

**Decision Session – Executive Member for
Transport in consultation with
Executive Member for Housing and Safer
Neighbourhoods**

14th March 2023

Report of the Director of Place

**Response to the petition; Remove the unlawful Gypsy Caravan site from
the Noddle Hill Lay-by**

Summary

1. The report sets out the background to the unauthorised encampment at Noddle Hill layby which is the subject of the petition attached as Annex A, outlines the relevant legislation and material considerations and makes recommendation on the proposed courses of action in the short, medium and longer term.
2. This report contains exempt information as defined in ‘Schedule 12A of the Local Government Act 1972. The response to the petition details information pertaining to identifiable individuals, their personal choices and information regarded as sensitive within Data Protection legislation. All matters concerning individuals are contained within Confidential Annex D.

Recommendations

3. The Executive Member is asked to:
 - 1) Note the E-petition attached as Annex A
 - 2) Note the interim situation for the unauthorised encampment at Noddle Hill
 - 3) Note the future work proposed to increase the amount of Gypsy and Traveller Accommodation as part of the delivery phase of the Local Plan which will enable relocation of the encampment to an authorised site.
 - 4) Note the establishment of a Project Manager post by the Corporate Director of Place in Consultation with the Executive Member for Housing in regard to already committed S106 funds and to commence early engagement with the developers of strategic sites and commence planning for the provision of additional pitches

- 5) Agree, subject to land ownership questions being clarified, to commence the process to stop up the Noddle Hill layby as being surplus to highway requirements and develop proposals for a green area to improve the amenity of the adjoining area.

Reason: *To ensure the long-term solution to the unauthorised encampment at Noddle Hill and reflect the legal protections afforded to the individuals on the encampment.*

Background

Petition

4. The following petition was received in January 2023.
“We the undersigned petition the council to act to remove the unlawful Gypsy Caravan site from the Noddle Hill lay-by alongside the A166, a main road into the city where this eyesore is in open view. This encampment has been in existence in its present location since June 2019 and has been the subject of many requests to City of York Council (CYC) for its removal, all of which have been ignored in favour of CYC actively facilitating the ongoing situation by the provision of taxpayer funded facilities to the occupiers. The situation continues to be unacceptable; Noddle Hill lay-by saw considerable community activity some years ago to transform the area with clear up operations and extensive tree planting, which is now undermined by CYC’s continued acceptance of this encampment. This petition calls upon CYC and North Yorkshire Police to use the powers available to them to remove this encampment without any further delay.”
5. Officers have been requested to attend the Dunnington Parish Council to discuss the encampment. The Head of Community Safety has attended twice to discuss general Community Safety concerns in the ward. Any information provided in response to requests about the Noddle Hill site has been focused on process and not on direct actions relating to the circumstances of the family residing there. As the issue concerns private individuals it has not been possible to discuss the situation in a public forum without breaching the rights of those individuals.

Noddle Hill Layby

6. The Noddle Hill layby lies on the A166 near Dunnington. The layby is the route of the old A166 which was altered to its current layout prior to the 1970s. It was part of the highway’s asset transfers from North Yorkshire County Council to City of York Council in 1996 when the unitary authority was established and is part of the adopted highway.

7. Annex B sets out the location of the layby and Annex C identifies the land ownership of the layby and the surrounding area. The ownership of the land under the old Highway route being unregistered with the land situated between the layby and the road registered to NYCC as noted in para 6 above.
8. In reviewing the status of the layby there are some historic anomalies in the records which do not clearly indicate that the layby is adopted highway, however it may be considered as adopted highway due to historic usage as such.
9. Section 130(1) of the Highways Act 1980 states that *"It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste (such as verges) which forms part of it"*. Section 130(3) of the Highways Act 1980 places a duty on the Highway Authority to prevent, as far as possible, the stopping up or obstruction of highways.
10. Section 130(6) Highways Act 1980 also states: "If the council of a parish or community or, in the case of a parish or community which does not have a separate parish or community council, the parish meeting or a community meeting, represent to a local highway authority—
 - a. that a highway as to which the local highway authority have the duty imposed by subsection (3) above has been unlawfully stopped up or obstructed, or
 - b. that an unlawful encroachment has taken place on a roadside waste comprised in a highway for which they are the highway authority, it is the duty of the local highway authority, unless satisfied that the representations are incorrect, to take proper proceedings accordingly and they may do so in their own name".
11. An offence is committed by whoever obstructs the highway, but only the highway authority has the power to take steps for the removal of the obstruction. However, Section 130A of the Highways Act 1980 enables the public to take steps to make the highway authority carry out its duty to ensure highways are not obstructed. The action that a highway authority can take differs depending on the type of obstruction and the particular circumstances of a situation.
12. If the authority considers that the encroachment has a significant effect on the passage of members of the public, the authority can contact the occupier/ landowner/ the person causing the obstruction (if different) to

require them to remove the obstruction within a period appropriate to the type of obstruction, taking all relevant matters into consideration.

13. If the encroachment has not been removed within the requested period, the authority may serve notice on the occupier/ landowner/ the person causing the obstruction under Sections 130, 137, 143, or 149 of the Highways Act 1980 (as appropriate) giving a deadline appropriate for the type of notice given and the action required.
14. Where the requirements of a notice are not complied with the authority may instruct Council contractors to remove the obstruction. Alternatively, the authority may initiate proceedings at the Magistrates' Court for an order to deal with the encroachment/ remove the obstruction and to recover any costs incurred in doing so.

Unauthorised Encampment

15. An unauthorised encampment has been in place on the Noddle Hill layby land since June 2019. The issue of the unauthorised encampment is legally complex as it requires taking into account Highways, Homelessness, Anti-Social Behaviour, Social Care and Equalities legislation. The removal of the unauthorised encampment cannot go ahead without consideration of the human rights of the individuals camped there, the council's duties in respect of care needs, duty to provide adequate accommodation for Gypsy and Traveller communities and the duty to prevent homelessness.
16. There are a number of legal duties and considerations to be borne in mind in finding a resolution to the situation
 - a. The responsibility of the council as a Highways Authority to protect and maintain access to the Highway
 - b. The responsibility of the council and the Police to respond to any reported incidences of anti-social behaviour and crime in the city as appropriate.'
 - c. The responsibility of the council under the Homelessness Prevention Act to ensure the family have somewhere to live
 - d. The responsibility of the council to assess the care needs of relevant persons
 - e. The responsibility of the council to protect rights of a Gypsy and Traveller family under the Human Rights Act and the Equalities Act
17. The detailed situation regarding the tenants of the encampment is outlined in confidential Annex D

Interim Solution

18. The ability of the council to meet the objectives set out above is set out in confidential Annex D. In summary due to other legal duties and potential weakness in the case for highways enforcement it is not recommended to use the provisions of the Highways Act 1980 (as set out in paragraphs 12-14 above) to remove the unauthorised encampment. There is no realistic possibility of an immediate legally enforceable resolution of the situation as explained in the confidential annex.
19. The immediate proposal is therefore to pursue a long-term solution to relocate the encampment and minimise the impacts of the continuing unauthorised presence until this solution is in place. Council teams will continue to provide support to the family in situ to mitigate the impact on local communities, and will take any appropriate enforcement action short of removal e.g. deal with any fly tipping or illegal trading etc.

Local Plan provision for Gypsies and Travellers

20. A long-term solution needs to be found but it is likely that this will only be possible through the creation of further authorised G&T pitches as part of the implementation of the local plan. The Local Plan makes provision for a further 44 pitches through the expansion of existing sites and through the development of pitches on strategic sites.
21. The Local Plan is in the final stage of consultation, and it is expected that it will be adopted in Summer 2023. There will then need to be a delivery plan to develop G&T provision using off site contributions from other non-strategic sites and the Council's own provision obligations. This work needs to be resourced and a job description for a project manager to lead the development work has been drawn up.
22. The Corporate Director of Place has commenced the process of establishing a project manager delivery role to be recruited ahead of the finalisation of the Local Plan to commence early engagement with the developers of strategic sites and commence planning for the provision of additional pitches which would help to resolve the immediate issues being faced at Noddle Hill.

Proposal for the Noddle Hill Layby

23. The layby exists as a result of a change in alignment of the historic road dating back to the 1970s. It was not created to meet a highways need and the lack of use for highways purposes over the last 3 years has not created any highways issues.
24. The local community have previously taken action to improve the visual appearance of the layby and the approach to the village by planting trees around the layby. It is therefore proposed to apply to the Secretary of

State for Transport (or to the Magistrates Court) to formally remove the layby from the highways network by applying for a Stopping Up Order in respect of the layby. When the encampment is moved, subject to obtaining planning consent that may be required, the layby can then be transformed into a small woodland glade to contribute to the expansion of the tree canopy in York as part of our commitment to become a zero carbon city by 2030.

25. The process for stopping up can be lengthy and requires a formal public consultation.

Consultation

26. Consultation has been undertaken with York Traveller's Trust, Legal Services, Housing Services, Highways Service, Adult Social Care, Community Safety Unit, North Yorkshire Police Fire and Rescue and the individuals in question. A further public consultation will take place as part of the Stopping Up process.

Council Plan

27. This report contributes to the following objectives in the council plan.
 - good health and wellbeing
 - a greener and cleaner city
 - safe communities and culture for all

Implications

Financial –The costs associated with the stopping up order can be contained within current budgets Network Management budgets. Should further works to landscape amend the site be required a further decision will be required and budget identified.

The cost of a Project Manager is assumed at £58k per annum with a cost of £45k anticipated in 2023/24. The post has been identified as being essential in ensuring the development of an additional G&T pitches Capital Programme across the city for which the Council already has £1,350,000 S106 contracts in place and in line with the Local Plan. It is proposed therefore that the cost in Year 1 is funded from the Waste Reserve which has funded the additional Local Plan enquiry costs in 2022/23 thereafter the cost will be absorbed in the G&T capital programme the full scale of which will be subject to Executive decisions. The estimated balance of the Waste reserve is c£700k after the 2022/23 Local Plan examination costs are funded. Whilst there remain some potential liabilities relating to the Allerton Waste Recovery Plant project

and Local Plan costs the budget will be able to cover the 2023/24 costs of the project manager.

Human Resources – The new post has been graded and would be recruited as per CYC policies. The Travellers Trust would be engaged in the recruitment process

Equalities – The Council is mindful of the Public Sector Equality Duty under Section 149 of the Equalities Act 2010 (to have due regard to the need to eliminate discrimination harassment and victimisation and any other prohibited conduct, advance equality of opportunity between persons who share the relevant protected characteristic and those who do not share it and foster good relations between persons who share the relevant protected characteristic and those who do not share it in the exercise of a public authorities' functions. The Gypsy and Traveller community are considered to have protected characteristics under this legislation. An Equalities impact assessment is attached at confidential Annex E.

Legal An outline of the legal considerations is set out in the body of the report with further detail contained in the confidential annex.

Highway Authorities have a range of statutory powers and responsibilities in relation to public highways. Generally, A highway must be open for public use and must not be obstructed unless or until such time as it may be “stopped-up” by order.

Stopping up orders are usually made to allow development to take place or because the public highway is no longer necessary. A public highway can include roads, streets, footpaths, public car parks, grass verges and footways. The most frequently used powers to secure stopping up orders are:

1. Section 247 of the Town and Country Planning Act 1990: Using this power a highway can be ‘stopped up’ to allow development to take place if it has received or may receive planning permission. This process requires consultation for which notice of the intention to make the order must be advertised in a local newspaper, the London Gazette and where possible the council’s website. There is a period of no less than 28 days from the date of publication in which to make an objection to the proposed order. Objections must be made in writing. If no objections are received, the order is then made as an unopposed order. Notice of the made order is advertised. Any judicial challenge to the validity of the order should be made in writing within six weeks of the publication date of the notice of made order.

2. Sections 116 and 118 of the Highways Act 1980: The Highways Authority may seek authorisation from the Magistrates Court to stop up areas of designated highway land where it is no longer required for public use. The land concerned needs to be owned by the applicants requesting the stopping up application to be processed. This process also requires publication of the details of the Hearing in a local newspaper and the London Gazette at least 28 days before the date on which the application is to be heard.

Any outstanding objectors have the right to be heard at the Magistrates Court. They also have the right to appeal to the court if the order is made. Applicants will have to demonstrate why the highway is no longer necessary.

Following the making of any Stopping Up Order by the Secretary of State or the Magistrates Court:

(i) the land affected by the Stopping Up Order would cease to be classed as highway and the highway rights would be extinguished in law;

(ii) the land comprising the former highway returns to the owner of the subsoil. Where the owner of the subsoil is not known and cannot be found, there is a legal presumption that the owners of the adjoining properties own the subsoil beneath the former highway out to the central line of the former highway

(iii) Any private rights of way over the land would not be affected/extinguished

(iv) The land can be enclosed or developed, subject to any necessary planning consent.

As indicated above, Annex B sets out the location of the layby and Annex C identifies the land ownership of the layby and the surrounding area. There is a rebuttal presumption in law that the owner of property fronting a highway is deemed to own the subsoil of the half-width of the highway fronting/adjoining their property.

Procurement – none

Crime and Disorder – covered in the report

Information Technology – none

Property – covered in the report

Risk Management

28. As part of the process of stopping up of the highway and developing proposals for future use of the land the Council will work with the Local Community to develop options for a future Executive to consider.
29. The interim solution of leaving the encampment in situ will be subject to ongoing liaison between the Council and family to ensure the Council balances its obligations to the family and wider City.
30. There is significant risk of legal challenge by taking enforcement action to move the encampment as set out in confidential Annex D
31. There is a risk that additional G&T pitches cannot be created. This is mitigated by the early development of delivery plans to support the local plan implementation and by ongoing engagement with the Travellers Trust to develop stronger working relationships and support for the G&T community.

Contact Details

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Report **Date** 1st March 2023
Approved

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Background Papers:

Annexes

Annex A – e-petition
Annex B – Location of Noddle Hill Layby
Annex C – Land ownership Noddle Hill Layby
Confidential Annex D – Unauthorised Encampment

List of Abbreviations Used in this Report

CYC - City of York Council (CYC)

G&T – Gypsy and Traveller

HRA Homelessness Reduction Act 2021 –

SuO – Stopping Up Order