

Equality Impact Assessment

Equality Impact Assessments will be carried out whenever you plan, change or remove a service, strategy, policy, project or function. Equality impact assessments can help to achieve the following:

- increased participation with customers
- more transparency in policy and service development
- a more proactive approach to the promotion of equality
- prioritise expenditure in an efficient and fair way
- make decisions that are justified, evidenced and relevant

Impact assessments should be carried out as soon as a relevant new strategy, policy, function, project, plan or procedure is considered. It should be an integral part of policy development.

The purpose of an EQIA is to assess and record the potential impact of a service, strategy, policy, project or function on residents and staff. It can help us to deliver excellent services by making sure that these reflect the needs of the community. The process involves anticipating the potential positive and negative consequences (impacts) and putting plans in place to make sure that any negative impacts are eliminated or minimised, and that any opportunities for promoting equality are maximised.

What do we mean by 'impact'?

The assessment looks at two possible impacts:

- a) **negative, adverse or unhelpful impact, effect or limitation** – this is where the impact could disadvantage one or more of the protected groups. The impact may be differential, i.e. the negative impact on one particular group is greater than on another. Negative impacts may be unintentional; they may also be unlawful.
- b) **positive or helpful impact or effect** – this is where the impact has a positive effect on one or more of the protected groups, and/or where the impact improves relations between groups or improves equal opportunities. The positive impact may also be differential, i.e. the effect on one particular group is greater than on another. Please bear in mind that we are always allowed to treat disabled people more favourably than other groups.

The '**protected characteristics**' are:

Age – a person belonging to a particular age (eg. 18 year olds) or a range of ages (e.g. 18 – 30 year olds).

Disability – a person has a disability if (s)he has a physical or mental impairment which has a substantial and long term adverse affect on that person's ability to carry out normal day-to-day activities.

Gender reassignment – the process of transitioning from one gender to another.

Marriage and civil partnership – marriage is defined as a legally recognised union between two individuals. Same sex couples can also have their relationships legally recognised as 'civil partnerships'. Civil partners must be treated the same as married couples on a wide range of legal matters.

Pregnancy and maternity – pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding.

Race – refers to a group of people defined by their race, colour and nationality (including citizenship) ethnic or national origins.

Religion or belief – religion has the meaning usually given to it but belief includes religious and philosophical beliefs including a lack of belief (e.g. atheism). Generally, a belief should affect your life choices or the way you live to be included in the definition.

Sex – a man or a woman.

Sexual orientation – whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.

Other characteristics important to Test Valley:

Socio-economic – overall the borough is not deprived, but there are areas where there are high levels of deprivation, economic inactivity and low education achievement.

Rural isolation – Test Valley is a rural area and this can affect access to services and some people's ability to take advantage of opportunities available.

Key points to remember:

- Don't do it on your own!
- EQIAs are supposed to be challenging but not over-complicated
- Use common sense and be proportionate
- Look at the strategy, policy, function, project, plan or procedure from the perspective of the person/people affected by it.
- Lack of data is not a reason to halt or not complete the process - find out if research or data already exists, or consult directly with representatives of relevant groups or specialist organisations.
- The process isn't a 'last minute check' - develop plans that include time to make changes to a project, strategy or policy as identified by the EQIA.
- Know your customers, their needs and the barriers they face
- Avoid focusing on one issue or protected groups; look at the demographics of your area and your service users
- Remember to look for the positive as well as the negative
- EQIA should be part of the development process – don't leave it until the Committee report deadline

Equality Impact Assessment

Service:	Legal and Democratic Service
Officer(s) completing the assessment:	Karen Louise Dunn
Date:	22 nd May 2020
Name of service, strategy, policy, project or function being assessed:	Application for Injunction prohibiting unauthorised encampments within certain areas of the Test Valley Borough Council area.

1.	What are the aims, objectives, outcomes, purpose of the service, strategy, policy, project or function that you are assessing? The aim of the application is to seek an injunction order, applying to defined areas within the Test Valley Borough Council boundaries prohibiting: 1. the setting up of unauthorised encampments; 2. bringing residential vehicles onto land or from entering for residential purposes; 3. bringing on any caravan or mobile home (other than when passing through) 4. deposit or causing to be deposited controlled waste (Fly-Tipping) other than in accordance with a valid licence or permit. A power of arrest attaching to these provisions is also sought. Intended Defendants are named individuals who have historically set up unauthorised encampments within the Borough along with 'persons unknown'. Given the limited geographic scope of the order sought, it is my view appropriate and proportionate to include 'persons unknown'. The legal basis of this application lies in section 222 of the Local Government Act 1972 and section 187B of the Town and Country
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Planning Act 1990.

In 2018, 2019 and to the end of May 2020 a total of 82 unauthorised encampments occurred within the Test Valley Borough Council area. This year 2020, we have experienced four (included in the 82 above) – however 2020 is a far from a usual year due to the Covid 19 pandemic and restrictions on movement.

The substantial evidence relied on in support of this application goes back to the start of 2018 and sets out details of the unauthorised encampments encountered since that time and the issues resulting from those encampments including anti-social behaviour, significant Fly-Tipping and other criminal activity, nuisance, threats and intimidation and the impact of those issues on local communities, residents and businesses.

Public health risks are also considered – the evidence sets out that human excrement and toilet waste is often a feature of and left behind after unauthorised encampments. The public's ability to enjoy the open spaces and sports facilities on which the encampments often arise is also severely curtailed. The evidence will show that particularly in Andover, green spaces including open spaces on housing developments and sports facilities are often targeted.

The evidence also sets out the cost to this Council, Hampshire County Council and the Police both in terms of clear-up, repair, reinforcement and court costs and officer man-hours spent on dealing with and clearing up after unauthorised encampments. Private landowners who experience unauthorised encampments on their land similarly incur significant costs in taking court proceedings and/or engaging commercial bailiffs to remove encampments from land and making good and reinforcing the land post-vacation in an attempt to deter future incursions.

The Council has seen an increase in the number and complexity of unauthorised encampments since the start of 2018. Increasing officer time is having to be spent over the summer months (when

the encampments most often occur) in dealing with them. Once an encampment arrives, Officers from either the Council's Communities and Leisure or Environmental Service will visit the encampment to speak to those present and establish their intentions.

A Welfare Check will also be carried out at this stage to identify if any of those present (including and in particular any children) has a health, social or welfare or educational needs and if so, to make the appropriate referral. Hampshire County Council's Gypsy Liaison Officers are also notified. Dependant on the outcome of that visit, the campers stated intentions, the location of the encampment and the outcome of the Welfare Check, the decision will be taken whether to serve notice to vacate and thereafter issue Court proceedings. The arrival of an unauthorised encampment can easily fully occupy three or four officers for a number of days, taking already stretched officers away from other vital Council work.

This Council will always seek an order of the Court prior to seeking to remove unauthorised encampments from its land; common law powers are never used.

If proceedings are deemed necessary then the Council will generally use the regime provided for at sections 77 and 78 of the Criminal Justice and Public Order Act 1994. This provides for service of a notice to vacate the land and if the land is not vacated by the time and date given, an application to the Magistrates Court is made and an order under s78 of the Act is sought. This order must then be served and 24 hours elapse before removal of the occupiers. Commercial Bailiffs are engaged when physical eviction becomes necessary at significant cost.

The Council has streamlined this process to be as quick as possible but there are certain statutory time limits which cannot be done away with. Our local courts are very accommodating and will always do their best to get such applications heard at the earliest opportunity but we are nonetheless at the mercy of the

court lists. It can be at the earliest several days and at the worst a number of weeks before encampments can be moved on, during which period residents and local businesses suffer the effects described above.

Generally these unauthorised campers know exactly what processes the Council must go through before they can be evicted and will expressly say that they intend to stay as long as they can, until a court order is obtained or until bailiffs arrive. They know that they have at least a number of days or possibly weeks before the Council can actually physically move them on. Increasingly and especially at the end of 2019 we experienced encampments hopping from one piece of land within Andover to another – once an order was obtained, simply relocating to land outside the scope of the order so the legal process has to begin again, making a mockery of the process.

The police also have powers to direct unlawful encampments to move on under section 61 of the Criminal Justice and Public Order Act 1994. These powers are exercised on occasion however police resources are already stretched and mobilising a s61 direction can be incredibly resource intensive and (understandably) the bar is high for the exercise of those powers. The cost of one section 61 mobilisation in August 2019 carried a man-hour cost of £22,000. Hampshire Constabulary has exercised its s61 powers twice in respect of TVBC land since the start of 2018. Hampshire Police endorse this application and give evidence in support of it.

Fly-tipping is a regular feature of the unauthorised encampments. Often large quantities of tree cuttings are left at sites – often by-products of the occupiers touting for tree work along with human and food waste, commercial and household waste and other detritus.

There is an increasing propensity for unauthorised campers to commit criminal damage to gain entry to the areas they wish to occupy, cutting through locks and removing defences sometimes

		with power tools or using vehicles to break defences. The Council has used all the tools and methods at its disposal to try and limit and mitigate the damage caused by unauthorised encampments including calling on the Police to assist to little avail. As set out above, the campers are generally completely familiar with the system and processes the Council must use to remove them. The only remaining option is to apply to the Court for an injunction prohibiting unauthorised encampments and the anti-social behaviour associated with them.
	Who implements or delivers the service, strategy, policy, project or function? State if this is delivered by more than one service or team, including any external partners.	The Injunction Order is applied for by the Legal and Democratic Service. Enforcement will need to be directed by the Legal and Democratic Service. The Application includes a request for a power of arrest to be attached to any order granted. Under section 27 of the Police and Justice Act 2006 the Court may attach a power of arrest in local authority injunction proceedings where the conduct includes the use or threatened use of violence or there is a significant risk of harm. The evidence in support of this application demonstrates both the use and threat of violence and a significant risk of harm to persons within the Borough. Implementation of arrest pursuant to any such power will fall to the police. The Council has consulted with Hampshire Constabulary and Hampshire County Council Gypsy and Traveller Liaison Officer who support this application and have given evidence in support of it.
3.	Who will be affected by the service, strategy, policy, project or function?	1. Members of the Gypsy and Traveller community seeking to stop up within the Borough. 2. The Residents of Test Valley Borough Council and in particular those within the area of the injunction application, those within the injunction application area. There is potential for impact on those in the wider area should an order be granted and displace the activities complained of but the staged nature of the application (interim then final

		order) provides an opportunity to seek the inclusion of further areas in the event that the behaviour complained of is displaced. Very little data is available regarding the number of Gypsies and Travellers in the Borough at any one time. The latest Hampshire Ethnic Minority and Traveller Achievement Service figures record less than 6 children from Gypsy/Roma ethnic backgrounds in Test Valley Schools. At the time of the 2011 Census there were 153 people who identified as white Gypsies living in the Borough (taken from the Borough Council's 2020 Equalities Report).
4.	What are the likely positive impacts for the protected groups (see above)? Are any particular groups more affected and why?	None apparent. There would be positive benefits for the community as a whole but no particular effect on those with protected characteristics that do not apply to the community as a whole.
5.	What are the likely negative impacts for the protected groups (see above)? Are any particular groups affected more and why?	Age – None Disability – None Gender reassignment – None Marriage and civil partnership - None Pregnancy and maternity – None Race – See below Religion or belief – None Sex – None Sexual orientation – None

It is acknowledged that certain of the Gypsy and Traveller Community will have protected characteristics in accordance with the Equality Act 2010. It is also acknowledged that this group and its way of life will likely be impacted by any injunction order made.

The Council must also have due regard to the Public Sector Equality Duty in accordance with section 149 of the Equality Act 2010, subsection (1) of which provides that a public authority must, in the exercise of its functions, have due regard to the need to-

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due consideration has also been given to Articles 8 and 14 of Part 1 of the Human Rights Act 1998. Article 8 of which enshrines the right to respect for private and family life and Article 14 prohibits infringement of Convention rights by discrimination on any grounds including grounds of race, language, religion, national or social origin, birth or other status.

The Council therefore must balance the rights of the Gypsy and Traveller Community with the rights of the settled community.

The injunction sought covers both named and unnamed Defendants. I am aware (from information provided by Hampshire County Council's Gypsy and Traveller Liaison Officer) that certain of the named Defendants are of the Romany Gypsy and Irish Traveller Communities.

The injunction application does not cover the entire Test Valley Borough Council area, only a relatively small portion of it. It

	covers an area encompassing the Andover Area only and one car park in Romsey reflecting the areas on which there is evidence of the most significant impacts of unauthorised encampments. Of the 82 encampments experienced throughout the Borough since the start of 2018, 65 have been within Andover's boundaries and it is that area which makes up the primary injunction area. The geographical scope of the order sought has been carefully considered to only encompass those areas where the majority of the unauthorised encampments have occurred and negative impacts encountered. It is limited only to a <i>reasonable</i> area. It is considered that the scope is sufficiently limited and evidence-based so as to justify including 'persons unknown' as Defendants. This limited geographic scope carries significant weight in both mitigating the effects on the group with protected characteristics and in decision making in balancing the rights of that group. If the Court sees fit to make an Injunction order the Council will consider adopting a Negotiated Stopping and Temporary Transit Agreement under which Gypsies and Travellers wishing to stop up on a temporary basis on the Council's land may seek lawful permission so to do. TVBC has reinforced sites and used the all tools at its disposal under sections 77 and 78 of the Criminal Justice and Public Order Act 1994 however this has not curtailed the instances of incursion and associated behaviour. In fact, the unauthorised occupiers simply have become au fait with the process, knowing that depending on the time it takes to serve notice, obtain a hearing date and secure an order, serve the order and thereafter enforce- they will have several days if not a number of weeks before they are forced to leave. It has become increasingly common that even when evicted, an encampment will simply move to another nearby piece of land outside of the scope of the order and the process must begin again, totally thwarting and undermining the process. Local
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communities and businesses are frustrated at the Council's seeming impotence in the face of this behaviour.

The police exercising and/or threatening to exercise their powers under s61 of the same Act have similarly had no effect on the instances of incursion. The system is not working and meanwhile instances of anti-social behaviour, illegal Fly-Tipping, criminal damage and other offences, nuisance and community unease and tension continue.

The Council has gathered significant evidence of criminal and antisocial behaviour relating to unauthorised encampments. This evidence comes from the Council's own officers, members of the public, local businesses, Hampshire County Council Gypsy Liaison Officer and the police in support of this application.

This application for an injunction is an action of last resort. The Council has utilised all other means of attempting to bring this behaviour to a halt to no avail. It is apparent that nothing short of an injunction order will stop the unauthorised encampments and associated nuisances. If granted, an injunction order will prevent the unauthorised encampments.

This Council has incurred and continues to incur significant costs in terms of officer hours, court costs, clear up costs, damage repair and reinforcement. These clear up costs include costs of clearing fly-tipped waste. In the last year the Council has successfully convicted an unlawful occupant of an Environmental Offence related to Fly-Tipping and a separate individual of a waste carrier licence offence.

Due consideration has been given to all of the above factors and risks to Human Rights and to those with protected characters have been identified and mitigated and the decision to proceed is reasonable and proportionate in the circumstances.

7.	What plans do you have in place, or are developing, to mitigate the likely negative impacts, i.e. how will you reduce the impact on the protected groups?	The geographical area of the order applied for has been carefully considered and is as limited as possible whilst still seeking to protect the areas which have most regularly experienced unauthorised encampments. If an interim order is granted, the effects will be monitored and the Equality Impact Assessment considered and revisited prior to the Court's consideration of a final order. The order sought does not prevent those of the Gypsy and Traveller Community from entering the Borough or the proposed injunction area acting lawfully and only seeks to limit unlawful behaviour. There are no transit sites in Hampshire. There is a permanent County Council-owned residential traveller site at Star Hill near Hartley Wintney and three privately owned sites at Penny Hill also near Hartley Wintney, Tynefield near Whitely and Bury Brickfields near Totton. If the Court sees fit to make an order, the Council will consider adopting a Negotiated Stopping Policy and Temporary Transit Agreement.
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What course of action does this EQIA suggest that you take? (tick one of the following options)	
Outcome 1: No major change required The EQIA has not identified any potential for discrimination or adverse impact and all opportunities to promote equality have been taken.	
Outcome 2: Adjust the policy to remove barriers identified by the EQIA or better promote equality. Are you satisfied that the policy adjustments will remove the barriers identified?	
Outcome 3: Continue the policy despite potential for adverse impact or missed opportunities to promote equality identified. You should ensure that the EQIA clearly sets out the justifications for continuing with the policy. You should consider whether there are sufficient plans to reduce negative impact and/or plans to monitor the actual impact	x
Outcome 4: Stop and rethink the policy when the EQIA shows actual or potential unlawful discrimination	

Head of Service sign off (name): Karen Dunn	<i>Karen Dunn.</i>
Date:	<i>17.06.2020</i>
Comments or any action required:	