at any time now or in future take action under the Highways Act 1980 to seek repossession of its land. Similarly, any private landowner could take action to remove the occupants and recover possession of his/her land.
6. The site would not become lawful after 10 years of unauthorised occupation, however planning enforcement action under the Town and Country Planning Act 1990 could be challenged due to the time limitation of taking such action against a material change of use of land.
7. There has been no introduction of “static caravans” or other large made structures, one timber garden shed has been erected but is not otherwise fixed to the ground.
8. This report should be read in conjunction with the report to Committee of the 15<sup>th</sup> March 2006 and the report Developing the Social Inclusion Policy – Gypsies and Travellers provision of 23 May 2006 to the Community Policy Development Group which was subsequently endorsed by the Executive

### **Site Location**

9. The encampment at Bourton Lane is located in an Area of Great Landscape Value (AGLV) outside the development boundary of both Littlehempston and Berry Pomeroy. The site is approximately 200 metres south west of the Coombe Park Equestrian Centre which is also the nearest residential dwelling to the encampment.

10. Vehicles and caravans occupy highway verge and a small wooded copse, which is also considered highways land. The encampment is bounded by farmland and although on high ground the site is screened from external views by hedgerows and trees.
11. A tarmac road surface stops at the equestrian centre and deteriorates to an unmetalled rough surface leading through the encampment along the now established John Musgrove Heritage Trail. The trail was developed through the "Life into Landscape" partnership with Devon County Council in 2006, and continues along a footpath to Totnes some 2km away. A site plan with photographs are attached as appendix A.

### **Site Analysis**

12. As the encampment occupies County Highways land it continues to be the responsibility of the County Council's Gypsy/Traveller Liaison Office and is "managed" in accordance with the County Council's policies relating to people of a nomadic lifestyle. The District Council have informally monitored the site during this period.
13. The latest site visit by the District Council in November 2008 indicates there are in excess of 15 "caravans and habitable units" at the site while at the time the number of occupants were not established the visiting officer was informed that at least two of the caravans were to be removed having been recently replaced with newer models.
14. There have been no complaints received by the Council about the behaviour of occupants at Bourton Lane. There have been complaints from time to time from the Parish Council and members of the local settled community who object to any use of this land as a gypsy or traveller site, not least because of its siting in an Area of Great Landscape Value, but also in consideration the welfare of occupants of a site. There are no waste services provided or utility services supplied. Concern has also been expressed that the occupation of the site is increasing and becoming more untidy and that dogs are untethered and unsupervised.
15. The County Councils Gypsy Traveller Liaison Office state that there are 11 travellers in total making up 9 separate units. 9 of these are employed, 1 attends a secondary school in the area and 1 is on incapacity benefit. There are links with families in the area. 3 of the traveller's children attend the local schools, although not all these children are resident at Bourton Lane. Residents are linked with local GPs and dentists and most employment is also local.
16. There has been no criminal activity by the residents but there has been one incident against them. Occupants look after their own waste, and toilet facilities as they feel any other methods would encroach on the neighbours.
17. Not all travel to and from the site is made on foot or by only using the John Musgrove Trail. Some occupants will require the day to day use of their vehicle to travel to work or elsewhere and to collect sufficient supplies of fresh water and other provisions as none are available at or near the encampment site.

## Planning Policy

18. The Development Plan includes the Devon Structure Plan 2001 to 2016 (adopted Oct 2004), the South Hams Local Plan 1989 to 2001 (adopted Apr 1996) and the LDF Core Strategy (adopted Dec 2006). These documents establish the scale of development which is appropriate for different parts of the County. In the open countryside development should be strictly controlled and any development should make provision for the safe use of the most sustainable and environmentally acceptable modes of travel.
19. Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites sets out national guidance for the assessment of Gypsy and Traveller accommodation needs. All local authorities are expected to identify sites through their Local Development Frameworks (LDFs) to meet the needs of Gypsies and Travellers.
20. Also of relevance are Devon County Structure Plan Policies ST5 and CO4 which seek to strictly control development in the open countryside and Areas of Great Landscape Value (AGLV), TR 5 relating to the most sustainable and environmentally acceptable modes of travel, and TR10 requiring development proposals to not adversely affect the road network in terms of traffic and road safety.
21. In the adopted Local Plan, Policy SHDC 3 is concerned with development in the countryside. It provides for a limited number of categories of development, provided that there would be little adverse effect on the character, appearance, wildlife and amenities of the area.
22. The first deposit of the South Hams Local Plan Review was published in 2002 and Policy HO12 provided for gypsy sites where there is a proven need and subject to the assessment with a number of recommended criteria. Amongst other matters the proposal should involve the most suitable site in the area without undue loss of amenity to nearby residents. This document has not been proceeded with and has not been adopted. Therefore, whilst material to any decision, it carries very little weight in the determination process
23. The Local Plan Process was not continued because the District Council changed to the new Local Development Framework (LDF) system. The LDF Core Strategy document, adopted December 2006, contains policy CS1: "Location of Development" which identifies settlements around that a development boundary will be defined in relevant settlement specific Development Plan Documents. Elsewhere in the district development will be more tightly controlled and only permitted where it can be sustained and in response to a demonstrable local need.
24. The current policy position and requirement for pitch provision in the South Hams is set out below;
  - a. A Devon wide Gypsy and Traveller Accommodation Assessment informed a consultation on "review of additional pitch requirements for Gypsies and Travellers" during autumn 2007. The results informed the emerging South West Regional Spatial Strategy (RSS) which proposed an allocation of 51 permanent and 5 transit pitches for the South Hams.

- b. An examination into these pitch provision allocations was held during March 2008. The Panel Report on the Examination was published in March 2008 followed by the Secretary of State's Proposed Changes to the RSS in July 2008. Neither of these publications changed the allocation of permanent or transit pitch numbers for the South Hams (51 and 5 pitches, respectively).
- c. The Secretary of State's Proposed Changes were consulted on for 12 weeks (from July to October) and consideration of further representations made. The Secretary of State will publish the final version of the RSS (which will include district wide pitch provision allocations) early next year.
- d. District provision will need to be addressed through appropriate allocation documents in the Local Development Framework.
- e. The Council has not yet reached the stage in its LDF process of producing site allocation documents. Any planning application received will need to be considered on its own merits and in light of policy guidance, particularly Circular 01/2006.
- f. Circular 01/2006 provides guidance on site location and selection. It identifies factors which are important for the sustainability of a site, including:
  - i. Means of access, availability of transport modes and distances from services;
  - ii. Promotion of integrated co-existence between the site and local community;
  - iii. Easy access to doctor and other health services;
  - iv. Near to a bus route, shops and schools;
  - v. Ground conditions and site levels; and
  - vi. Avoiding areas of high flood risk.

## **Human Rights**

25. Article 8 of The European Convention on Human Rights states that:

- (1) Everyone has the right to respect for his private and family life, his home and his correspondence.
- (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

26. The Courts have held that evicting occupants of caravans from land that they do not own could possibly bring Article 8 into play. Officers take the view that if Article 8 is engaged, the decision to take enforcement action can be justified because it is in accordance with the law and is necessary for the protection of

the rights of the public by preserving the amenity of the countryside. If enforcement action under the planning legislation is not taken there is the risk that such action will become impossible due to the 10 year limitation period. Officers also believe that serving an enforcement notice is proportionate because of the long period of time for compliance with the notice, during which time the occupants of the site will be able to seek alternative sites. It is envisaged that alternative sites will be allocated as part of the emerging Local Development Framework.

## **Sustainability and Gypsy and Traveller Development**

27. Circular 01/2006 makes it clear that in the first instance locations for gypsy and traveller sites should be considered in or near existing settlements. Rural locations are, however, acceptable in principle and a realistic approach should be taken to the likely availability of alternatives to the car in accessing local services.
28. Bourton Lane, comprising the John Musgrove trail, does provide adequate access to the site on foot although beyond the fringes of Totnes has no lighting. The A381 leading to Newton Abbot is particularly awkward for persons on foot and although street lighting is installed it does not work, the road has no refuge from passing vehicles for 150 hundred metres after which the highway opens to an unlit grass verge. As a result, safe access to and from the encampment and Totnes other than by foot using the John Musgrove Trail requires a need to travel by vehicle.
29. The Circular explains that sustainability should not only be considered in terms of transport mode and distance from services, and lists several factors to take into account. These include easier access to health services and regular school attendance, both of which are more likely to be achieved closer to a settlement. The first criterion refers to the promotion of peaceful and integrated co-existence between the site and the local community.
30. The distance to Totnes, where facilities and services are available is reasonable but only by foot and then only using the Bourton Lane route rather than what would be required by vehicular access via the road network from Littlehempston or Berry Pomeroy. In this context the encampment site would not represent a sustainable form of gypsy and traveller development, and would conflict with Structure Plan policies and national planning policy as expressed in Circular 01/2006.
31. The encampment in Bourton Lane does not in itself promote any integrated co-existence between the site and local community by anything other than its distance and detachment from the settled community which is mainly made up of a small number of isolated dwellings in the immediate locality. For the most part the occupants of the site are able to avoid any direct conflict with the sensitivities of local residents.
32. Although the site is on high ground and well screened generally, having little or no effect from flooding, the trail can become waterlogged and boggy where vehicles and caravans pass and re-pass. Also the ground conditions and site

levels of the encampment are not suitable as a residential site and particularly in the wooded copse area, are un-drained with no hard or permeable surface.

33. The Communities and Local Government Good Practice Guide “Designing Gypsy and Traveller Sites” includes extensive advice and criteria on the layout and Design of Gypsy and Traveller sites. When assessing the Bourton Lane site against these criteria the existing encampment falls significantly short of the space, layout and services detailed in the document. Examples of where the site is inadequate include a clear demarcation of the perimeter of the site which should be designed with the safety of occupants and children in mind.
34. The Bourton Lane site has no clear demarcation and immediately abuts the highway. One set of occupants have had their caravan vandalised in the past. Although the roadway is not excessively used the current layout of the site does not afford much distance between the living accommodation and the highway and in health and safety terms is unsuitable. In terms of access for emergency vehicles the Good Practice Guide states that access roads must not be less than 3.7 metres wide again this criteria has not been met. A distance of at least 6 metres between vehicles is required for fire safety reasons is essential. As the photographs show the layout of the Bourton Lane site means that there is a close proximity between many of the vehicles as they are arranged on a nose to tail basis.

## **Consultation**

35. Since 2006 the District Council has undertaken a series of Gypsy and Traveller Liaison meetings as part of its social inclusion agenda. These meetings have been led by The Strategic Director (Community) and involve a range of officers and elected members from the Council, local Gypsies and Travellers, representatives from Devon County Council’s Gypsy and Traveller Liaison Unit and Devon Racial Equality Council, and representatives from Dartmoor National Park.
36. The aim of the meetings is to improve dialogue and understanding between the Council and Gypsy and Traveller groups. Discussions have included site specific issues, the bi-annual caravan count, gypsy and traveller pitch allocations set out in the Regional Spatial Strategy and the development of criteria for how potential sites will be assessed for allocation. These meetings are ongoing and will inform the Council’s LDF evidence base as it develops its policy and site allocation proposals.
37. The District Council is continuing to work with other local authorities to establish the level of housing need for travellers in the district, and to consider the identification of traveller sites through the LDF process. As part of the Council’s development of a Social Inclusion Policy, presented to the Community Policy Development Group in May 2006, the Council recommended a policy for responding to traveller issues including unauthorised encampments taking into account national guidance.
38. The District Council’s Housing Service has not received any application for housing from anyone occupying the Bourton Lane site.

## **Conclusions**

39. This site comprises a change of use of land outside the development boundary of any recognised settlement where there are no local services, facilities and where any development is strictly controlled by adopted Local Plan policy SHDC 3, LDF Core Strategy policy CS1 and Devon County Structure Plan Policy ST5.
40. The encampment site is divorced from these facilities and is therefore unsuitable for continued consideration for the purposes of any residential or transit Gypsy/Traveller accommodation and will foster increased travel by private vehicle and as such conflicts with Devon County Structure Plan policies TR5 and TR10.
41. The encampment is located within an Area of Great Landscape Value and the encampment site is detrimental to the character and appearance of the rural landscape. Such development is contrary to adopted Structure and Local Plan policies CO4 and SHDC 3 and Central Government guidance.

## **Expediency of Enforcement Action**

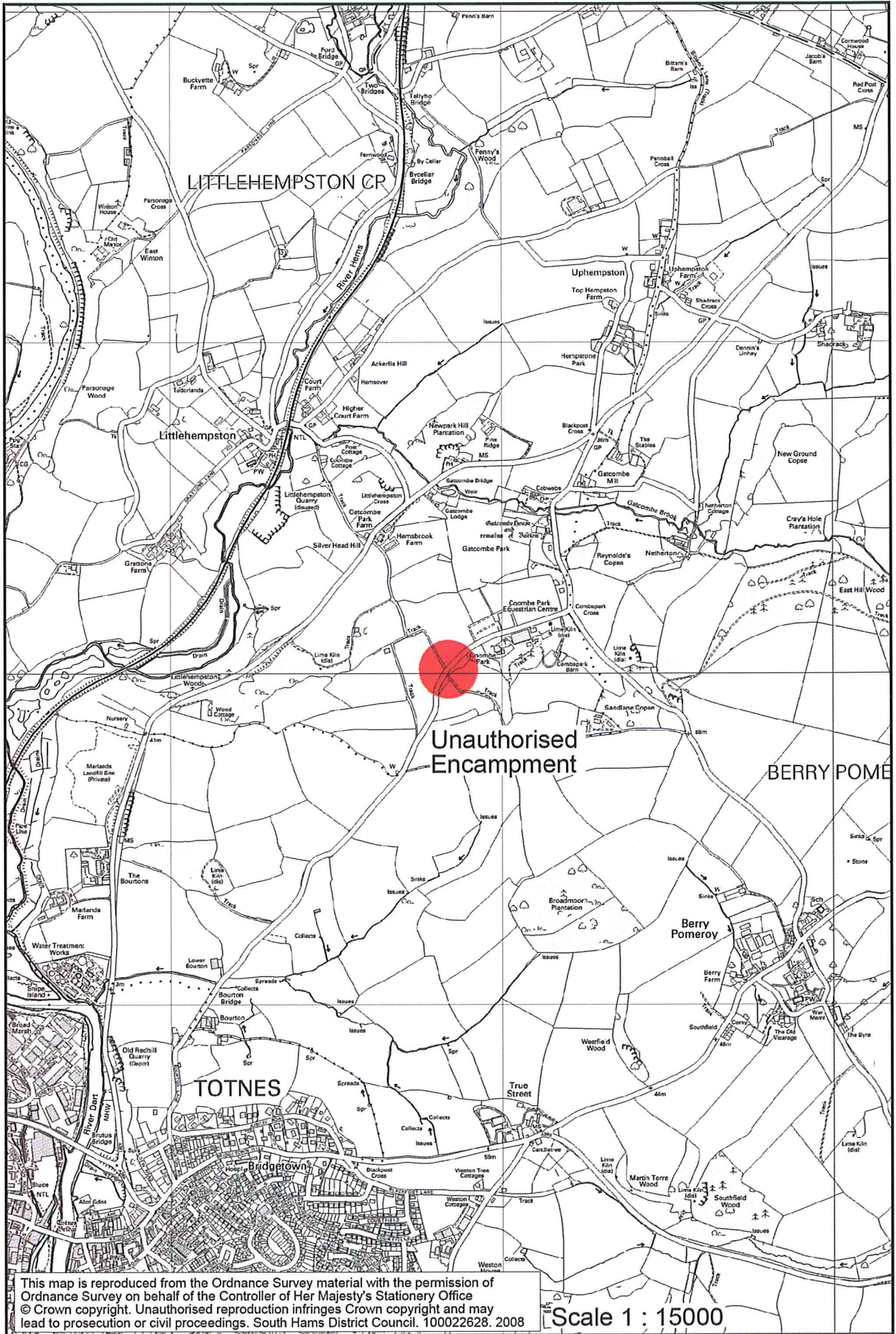
42. Planning Policy Guidance Note (PPG18) advises that the decisive issue for the LPA should be whether the breach of control would unacceptably affect public amenity or the unauthorised use of land or buildings merit protection in the public interest.
43. Notwithstanding the discretion exercised by the Development Control Committee in March 2006 to continue to tolerate this unauthorised encampment, continued assessment of this site has determined that it is not a suitable site for such continued occupation.
44. In consideration of the submissions presented in this report it is now considered expedient, and in the public interest, to commence enforcement action to remove the unauthorised encampment.

Rick Crombie  
Enforcement Officer

Development Control Committee  
10 December 2008

Stephen Munday  
Head of Planning and Building Control

Appendix A – Site plan and most recent photographs (November 2008)



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Scale 1 : 15000



