

## Powers for dealing with unauthorised development and encampments

# Consultation response proforma

If you are responding by email or in writing, please reply using this questionnaire proforma, which should be read alongside the consultation document. You are able to expand the comments box should you need more space

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Are the views expressed on this consultation your own personal views or an official response from an organisation you represent?\* (please tick as appropriate)

Personal View

Organisational Response

Name of Organisation (if applicable)

National Bargee Travellers Association

If you are responding on behalf of an organisation, please tick the box which best describes your organisation.

Local Authority (including National Parks, Broads Authority, the Greater London Authority and London Boroughs)

Neighbourhood Planning Body/Parish or Town Council

Private Sector organisation (including housebuilders, housing associations, businesses, consultants)

Trade Association / Interest Group/Voluntary or Charitable organisation

Other (Please specify)

The National Bargee Travellers Association (NBTA) is a volunteer organisation formed in 2009 that campaigns and provides advice for Bargee Travellers: itinerant

boat dwellers on Britain's inland and coastal waterways. This includes anyone whose home is a boat and who does not have a permanent mooring for their boat with planning permission for residential use. The NBTA is the only national organisation in Britain dedicated to upholding and defending the rights of itinerant boat dwellers. The NBTA has members on all the major navigation authorities' waterways and beyond. The NBTA deals with approximately 200 individual cases each year.

## **Unauthorised development and encampments**

### **Question 1:**

What evidence is there of unauthorised development and encampments in your community, and what issues does this raise for the local community?

*Please enter your comments here*

This is clearly a biased, loaded question which is aimed at communities other than Gypsies and Travellers and thus denies the Gypsy and Traveller community a voice in response to this part of the consultation.

Bargee Travellers experience daily violations of their rights to moor their homes, pursuant to the rights to moor for a reasonable time without payment to the owner of the soil that is contingent on the Public Right of Navigation on natural, canalised and diverted rivers and the right to moor for 14 days or longer without the requirement for any minimum range of travel, pursuant to Section 17(3)(c)(ii) of the British Waterways Act 1995. Navigation and riparian local authorities carry out enforcement action that goes beyond their legal powers, seizing boats and making boat dwellers homeless, or imposing steep fines that they have no prospect of recovering from people who are on minimal incomes. Due to prejudice and misinformation, the settled community labels Bargee Travellers as mooring "illegally" or without authority, and local groups of residents have mounted numerous campaigns to drive Bargee Travellers out of their areas. Bargee Travellers require recognition of and respect for their lawful rights to moor their homes.

## **Powers for dealing with unauthorised encampments**

### **Question 2:**

We would like to invite evidence of unauthorised encampments which have occurred in the last 2 years, as follows:

- a. the number of instances where trespassers have occupied land without authorisation, including the location and scale of the encampment.
- b. whether the land in a) required cleaning or repair once the encampment had left, and if so, what was the cost?
- c. how was each unauthorised encampment encouraged to leave, how long did it take, and was the local authority able to move them on; or did the police become involved?

*Please enter your comments here*

Again, this is a biased, loaded question which is aimed at communities other than Gypsies and Travellers and thus denies the Gypsy and Traveller community a voice in response to this part of the consultation. Why does this consultation not ask for the experience of Gypsies and Travellers living in unauthorised encampments?

### **Streamlining the powers under which local authorities can direct unauthorised campers to leave land**

#### **Question 3:**

Do you think that the existing powers made available to local authorities to remove unauthorised campers from land are effective?

*Please enter your comments here*

The Police, local and public authorities, navigation authorities and private landowners already have sufficient powers to deal with unauthorised development and encampments. Indeed these powers are already far too draconian. Due to the extreme shortage of authorised sites, Gypsies and Travellers on land have no other option but to camp in unauthorised locations. Greater powers to evict are not the solution and will only cause greater hardship for families on the roadside, increasing insecurity, encouraging public prejudice, disrupting family life, and threatening health and well-being. As stated above, Bargee Travellers on waterways have rights to moor their homes that are being systematically violated. Their rights should be upheld not denied. The answer to any unauthorised occupation of land is the creation of sufficient moorings and pitches to meet identified need, as local planning authorities have a duty to do under Section 124 of the Housing and Planning Act 2016 in respect of the accommodation needs of those residing in or resorting to their area who live in "caravans or houseboats".

Local authorities, navigation authorities and private landowners should create:

1. For Bargee Travellers, recognition of their rights to moor without the requirement for any minimum range of travel contingent on the Public Right of Navigation and/or the British Waterways Act 1995; together with a network of transit moorings of 14-28 days duration; and for those who need permanent moorings, additional permanent moorings or the granting of planning consent for residential use for existing moorings where such consent is not in place.
2. For Gypsies and Travellers on land: permanent caravan pitches, transit pitches and emergency stopping places, in conjunction with negotiated stopping arrangements.

#### **Question 4:**

Do you think local authorities could improve their use of existing powers?

*Please enter your comments here*

The use of these powers could be improved by recognising and upholding Bargee Travellers' rights to moor their homes, as stated above; introducing a 'tolerated sites' policy; the use of negotiated stopping for land based Gypsies and Travellers; and providing services. All of these are proven to improve the welfare and stability of families and vastly decrease enforcement, legal and other costs.

**Question 5:** What other powers may help local authorities deal with unauthorised encampments?

*Please enter your comments here*

Local authorities already have a wide range of existing powers to deal with unauthorised encampments swiftly. No further or additional powers are needed. Local authority powers under the Sections 77 and 78 of the Criminal Justice and Public Order Act 1994 were described by Sedley J in *R v Lincolnshire CC ex p Atkinson* [1997] JPL 65, as 'draconic'. These powers can be implemented very quickly. They cover any land where there is no consent to be there from the occupier. Often the process is so quick that, even where the local authority is acting unlawfully, for example by not making welfare enquiries or taking into account welfare concerns, it is impossible to prevent the eviction from taking place. There is no need for any additional powers.

## **Aggravated trespass**

**Question 6:**

Do you consider that the current powers for police to direct trespassers to leave land are effective?

*Please enter your comments here*

Aggravated trespass was created especially to deal with hunt saboteurs. In other words it was created to deal with people who in some cases (many hunt saboteurs were very peaceful) were deliberately intending to intimidate or challenge the landowner or others lawfully on the land. Gypsies and Travellers are trespassing on land because there are insufficient pitches and stopping places and because they have no other alternative. Aggravated trespass is totally inappropriate and irrelevant for dealing with unauthorised encampments. There are, in any event, separate powers that can be used to deal with criminal damage, fly tipping, anti social behaviour and other nuisances.

**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?

*Please enter your comments here*

The idea that the police powers under Sections 61, 62 and 62A of the Criminal Justice and Public Order Act 1994 could be strengthened is quite unbelievable. The police typically give only 30 to 60 minutes for an encampment to leave. If the Gypsies and Travellers concerned do not leave, they can be arrested and their homes impounded. Even where the police are acting unlawfully such as by failing to take account of serious welfare concerns, the swift timetable can often make any challenge totally impossible.

**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?

*Please enter your comments here*

No further criminalisation of Travelling communities should be carried out. The blanket criminalisation of unauthorised encampments would effectively amount to the complete criminalisation of trespass. This would have extensive unintended consequences including, but not limited to:

1. It would be certain to trigger an action for a declaration of incompatibility with regard to the Human Rights Act 1998. Such a vast increase in powers could not possibly be proportionate and reasonable when there are insufficient pitches and stopping places.
2. No account at all would be taken of welfare circumstances or the question of alternative locations, and the welfare needs of vulnerable Gypsies and Travellers would go unmet.
3. It would fail to facilitate the Gypsy way of life as required by *Chapman v UK* (2001) 33 EHRR 399.
4. It would breach the Public Sector Equality Duty under Section 149 of the Equality Act 2010.
5. Gypsies and Travellers without anywhere to go would literally be driven out of the whole of England and Wales.
6. Where a navigation or local authority deemed that a particular pitch or mooring was unlawful but the occupants disputed the allegation of unlawfulness, the Travellers would be criminalised and would lose the opportunity to prove that their occupation was lawful.
7. Other innocent groups of people would be caught by such powers, for example ramblers accidentally straying off a footpath; children getting their ball back from a neighbour's garden; confused elderly people wandering into private property; riders whose horses are bolting after being frightened by traffic or loud noises; inland waterway boaters taking refuge in conditions of flood or extreme weather.

## Use of injunctions to protect land

### Question 9:

What barriers are there to the greater use of injunctions by local authorities, where appropriate, and how might they be overcome?

*Please enter your comments here*

This is also a biased, loaded question which is aimed at communities other than Gypsies and Travellers and thus excludes the Gypsy and Traveller community from making a response to this part of the consultation.

The power to use injunctions already exists and it does not need to be strengthened. In any event such wide injunctions are open to legal challenge. This has not yet been tested because to date, none of the defendants have had legal representation.

The use of injunctions is a sledgehammer to crack a nut and the practice of bringing injunctions against Gypsies and Travellers fails to recognise that the chief reason people occupy land without permission is the appalling lack of authorised sites. What is needed is far greater provision of sites by local authorities, private landowners and through a non-discriminatory use of the planning system to grant consent for the residential use of Gypsies' and Travellers' own land.

## Joint-working between local authorities, communities and the police

### Question 10:

Do you have any suggestions or examples of how local authorities, the police, the courts and communities can work together more successfully to improve community relations and address issues raised by unauthorised encampments?

*Please enter your comments here*

Again, this is a biased, loaded question which is aimed at communities other than Gypsies and Travellers and thus denies the Gypsy and Traveller community a voice in response to this part of the consultation. Simply acknowledging that Gypsies and Travellers are part of the community rather than a group that is targeted for exclusion would help to improve community relations. Community relations can also be improved by joint working with Gypsies and Travellers themselves, for example with the practices of negotiated stopping and/or tolerated sites; and by education of local residents, local and navigation authorities, the police and the courts, with regard to eliminating prejudice against Gypsies and Travellers and with regard to their rights.

Anti-social behaviour around unauthorised development and encampments is due to a very small minority of people. In addition Gypsies, Travellers and Bargee Travellers are frequently blamed for anti-social behaviour which actually stems from the settled community, such as deliberate fly tipping near to an unauthorised encampment. Bargee Travellers are more likely to be the victims of crime such as break-ins to

boats and attacks on the towpath. There is also the issue of hate crime against Gypsies and Travellers.

## Court Processes

### Question 11:

Are there ways in which court processes might be modified in a proportionate way to ensure unauthorised encampments can be addressed more quickly?

*Please enter your comments here*

Court processes are already too fast and the Article 6 rights of defendants are already being violated in that their ability to find legal advice and representation in order to defend themselves is being seriously compromised. Any further modification to make court processes swifter would be a complete denial of justice.

In actions against trespassers under CPR Part 55, two days' notice of a hearing is already a very short timescale within which to try and get advice and should certainly not be shortened any further. In our experience clients facing Part 55 proceedings have been unable to obtain legal advice within this timescale, let alone representation, and have appeared in court uninformed about their rights or of how the court processes work, to the point that they have been denied the right to defend themselves, in violation of their Article 6 rights. In one case this even included a person whose first language was obviously not English not being informed of their right to an interpreter by the court.

Paragraph 22 of the consultation document states: "There have been a number of improvements made to the court system, to streamline and improve the efficiency of the appeal and judicial review (JR) process".

This is completely incorrect. Many courts have been closed leading to inconvenience, disruption and lack of access to justice. JR regulations have been changed meaning that there is a risk that a legal aid provider will not be paid when taking a JR under legal aid. As a result many people eligible for legal aid can no longer obtain representation in JR cases.

## Interim possession orders

### Question 12:

In your view, what would the advantages and disadvantages be of extending the IPO process to open land?

*Please enter your comments here*

IPOs were created to deal with people squatting in residential properties in circumstances where the person entitled to reside in the property was being denied access. These are not the circumstances of Gypsies, Travellers or Bargee Travellers residing on open or riparian land. These powers would be totally inappropriate with regard to unauthorised encampments and development and would be *ultra vires* when applied to riparian land as stated above.

## Powers for dealing with unauthorised development

### Question 13:

Are you aware of any specific barriers which prevent the effective use of current planning enforcement powers?

*Please enter your comments here*

Existing planning enforcement powers are extensive and entirely adequate to tackle unauthorised development. These powers cover the full range of breaches of planning control, including unauthorised change of use, unauthorised residential use and unauthorised new buildings. Local planning authorities do not need any barriers removed or any further planning enforcement powers. People are being criminalised simply because they desperately need a stable and secure home. Further powers would risk violating the Article 6 and 8 rights of Travelling communities under the Human Rights Act 1998.

The effective - that is, the fair - use of planning enforcement powers, is being compromised by the practice of many local authorities which, almost as a matter of course, reject planning applications from Gypsies and Travellers. The Gypsies and Travellers then have to go to the time and expense of appealing to a Planning Inspector. In many cases, the Planning Inspector then grants planning permission. The MHCLG should be investigating the reasons why more local authorities are not granting the initial applications for planning permission. This is not an issue addressed in the consultation document. The unfair use of powers is not effective.

**Question 14:**

If you are aware of any specific barriers to effective enforcement, are there any resourcing or administrative arrangements that can help overcome them?

*Please enter your comments here*

The planning enforcement powers available to local authorities are extensive and entirely adequate to tackle unauthorised development. These powers do not need further resourcing or administrative changes. To do so would risk breaching the Human Rights Act 1998 and the Equality Act 2010. The use of powers under the Proceeds of Crime Act 2002 confiscation orders to recover financial benefits accrued from unauthorised development unfairly penalises families whose only benefit from living on their own land without planning consent for residential use is not financial as such but is simply the fact of having a relatively stable home as opposed to being subject to regular multiple evictions that prevent them from accessing the health, education and other services that the rest of the population benefit from.

**Question 15:** Are you aware of any specific barriers which prevent the effective use of temporary stop notices? If so, do you have a view on how these barriers can be overcome?

*Please enter your comments here*

Temporary stop notices are intended for specific situations. As a precursor to planning enforcement they do not need any extension or streamlining. To extend the scope of temporary stop notices would also risk breaching the Human Rights Act 1998 and the Equality Act 2010.

### **Improving the efficiency of enforcement notice appeals**

**Question 16:**

How do you think the existing enforcement notice appeals process can be improved or streamlined?

*Please enter your comments here*

The timetable for such an appeal is already a very tight one especially when there are very few sources of advice and assistance for Gypsies and Travellers. The idea that the powers should be 'streamlined' simply to provide for greater enforcement against Gypsies and Travellers is disproportionate and would have the unintended consequence of increasing tensions between the Travelling and settled communities as all sections of society found themselves faced with tighter timescales and predictably blamed the Travelling community unfairly for the tightening up of the process.

## Government Guidance

### Question 17:

How can Government make existing guidance more effective in informing and changing behaviour?

*Please enter your comments here*

Government guidance should include guidance regarding the education of local residents, local and navigation authorities, the police and the courts, with regard to the rights of Travelling communities and should be aimed at eliminating prejudice against them. Guidance should also include the specific point that there is a pressing need for more permanent, temporary and emergency sites; stopping places; and moorings.

### Question 18:

If future guidance was issued as statutory guidance, would this help in taking action against unauthorised development and encampments?

*Please enter your comments here*

Only if it is confined to guidance regarding the need for more permanent, temporary and emergency sites, stopping places and moorings; the need to eliminate prejudice against the Travelling communities; and the rights of Travelling communities.

## Planning and traveller site provision

### Question 19:

Are there any specific barriers to the provision of more authorised permanent and transit sites? If so, is there any action that the Government could take to help overcome those barriers?

*Please enter your comments here*

A change is needed in the planning use class of residential moorings, which are currently classified in the same way as bricks and mortar housing, even though the residential use of moorings has minimal impact in comparison as is demonstrated by Planning Inspectorate decisions such as APP/E2001/C/10/2122441 and APP/E3905/C/06/2019638. This would enable local authorities to grant planning consent more easily for the residential use of moorings. Currently there is a significant mismatch in supply and demand of residential moorings. Only about 1% of moorings have planning consent yet an estimated 35% of boats are used as a residence (Canal & River Trust Boat Owners' Survey 2017). Taken together with accommodation needs assessments under Section 124 of the Housing and Planning Act 2016 and Section 103 of the Housing (Wales) Act 2014, we recommend that the residential use of moorings is reclassified as permitted development.

## Impacts on the travelling community

### Question 20:

What impact would extending local authority, police or land owner powers have on children and families and other groups with protected characteristics that public authorities must, in the exercise of its functions, have due regard to under their Public Sector Equality Duty?

*Please enter your comments here*

The impact on children, families and those with protected characteristics would be adverse, extensive and severe, to the extent that if implemented the proposals would almost certainly be unlawful for a number of reasons, including being a breach of the Public Sector Equality Duty, as the Government's own equality analysis identifies.

### Question 21:

Do you expect that extending the powers referred to above would have a positive or negative impact on the health or educational outcomes of Gypsy, Roma and Traveller communities? If so, do you have any evidence to support this view, and/or suggestions for what could be done to mitigate or prevent any negative impacts?

*Please enter your comments here*

The consultation document provides considerable negative data with regard to health, life expectancy, and education in a paper which seems to lean in favour of strengthening enforcement powers across the board. This data ought to, yet again, point to the need for all types of site provision: public and private; permanent; transit; emergency stopping places; negotiated stopping. We note that the Welsh Government has enacted a duty to meet assessed needs in Section 103 of the Housing (Wales) Act 2014. Any strengthening of powers will also affect Wales and would conflict with the powers of the Welsh Government under the 2014 Act.

## Other comments

### Question 22:

Do you have any other comments to make on the issue of unauthorised development and encampments not specifically addressed by any of the questions above?

*Please enter your comments here*

We hope this review gives the government the opportunity to show political leadership in addressing the fundamental cause of unauthorised encampments, namely the severe shortage of authorised sites for Gypsies and Travellers. However, as it stands the consultation paper is susceptible to challenge by way of judicial review: see *R (Moseley) v London Borough of Haringey* [2014] UKSC 56. The consultation paper makes misleading statements regarding the law in the Republic of

Ireland. It fails to identify reasonable alternative options, namely that the perceived problems arising from such encampments and developments could be addressed by the provision of more permanent and temporary sites and moorings; there is no suggestion that site provision is a viable alternative to the other options identified in the paper. The proposals risk worsening the relationship between the Travelling communities and the settled community, thus further damaging community cohesion.

The consultation paper fails to disclose the Government's equality analysis of the proposals, thus providing insufficient information for intelligent consideration of the proposals; the equality analysis expands on aspects of the consultation but this expansion has not been available to consultees.

The consultation also fails to comply with the Public Sector Equality Duty in that it fails to address the significant inequality of opportunity suffered by Gypsies and Travellers living on unauthorised sites. Indeed the equality analysis of the proposals carried out by the Government identifies significant negative impacts on people with protected characteristics in comparison to people without those characteristics. The failure to identify the realistic option of site provision throughout the paper is *prima facie* evidence that the Government has failed to comply with its Public Sector Equality Duty in accordance with section 149 of the Equality Act 2010.

**Your opinion is valuable to us. Thank you for taking the time to read the consultation and respond.**