Harlow Council is responding to the consultation in the manner prescribed and has duly addressed the questions set within the questionnaire. The questionnaire should be read in conjunction with this statement.

The Council has recently written to both the Home Secretary and the Secretary of State for Communities and Local Government setting out the issues of particular concern to Harlow (copies attached with replies).

The Council was prompted to write to Ministers given the unprecedented influx of travellers into Harlow which has resulted, since 8 October 2013, in 77 unauthorised encampments to date with traveller numbers peaking at 69. Notwithstanding the thrust of the consultation and the specificity of the questions asked, it is crucial to the understanding of the issues in Harlow that the following be taken into account when considering putative amendments to relevant legislation and policy guidance:

**The rights of the settled and non-settled community in respect of unauthorised occupation of land**

To be quite clear from the outset, Harlow Council wishes very much to get to a position where an appropriate and explicit balance between the rights of the settled community and the rights of the Travellers can be understood by all. Citizens of Harlow quite rightly expect the law to be respected and upheld. When land is occupied by travellers it is invariably without the consent of the owner and without planning permission. Every incursion onto land in Harlow is therefore a prima facie breach of the law. This leads to a train of consequences:

a. The wider settled community knows that the law has been broken and holds a rightful expectation that the appropriate agencies should move swiftly to remedy the matter.

b. The Council, together with partner agencies (frequently Essex County Council and the Police) begin legal proceedings to evict the Travellers and make good the damage invariably caused by the incursion – and in so doing expending significant time and resources to complete.

c. The Travellers, notwithstanding their unauthorised and/or illegal land occupation, are ultimately moved on or evicted leading to multiple disruptions to their lives.

d. The problem moves from one piece of land in Harlow to another and the cycle repeats.

The effects of this recurring scenario are several:

a. loss of confidence in the wider settled community that effective action can be taken to uphold the law;
b. a consequential diminishing respect for both the law itself and for the agencies engaged in attempting to uphold it, bringing both into disrepute,

c. frequent instances of criminal damage and despoliation as travellers move from site to site;

d. spiralling legal costs, site clearance costs and opportunity costs to the wider community as staff and resources are diverted from providing other services; and

e. wholly unwelcome fuelling of tension between the settled and travelling communities.

In light of the multiple incidents experienced in Harlow over the past year there is a compelling and growing case for Government to help arrest the decline in public confidence by amending legislation to enable decisive and visible action to be taken by the Council and its partner bodies when tackling illegal or unauthorised encampments. Equally, there is a growing and compelling case for Government to intervene more forcefully in the planning debate over traveller site provision. To tackle these issues the Council considers that the following changes to current policy and law must be put in place. Specifically when considering the rights of the settled and non-settled communities both should adhere to the requirements of the law and expect the other to adhere to the requirements of the law. They should recognise the human and other rights of the other.

**Definition of Traveller**

It has become clear that those who wish to reside in caravans and similar movable temporary structures covered by the term traveller fall into two groups. The first is the *settled Traveller* who stays on an authorised site within a community. The second is the *non-settled Traveller* who for reasons of lifestyle or other choice chooses to move within and between communities.

At present there are two definitions of Traveller set out below:

*Persons of a nomadic habit of life, whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily or permanently, and all other persons with a cultural tradition of nomadism and/or caravan dwelling.*

*Members of a group organised for the purposes of holding fairs, circuses or shows (whether or not travelling together as such). This includes such persons who on the grounds of their own or their family’s or dependants’ more localised pattern of trading, educational or health needs or old age have ceased to travel temporarily*

It is important that these two types of Traveller are defined. The Council would suggest the following definitions for discussion:
Settled Traveller: Those who are associated with a tradition of a nomadic habit of life, whatever their race or origin, and who reside in a caravan or other similar movable structure on an on-going basis on an authorised permanent site within a District or Unitary Council area as the principal site of their home.

Non-settled Traveller: Those who are associated with a tradition of a nomadic habit of life, whatever their race or origin, who reside in a caravan or other similar movable structure and who do not reside on an on-going basis on an authorised permanent site within a District or Unitary Council area as the principal site of their home and who move to different sites within and/or between communities.

Site and pitch provision

The settled Traveller community

Sufficient sites (and pitch numbers within them) must be identified in every Council's Local Plan to meet the objectively assessed demographic needs of the settled travelling community for the plan period. Failure to do so should render the plan unsound.

The non-settled Traveller community

Sufficient sites (and pitch numbers within them) must be identified in every Council's Local Plan for transit sites for the non-settled Traveller community. Failure to do so should render the plan unsound.

County and Unitary authorities (as local highway authorities) should be given a duty to provide transit sites for the use of non-settled travellers.

Current Enforcement Powers

It is the Council’s strongly held view that there must be a change in the legislation above and beyond planning law and guidance. Appendix 1 shows a brief interpretation of the available powers that are mostly ineffective in the situation that Harlow finds itself.

Temporary Stop Notices

Temporary Stop Notices under section 171E Town and Country Planning Act 1990 are not appropriate where travellers do not own the land nor show any signs of making an unauthorised encampment permanent. In any event, it does not give the landowner possession of the land.

Powers under Section 61 Criminal Justice and Public Order Act 1994

Section 61 as currently enacted enables a senior police officer, if two or more persons are trespassing on land and have a common intention to reside there for a period of time and is satisfied reasonable steps have been taken by the owner of the
land to remove them previously, to issue a direction that they leave the land. There are caveats in that the persons directed to leave must either be causing damage to the land or property or use threatening or abusive language or there must be six or more vehicles on the land. The direction under section 61 as is lasts for three months, and it is an offence if the person direct to leave does not do so or returns to the land within three months punishable with a scale 4 fine and or imprisonment of up to three months. At present section 61 gives the power to the Police to remove trespassers from land, but the power is discretionary and will only be exercised if the criteria in the ACPO Guidance is met. This Guidance is not statutory and gives a wide discretion as it is open to interpretation by individual officers. There is no standard check list to guide individual officers. This leads to inconsistency in decision making and confusion amongst the public.

**Powers Under Section 62 A-E Criminal Justice Public Order Act 1994**

This gives the Police power to remove Travellers where an alternative site is available. Once a direction is served under this section, it is an offence for those served to return to any land in the district for three months.

The Police are understandably reluctant to use this power due to lack of alternative sites.

**Proposed Enforcement Powers**

The Council believes that the law must be amended to enable a District, County or Unitary Council to remove Travellers from their areas without further recourse to the Courts where a Court Order is made against them, or the Police serve a section 61 notice under the Criminal Justice and Public Order Act 1994 [as amended] see attached Appendix 2, or where an unauthorised encampment occurs on land that has been subject to a Court Order or section 61 direction, in the preceding period of twelve months. Additionally, the criteria for the use of section 61 should be reviewed and clearly and legibly set down, with the use being mandatory when the criteria are met.

The Council believes that this power should be available to District, County and Unitary Authorities to serve a direction on trespassers of land within their area. The Council also believes strongly that the direction should last for a period of twelve months The Council would wish for statutory guidance to be issued that bind both the Police and the Local Authorities to use the same criteria when assessing the use of section 61 directions and once such criteria is met then the power should become a duty to issue such a direction.

The Council believes that the changes proposed to the current legislation are not victimising Travellers and Gypsies as the proposed changes will also apply to tented communities and unauthorised moorings.

In addition to the above, looking further ahead the Council would urge thought be given to the following being enacted. When a district has sufficient transit sites, it would appear reasonable to the Council that further powers/duties should be
enacted to enable a District, County or Unitary Authority to remove unauthorised encampments without recourse to the Courts.

The Council envisages a scenario whereby a transit site in the district is full, or those persons setting up an unauthorised encampment when directed to will not move to the designated transit site. There should be a power/duty that the Council can direct any persons not on these sites to leave the district. Again the direction should endure for twelve months.

Furthermore, failure of the travellers to move on or if those directed to leave return within twelve months the punishment should be comparable to that under Section 61 and Section 62 A to E of the Criminal Justice and Public Order Act 1964 i.e. imprisonment for up to three months and or a fine. This power should be available both to the police and local authorities. Again the Council would envisage that there would be statutory guidance issued with clear criteria that once met the direction should be issued.

The purpose of making amendments to current legislation would be to make legal provisions fit to deal with the particular issue at hand without the need to continually commence new and duplicate action simply because the issue has moved from one site to another. Equally, community expectation of swift and effective action needs to be addressed and be seen to be addressed.
A review of the legislation available to deal with travellers.


Sections 171E to H are the legislative framework for Temporary Stop Notices [TSN] [the 2005 Regulations were repealed on the 5 May 2014] Section 171F deals with the restriction on the use of TSNs.

A TSN is an immediate blocking on development that breaches planning law, which has an immediate effect and lasts 28 days. With regard to Travellers whose caravans are their main residence the test would have to be proportionate and "expedient that the activity which amounts to the breach [of planning conditions or building control] is stopped immediately".

In the case were Travellers do not own the land nor show any signs of making an unauthorised encampment permanent; it is not open to a local authority to use this power.

It will also not give the authority possession of the land. Separate proceedings would be necessary.

The Travellers in Harlow do not own land nor have shown any inclination to carry out "works" on the encampments that could be seen as requiring a TSN.

Pre-emptive injunctions

A local authority can apply to the Court for a pre-emptive injunction separately from other proceedings to regain land. In order to do so the local authority must be able to show that there has been harm, nuisance, trespass, a anticipatory breach of planning permission, obstruction of the highway [open to highways authorities and their agents], or to prevent environmental damage.

The application must not be linked to possession proceedings under other legislative provisions for example part 55 Civil Procedure Rules see Drury –v- Secretary of State for the Environment, Food and Rural Affairs [2004].

Injunctions are normally personal remedies; there is scope in the Local Government Act 1972 to obtain injunctions against persons unknown, each person present on the unauthorised encampment must be served with a copy of the injunction and a copy displayed prominently at each vulnerable site. It is an offence for a person to knowingly breach an injunction; enforcement is via committal procedures that may amount to a term of imprisonment and or a fine.

Any local authority looking to make an application for injunctive relief must have regard to the Human Rights Act 1998 [the European Convention on Human Rights] and the Public Sector Equality Duty under the Equality Act 2010. Any action must be proportionate to the aim that the local authority is trying to achieve.
An injunction alone may not give possession of the land but would be a deterrent to others from entering the land. The Council would choose whether to instigate committal proceedings or possession proceedings on other Travellers who set up encampments in the vicinity.

Injunctions are also available if there is an anticipatory breach of planning or building control; the Travellers would either have to have applied for planning permission or applied for retrospective permission and not been granted. Or acts had been taken to make the site a permanent pitch without the necessary building control consent. There are powers available to the Highways Authority to prevent an obstruction of the Highway or to prevent dangerous encampments that are too close to a highway or on a verge. A local authority can take action under the public health legislation if there is a public health issue that would affect people within their area.

Most of the pre-emptive injunction proceedings are to prevent breaches of planning or to protect the Highway or the public from serious public health issues.

In the case of the encampments in Harlow there have been no breaches or anticipatory breaches of planning permission, the Council has no power to evict Travellers from land owned by the Highways Agency or other land owned by Essex County Council.

The environmental effects of the unauthorised encampments where there have been issues of fly-tipping the police have exercised their powers under section 61 Criminal Justice and Public Order Act 1994. With regard to public excrement while this is evidence of harm there is insufficient evidence at this time to show that it amounts to a public health issue that Environmental Health Officers could prosecute for.

**Licensing of Caravan Sites**

The Caravan and Control of Development Act 1960, County Councils are still able to provide special caravan sites for Gypsies and Travellers, it is no longer a duty. There is no security of tenure on these sites where occupiers can be evicted with four weeks' notice.

Section 1, of the above Act, states that no occupier of land shall after the commencement of this Act permit any part of the land to be used as a caravan site unless he is a holder of a licence. If an occupier fails to obtain a licence they will be liable for a fine not exceeding £100 level 4 for the first offence and not exceeding £250 second or subsequent offence.

The occupier is defined as a person who by virtue of an estate or interest in the land is entitled to possession of the land or would be entitled to possession but for the rights of any person under any licence.

This power therefore is ineffective against the illegal encampments in Harlow, the Travellers are not occupying the land by licence or permission the entity entitled to
possession of the land is either by the Council, Essex County Council or private landlords.

**Tent site licence**

Section 269 Public Health Act 1936 defines movable dwellings as tents, any van, or other conveyance whether wheeled or not”. If the land is not let the occupier is the owner of the land.

Again in this case the land in question is not let by the Council, Essex County Council or private landlords therefore the Travellers who are unlawfully occupying the land cannot be served this notice.

The fine is level 1 and £2 thereafter per day after conviction.

**Possession Orders under Part 55 Civil Procedure Rules**

The Council uses this power when land owned by the Council is occupied by unauthorised encampments each application costs the Council £280 plus the costs of clearing up the site and officer time in preparing for the Court Hearing.

Only the landlord can apply for possession of the land, which means unless the land in question is owned by the Council no action can be taken, the Council cannot act on behalf of private land owners or the County Council.

There is no defence to the action taken to recover the land under Part 55, if the Travellers refuse to move then enforcement action is needed, a warrant needs to be applied for and bailiffs appointed.

There is no sanction if the Travellers return to the land, the Council has to obtain possession numerous times for the same piece of land within a short time frame.

**Interim possession orders under section III Part 55 CPR**

Only applicable if the Travellers occupied premises not open land. In Harlow they have not done so.

**Local Byelaws**

Section 235 Local Government Act 1972 enables byelaws to be made, prior to adoption they need to be advertised and consulted on, and the Secretary of State’s approval is required. Breaches cannot give possession of the land illegally occupied those breaching byelaws are subject to fines.

Section 150(2) Police Reform and Social Responsibility Act 2011 allows local authorities to attached powers of seizure and retention of any property. It would be difficult to justify attaching this power to a main dwelling thus effectively making a person homeless.
Westminster Council used this power to remove protestors camping in parliament square, it is unlikely that they had protected characteristics under the Equality Act 2010 or at least not en-masse.

Section 77 -78 Criminal Justice and Public Order Act 1994

Power of the local authority to give a direction to leave land under section 77 CJPOA, irrespective of ownership, failure to leave enables the local authority to apply to the Magistrates Court for an order requiring the removal of vehicles and occupants.

This power is used by the local authorities when vehicles can be identified, if those named or the identified vehicles return to the site within three months they commit a criminal offence, liable to three months imprisonment and or a fine.

These powers are used by local authorities when applicable, but as vehicles change hands frequently it is difficult to identify if the same individuals are present or not. The power is considered alongside Part 55 CPR whether or not appropriate in each case.

Obstructing the public highway

Powers are for the Highway Authority to remove obstructions, not open to district authorities that do not have a highways function. The Council does not have a highways function nor is it an agent for the Highways Authority.

Planning contravention notices

Only if the planning authority believes there may have been a breach of planning or building control.

Not applicable as the Travellers have not shown signs of permanently remaining on one site.

Enforcement Notice and Retrospective Planning

Only applicable if permanent site either owned by Travellers or others where development has breached planning or building control.

Not applicable to transient unauthorised encampments that move frequently.

Stop Notice, breach of condition notice, powers of entry onto land

As above all powers relate to breaches, perceived or anticipatory breaches of planning which are not applicable to transient illegal encampments.

Police Powers
Section 61 Criminal Justice and Public Order Act 1994

Can only be used by the police, not a duty but a discretionary power, can use the power on any land except Highway land. The police follow the ACPO guidance and will only exercise the power if there are aggravating circumstances. Once a direction has been given it is an offence to return to the same land the person is liable on summary conviction to a three months imprisonment and or a fine.

The direction applies to a specific piece of land only, a person to be in breach of the order must know that a direction has been served, may be difficult to prove as direction is against persons unknown.

Used infrequently.

Section 62A-E Criminal Justice and Public Order Act 1994

Police power to remove trespassers where an alternative site is available, the site has to be managed either by a local authority or registered social landlord. The sites identified can be permanent or transient such as winter pitches or temporary stopping sites.

There are two sites in Harlow one of which has ten empty pitches, these are managed by Essex County Council who would have to be consulted to determine if the sites were suitable or not.

Failure to comply with the direction can lead the police to impound the vehicles including the caravans, a power to arrest and detain them if convicted may be subject to a fine or custodial sentence of not more than three months.

Once served it is an offence for those served to return to any land in the district for three months, if return liable to imprisonment for up to three months and or a fine.

The police are reluctant to use this power, due to the lack of suitable alternative sites.

Offence of squatting in a residential building

Not applicable in this case.

Power to act in respect of fly-tipping

The power under section 33 of the Environmental Protection Act 1990(as amended) cannot be used if waste cannot be identified as being commercial, household or industrial. It also cannot be used if the person who carried out the fly-tipping cannot be identified.
On the one occasion that a Traveller was identified as being responsible for fly-tipping the police exercised their power under section 61 CJPOA. No prosecution was undertaken.

**Removal of waste from land**

Section 59 of the Environmental Protection Act 1990 would be useful if the Travellers are still in occupation of the land, but more often than not they have moved on. The Council and other owners of land are therefore by virtue of the abovementioned section obliged to clear up the sites once vacated.

**Removal of any thing abandoned without lawful authority**

Section 6 Refuse Disposal (Amenity) Act 1978 does not apply to motor vehicles.

Tort notices have been used to remove an abandoned caravan.

**Harm to Public Health**

Section 79-81 Environmental Act 1990 (as amended), can be used to abate a nuisance on land that interferes with others quite enjoyment. The names of those causing the nuisance need to be known to prosecute.

An abatement notice this will not lead to possession of the land even if the land is illegally occupied.

**Clearing of land**

Section 215 of the Town and Country Planning Act 1990 would not apply to the circumstances as the land occupied is not owned by the Travellers, the notice is served on the owner, which is the Council, Essex County Council or private businesses.

**The Public Health Act 1961**

The power can be used to clear rubbish from the unlawfully occupied land, 28 days’ notice must be given, materials connected to a business is excluded. The power is only useful if there is a permanently occupied site, the sites around Harlow are transient in nature. The power is ineffective in gaining possession of land.

**Power to seize a vehicle.**

Only applicable if the vehicle can be identified as being involved with fly-tipping or other waste offences.

This power is ineffective in relation to illegal encampments.

**A. to identify the legislation required to enable District Councils to deal with the traveller issues**
Part 55 CPR

Once a possession of land is obtained that such an order is effective for a period of twelve months, irrespective of whether the same group of Travellers return or a new group.

Section 61 CJPOA

Expanded to be the same as Section 62 CJPOA that once a direction is given it is illegal for those removed to return to the area for twelve months.

Statutory Guidance on Section 61 CJPOA

Statutory guidance to be reviewed to determine what is the criteria and if met that it is mandatory to serve a direction.

Section 77 CJPOA

Criteria to be reviewed.

Injunctive proceedings

Specific powers for local authorities to be able to apply for injunctive relief from repeated illegal encampments for both Travellers that can be identified and those that cannot.

Equality Act 2010

Specific guidance that relates to protected characteristics relating to ethnicity and race that includes guidance on public sector equality duty and illegal encampments.