

Parker, Christine

From: Wortley, Stuart
Sent: 18 June 2018 13:44
To: Wortley, Stuart
Cc: Parker, Christine
Subject: Consultation - Eversheds Sutherland

From: Jones, Sue
Sent: 15 June 2018 16:20
To: Wortley, Stuart <StuartWortley@eversheds-sutherland.com>
Cc: Oldfield, Alison <AlisonOldfield@eversheds-sutherland.com>; Dilcock, Julie <JulieDilcock@eversheds-sutherland.com>; Bevan-Jones, Anna <AnnaBevan-Jones@eversheds-sutherland.com>; Jones, Sue <susanjones@eversheds-sutherland.com>
Subject: PLA - consultation on unauthorised encampments - urgent

Dear Stuart,

To assist the PLA in responding to the Ministry of Communities and Local Government's consultation on unauthorised developments and encampments, please find below Eversheds Sutherland's comments. They are a snapshot of three of our teams' experiences.

For the purpose of responding to Question 2 of the Consultation:

- a. If PLA members have dealt with the removal of unauthorised traveller encampments within the last 2 years, please provide details of location and scale.
- b. If the relevant land needed repairing or cleaning afterwards, what was involved and was the approximate cost ?
- c. How did the unauthorised encampment come to an end and how long did it take ?

Experience 1:

- a) A recent case where approximately 17 caravans and 20 other vehicles and around 70 travellers ram-raided their way through a gate to get into an industrial park, the buildings in which were mostly empty. They proceeded to threaten and intimidate security staff, break into buildings and strip out the metal. The police were called and stood by whilst criminal offences were being committed, but refused to take any action (citing lack of resources). We notified the local authority and asked for a welfare assessment. The local authority refused to attend unless we paid them.
- c) We drafted proceedings and an application to abridge time to less than 24hrs in view of the significant property damage being caused and hand-delivered it to the Court. Judge refused to look at it until right at the end of the day, but made the order abridging time. The court then regardless listed it for 9 days later and promptly shut the counter and refused to do anything else. We had to spend the following day sending the agent back to court and arguing back and forth before finally they agreed to list it earlier (but still not until 2 days after issuing). After we got the possession order we then had a further battle trying to get a writ issued with the Court insisting the we had to transfer up (despite the possession order reciting the automatic entitlement to enforce in the High Court) and the counter at Birmingham High Court District Registry refusing to deal with issuing the writ at all due to lack of resources. Sadly, all a pretty typical experience.

Experience 2:

- a) A case of mass protest-based trespass at a housing estate that was due for demolition. Multiple cases of breaking and entering, squatting in residential property and

criminal damage. Again, the police stood by watching criminal offences being committed and refused to intervene.

- b) Took approximately two weeks secure a possession order and in the meantime the protestors dug in and barricaded themselves in, meaning that eventual enforcement was difficult and expensive.

Experience 3:

- a) Case in Edmonton County Court relating to an industrial unit where 12 caravans were found on site
- b) The travellers had fly tipped a huge amount of rubbish within the unit and had ripped wiring out of the walls. Clear up costs were likely to be high but as they were dealt with by client the actual figures are unknown.
- c) Possession was obtained within a week but the travellers had vacated the site the day before the hearing due to the police flying drone cameras above the site.

Experience 4:

- a) 12 or more cases in the last year located all over the country with one being heard in the High Court.
- b) Involved wide scale fly tipping and some incidents of violence with the repair and cleaning costs running to £10s of thousands
- c) Recent cases have taken 1 week. Issues have arisen, however, due to the fact that claims have to be issued in the Court that has jurisdiction. A number of those courts have closed and are having to send documents to other courts adding significant time. In one matter involving Hertford county court the team found that as no judge sits there on Mondays and Tuesdays the earliest they could get a hearing was on a Thursday of a given week (having waited for one since the Friday of the week before). This was despite making an application to abridge time to service and the judge agreeing with our application. The court simply didn't have the resources to hear the matter until then. In the meantime, travellers continued to fly tip, increasing cost and the scale of the clean-up exercise.

As a general point, public sector clients experience significant difficulties in getting the relevant local authority ("LA") to engage. The Government's Guidance makes it clear that local authorities should assist other public sector bodies in dealing with unauthorised encampments by carrying out "welfare assessments" (i.e. by visiting the encampment and assessing whether there is anyone there to whom the LA owe particular duties in respect of housing, welfare, social service etc. and reporting back to the public sector body in question so that any particular issues / vulnerabilities can be factored into the public sector body's decision on when and how to evict). Often LAs refuse to attend the encampment or to carry out any kind of assessment unless the public sector body pays the LA to do it. We always take the view that the welfare issues in question are the responsibility of the LA (usually we are acting for someone like SoS Transport or Environment who have no duties, powers or functions in that regard) and that our client has discharged its duties in that regard by notifying the LA (whether or not they choose to act), but the lack of co-operation is frustrating and obviously not in the interests of ensuring that any genuine welfare issues are dealt with appropriately.

For ease, the Government's Guidance on Managing Unauthorised Encampments are below:

<http://webarchive.nationalarchives.gov.uk/20120919222422/http://www.communities.gov.uk/documents/housing/pdf/157323.pdf>

<https://www.gov.uk/government/publications/managing-unauthorised-camping-guidance-supplement>

<https://www.gov.uk/government/publications/unauthorised-encampments-using-enforcement-powers>

<https://www.gov.uk/government/publications/dealing-with-illegal-and-unauthorised-encampments>

To assist us in responding to Question 6 of the Consultation

If PLA members have experience of asking the police to exercise powers to direct travellers to leave land pursuant to sub-ss 61 / 62A Criminal Justice and Public Order Act 1994, what was their experience ?

- Police engagement is usually minimal or non-existent.
- In one team only one case can be recalled where the police were prepared to intervene using their section 61 powers to remove an unauthorised encampment (it was a traveller case). Usually the police refuse to exercise any powers beyond being present during any eviction to prevent a breach of the peace – and this is the case even where criminal offences such as criminal damage, breaking and entering and theft are taking place in the presence of the police. The police will usually inform the victim of the trespass that it is a “civil matter” and that they must obtain a possession order to deal with it.
- Another team’s experience is even when the police agree to engage (where there have been threats of violence for example) it then takes a long time to get officers together (e.g. recently a case in the Deptford area).

To assist us in responding to Question 12 of the Consultation

If PLA members have used the procedure for obtaining an Interim Possession Order (CPR Parts 55.20 to 55.28), what was their experience ?

- An interim possession order was obtained urgently to secure possession of a unit occupied by squatters who were planning a New Years’ rave. The process was ideal for obtaining possession quickly and urgently (it was the two working days in between Christmas and New Year) but two hearings was expensive and time consuming.
- Given the Lack of engagement on the part of the police, in very rare circumstances would it be felt beneficial to seek an ipo as it is felt that it would just mean going to court twice.
- As a general point, the Court system remains difficult to engage with – particularly with any speed. Increasingly, Courts are refusing to allow claims to be issued on the day over the counter. Many use a “drop-box” service where the claim is deposited in a box at Court and there is then usually at least a day or so delay in the claim being issued. This means increased expense for the client as agents need to be instructed to visit the Court twice (once to deposit the papers and again to collect the issued papers for service) and an additional delay in having a hearing listed and getting on with service. We experience frequent incidents of the Courts being either unable or unwilling to list claims for hearing urgently (having regard to the minimum prescribed period between service and hearing date) and often have to battle with the Court over the phone to obtain an appropriate listing. Even where we have considered the urgency to be such that we have applied to abridge time and it has been granted (see further above) we have still had a battle to have the hearing listed appropriately.

I hope that the above is of assistance.

Kind regards,

Anna

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