

Parker, Christine

From: Wortley, Stuart
Sent: 21 June 2018 17:48
To: 'Alex.Turner@communities.gsi.gov.uk'
Cc: 'Vicky.Engelke@communities.gsi.gov.uk';
'UnauthorisedDevelopmentandEncampments@communities.gsi.gov.uk';
'Peter.Bourke@wilsonlaw.com'; 'Charlotte.Tyfield@gowlinglg.com'
Subject: MCLG - consultation on unauthorised development and encampments
Attachments: Consultation - CMS ; Consultation - Howard Kennedy (2) ; Consultation - Eversheds Sutherland ; Consultation - HJiggs & Sons ; Consultation - Mills & Reeve (2) ; Consultation - Shulmans ; Consultation - Penningtons ; Consultation - Hogan Lovells ; Consultation - Stephens Scown; Consultation - Actons; Consultation - Jones Day; Consultation - Shoosmiths ; Consultation - Lester Aldridge

Dear Alex

On behalf of the Property Litigation Association, I am pleased to attach feedback from 14 firms of solicitors. Collectively, those firms have been involved in around 50 civil actions to remove unauthorised encampments in the UK over the last 2 years.

Our members' feedback is directed at the procedure for recovering possession since that is our area of expertise (rather than the issues concerning planning, planning enforcement, traveller site provision and other travelling community issues). We have attached the responses in full (rather than a summary) since most of these include examples of unauthorised encampments which you may find of interest / use.

The clear message which comes across from our members' feedback is as follows:-

- (1) The police are very reluctant to issue directions to those in occupation of unauthorised encampments to move on pursuant to s 61 Criminal Justice Public Order Act 1994. Often our members are left with the impression that the police do not want to use these powers - preferring the simplicity of trespass is the landowner's problem.
- (2) The NPCC guidance (copied at the end of the Penningtons' response) recommends that the police will only consider taking action in relation to unauthorised encampments where there are aggravating factors such as (a) deprivation of local amenities or significant environmental impact; (b) local disruption to the economy; (c) other disruption to the community or environment; (d) danger to life; and / or (e) some other need to take preventative action. The NPCC guidance therefore takes no account of the impact on the innocent landowner of the cost of addressing fly-tipping and wilful damage that is a very common feature of these cases.
- (2) Sadly, even where such aggravating factors are present, police engagement cannot be relied upon. I'm currently advising a national utility company concerning an unauthorised encampment in North Hyde where there are a number of aggravating factors. This encampment is on land immediately adjacent to an electricity substation which transmits 270,000 volts and which supplies critical national infrastructure. There are other hazards present including asbestos contamination (present before the travellers - including a number of children - entered the site last week), dangerous road conditions and children throwing objects at an electric fence. Access was gained to the site after metal fencing panels were removed amounting to criminal damage. Even in this instance, the police have failed to engage. This has resulted in a complaint to the Hillingdon branch of the Metropolitan police - a complaint which we have now escalated to a contact within the National Business Crime Unit. Possession proceedings were issued in the High Court this morning and a possession order granted this afternoon which will now be enforced.
- (4) Amongst our membership, we are only aware of one incident where a s 61 direction was issued (and complied with) following threats and intimidation at a site in York - see the Shoosmiths' response.
- (5) There is absolutely no confidence amongst our members that the police will either issue a direction to move on pursuant to s 61 or (in the context of trespassers in occupation of buildings) take prompt action to enforce an Interim Possession Order. Although both the s 61 direction and the IPO procedure are theoretically very useful tools, our members consider them to be a waste of time. When acting for landowners who are faced with unauthorised encampments, urgent action is required (often to minimise the clean-up costs arising from illegal fly-tipping and other damage) with a guaranteed outcome.

- (6) In relation to Q6 / Q12 of the consultation, whilst it would be sensible for the police power to issue a direction pursuant to s 61 to be extended to open land, unless police resources can be guaranteed, this is unlikely to assist matters in practice for the reason given in the previous paragraph. Many trespassers understand that the police are very unlikely to take any action and believe they can act with impunity. A recent example of this was amplified by the Daily Mail in relation to the illegal activities carried out at the Thwaites Brewery in Lancashire.
- (7) Our members universally prefer to assume responsibility for obtaining and – if necessary – enforcing orders for possession in the Civil Courts. Enforcing such orders can be extremely expensive given the resources which need to be available to carry out the order. In most cases, however, enforcement is unnecessary because the trespassers move once a possession hearing has been fixed or a possession order has been made (leaving the landowner to deal with the fly-tipping and damage issues).
- (8) Our members' experience of the County Court procedure is mixed. Often court staff fail appreciate the urgency (even after this has been explained to them) resulting in unnecessary and costly delays. There are significant delays in getting proceedings issued in some court because the court staff are directed that the proceedings must be seen by the supervising judge (which has been known to take 3 weeks). Where orders for possession are obtained in the County Court, those orders are invariably transferred to the High Court for the purposes of enforcement (because enforcement through the County Court bailiffs is extremely slow and inefficient). One member had an example 2 months ago when it took nearly a month to transfer to the High Court because the court staff did not understand that permission from the judge was not required yet they did not do anything until the judge had seen the papers whilst doing box work and made the order immediately. This delay occurred despite daily telephone calls to the court for the matter to be treated as urgent. The matter was only resolved and placed to the top of the judge's box work following intervention at a very senior level and pressure being applied down on the court manager.
- (9) Fortunately, the High Court is more understanding of these issues. Whilst the guidance in Part 55.3(2) of the Civil Procedure Rules and a Practice Direction dated 30 September 2016 is that possession claims against trespassers should only be commenced in the High Court in exceptional circumstances (by default such proceedings should be commenced in the County Court), in practice, the High Court takes a pragmatic approach and accepts cases involving unauthorised encampments as suitable High Court business. In appropriate circumstances, the High Court is also willing to expedite the hearing date to speed up the process.
- (10) In response to Q11 of the consultation, the feedback from our members is that (thanks to the pragmatic approach taken by the High Court, the current procedures for obtaining orders for possession in the High Court in relation to unauthorised encampments are already very efficient provided they are used correctly. If the High Court were to apply a more rigorous "exceptional circumstances" test than is currently the case, it would then become necessary to improve the County Court procedure by ensuring that proceedings for possession against trespassers are given priority and, where appropriate, expedited. That would principally involve training court staff. The current County Court service is not fit for purpose.
- (11) In relation to Q9 of the consultation (which is about injunctions to restrain trespass before trespass takes place), the difficulty here is that without credible evidence of a genuine risk of trespass, the landowner will simply not have a cause of action. See The Secretary of State for the Environment Food & Rural Affairs v Natalie Meier & others [2008] EWCA Civ 903. In relation to unauthorised encampments, the landowner will not normally be given any advance notice of the encampment - and so an injunction to restrain trespass will not be available.

We hope that this feedback is helpful.

Please do not hesitate to contact us if you have any questions or if you require any further engagement on any of these issues.

Kind regards

Stuart

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