

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

Minutes of a meeting of the Planning Enforcement Sub-Committee held on
Wednesday, 21 July 2010 at 2.00 p.m.

PRESENT:	Councillor Mervyn Loynes – Chairman Councillor Val Barrett – Vice-Chairman	
Councillors:	Pippa Corney Charles Nightingale Hazel Smith	Sebastian Kindersley Deborah Roberts
Officers:	Gary Duthie Saffron Garner Gareth Jones Jo Mills Philip Readman Ian Senior Charles Swain Andrew Winter	Senior Lawyer Senior Planning Assistant Head of Planning Corporate Manager, Planning and New Communities Assistant Enforcement Officer Democratic Services Officer Enforcement Officer Planning Assistant

Councillors Simon Edwards, Lynda Harford, Ray Manning, Tim Wotherspoon and Nick Wright were in attendance, by invitation.

3. DECLARATIONS OF INTEREST

Councillor Sebastian Kindersley declared a personal interest as a Cambridgeshire County Councillor whose electoral division of Gamlingay included Orwell.

4. MINUTES OF PREVIOUS MEETING

The Planning Enforcement Sub-Committee authorised the Chairman to sign, as correct records, the minutes of the meetings held on 20 April 2010 and 27 May 2010.

5. FOXTON: Q8 GARAGE - ENFORCEMENT AGAINST THE SALE OF CARS FROM THE SITE WITHOUT SPECIFIC PLANNING CONSENT

Further to the meeting on 26 January 2010 (Minute 6 refers), the Planning Enforcement Sub-Committee considered a report detailing the current situation relating to the sale of vehicles from the forecourt of the former Q8 garage by the A10 in the Parish of Foxton without the specific consent of the Local Planning Authority. In January, the Sub-Committee had concluded that a deadline be given for the site owner to submit a planning application. However, the resolution had not been based on any material harm arising from the proposal – an essential factor in determining whether or not to issue and serve an enforcement notice.

The Senior Planning Officer informed Members that, in spite of further discussions with the landowner, he still had not submitted a planning application. However, following further consideration, officers had recognised that there was no significant harm in planning terms, and were now proposing “positive enforcement action” as a way of addressing local concerns while seeking to regulate the vehicle sales activity. This would involve defining from which parts of the site sales could and could not take place, and securing the landowner’s formal agreement to this. The Council had to consider the impact of vehicle

sales on a rural area.

Councillor Deborah Roberts, the local Member, said that it was essential that there should be public confidence in the planning system. If people perceived the Council as allowing that system to be undermined in certain cases, a very dangerous precedent would have been set. She said that the land owner had been given ample opportunity to apply for planning permission, and that the Council should now issue and serve an enforcement notice. Councillors Charlie Nightingale and Pippa Corney supported the comments of the local Member.

The Head of Planning reminded Members that the Council could not force the landowner to submit a planning application. He commended the "positive enforcement" approach as the best option, given the difficulty in identifying any planning harm. Councillor Nightingale referred to the Council's pre-application charging regime, and asked whether the landowner was receiving free advice. In reply, the Head of Planning said that the landowner was not being advised, but was being told what he had to do in order to regularise his business in planning terms.

Councillor Sebastian Kindersley raised the issue of the landowner applying for a Certificate of Lawful Use or Development. In reply, the Senior Lawyer advised that the appropriate timescale in this case was ten years, during which time the unauthorised activity must have operated continuously. Service of an enforcement notice effectively would "stop the clock". There would then almost certainly be an appeal, and the Council would have to defend its reasons for the enforcement notice. It would have to satisfy the Inspector that there had been a breach of planning control in the first place, and that it was in the public interest to enforce. It would be an abuse of power for the Council to use enforcement action as a form of punishment for conduct of which it disapproved.

Councillor Hazel Smith supported the comments from the Head of Planning, and said the Council must have confidence in its ability to win any subsequent appeal.

Councillor Kindersley noted that the site had formerly been a petrol filling station. He said that, had an application for planning permission been received, the Local Planning Authority would have been able to attach Conditions to a consent, including a requirement to remediate any contaminated land. Given the potential cost of such remediation, Councillor Kindersley wondered whether this might explain why no application had been forthcoming.

Councillor Corney was worried by the perception that might be given if the Council refrained from taking enforcement action.

The Senior Lawyer emphasised that the enforcement notice process was constrained by the need to identify planning harm. The absence of such harm being identified also made it highly unlikely that an Injunction would be a realistic alternative: the absence of a good reason was likely to persuade a Judge that such a discretionary remedy would not be proportionate.

Councillor Kindersley proposed that this matter be deferred for at least one month and that officers be instructed to write to the landowner to the effect that the Council would seek an Injunction should no planning application be received within a reasonable period. Councillor Smith seconded the proposal. Through planning officers, Councillor Nick Wright instructed Environmental Services to investigate contaminated land issues on the site.

The Planning Enforcement Sub-Committee was minded to seek an Injunction in this

instance, but **deferred** making a final decision until its next meeting. In the meantime, Members instructed planning officers to write to the landowner seeking a valid application for planning permission, receipt of which would halt court action while the application was processed through to determination.

6. ORWELL: UNAUTHORISED LAND LEVEL RAISING AT THE REAR OF 9 HIGH STREET

Further to the meeting on 20 April 2010 (Minute 18 refers), the Planning Enforcement Sub-Committee considered a report about unauthorised earth works that had raised land level to the rear garden of 9 High Street, Orwell. Members visited the site on 21 July 2010. Councillor Deborah Roberts had not attended that site visit but had since had a look at the land in question.

Councillor Sebastian Kindersley described the development as unneighbourly. However, he acknowledged that it was an unusual site, and accepted that the works had been completed. He acknowledged that, were the Council to take action in this case, it would not have sufficient grounds on which successfully to defend a subsequent appeal. Councillor Kindersley said that, with regret, he had to support the officers' recommendation.

The Planning Enforcement Sub-Committee **resolved** that no further action be taken. Members agreed that, taking into consideration the overall extent of the land level increase and its siting, the development did not cause significant harm in planning terms to the local area or to residential amenity.

7. COTTENHAM: UNAUTHORISED PLOTS AT SMITHY FEN

Prior to the introduction of this item, the Senior Lawyer reminded Members that, as well as declaring any personal or prejudicial interests, they should also consider whether there existed any previous history that might give a public perception of pre-determination were they to participate in the debate. The Senior Lawyer referred to advice that had been tendered in advance of the meeting and cited specific cases that indicated decisions arrived at in such circumstances were vulnerable to legal challenge. Councillor Deborah Roberts told the Planning Enforcement Sub-Committee that she had neither personal nor prejudicial interests but, in order to prevent the possibility that any decision about to be made might be challenged on the basis that, in law, it had been made improperly, she had decided to take no part in the debate.

Councillor Roberts withdrew to the public gallery, took no part in the subsequent debate, and did not vote.

Members visited the site on 21 July 2010.

The Planning Enforcement Sub-Committee considered a report summarising the current situation relating to unauthorised Traveller plots at Smithy Fen, Cottenham. Members considered the report in open session but recognised that reference to any of the details contained in the confidential appendices would have required exclusion of the Press and public.

Jackie Smith (a Cottenham resident) and Councillors Simon Edwards and Tim Wotherspoon (local Members) addressed the meeting. Councillor Wotherspoon also read out a statement from Cottenham Parish Council.

The Head of Planning outlined the legal and planning history associated with Smithy Fen,

Cottenham. He explained that, although Plot 12 Victoria View formed the basis of the report, officers had deemed it appropriate to seek Members' views, at the same time, on Plots 5, 5A, 6, 10 and 14 Orchard Drive and Plot 15 Water Lane. He strongly refuted media coverage that had suggested that the officers' recommendation had been reached on the basis of potential cost. By way of clarification, the Head of Planning stated that the recommendation to Members was as set out in paragraph 24(c) of the report, namely to continue to tolerate while the Council develops a plan for Smithy Fen with the residents, and dismissed media speculation that the concept of "toleration" meant that the Council would be allowing illegal plots to become legal.

The Corporate Manager (Planning and New Communities) said that the proposed Management Plan for Smithy Fen would cover issues not relevant to planning and enforcement. She said that the Council would like to work with residents in order to develop the Plan and enhance the quality of life for all concerned.

Short of compromising the legal privilege relating to Appendix 1, the Senior Lawyer summarised Counsel's Opinion. He concluded that Members would need to balance the personal circumstances of those occupying the plots with planning expediency. One consequence of taking enforcement action might be the need for the Council, in its capacity as Local Housing Authority, to process a series of homelessness applications.

Councillor Wotherspoon spoke enthusiastically about his visit to Smithy Fen. He acknowledged the conflict between private property rights and the public interest, but said the Council's objective must be to promote certainty and security both for travellers and for the settled community. Councillor Wotherspoon commended to the Sub-Committee paragraph 17(f) of the report, namely enforcement as the authority had done in the past to clear the unauthorised sites and, as an alternative, paragraph 17(e) - Compulsory Purchase of unoccupied sites at Smithy Fen. Councillor Edwards agreed, and added that the guiding principle must be one of fairness: the toleration of breaches of planning control was unfair to other travellers and to members of the settled community.

Councillor Kindersley endorsed the comments of the local Members with the exception of compulsory purchase. Expressing disappointment though that the issues of Plot 12 Victoria View and the other plots had not been in two separate reports, he described paragraph 25 of the report as being not feasible. Councillor Kindersley cautioned Members against making a decision based on emotion, but instead urged them to consider how best to deliver the Council's planning policies. Members would be sending out the wrong message if they were to give a public perception that the traveller and settled communities were to be treated differently. The Council had given the occupiers concerned ample opportunity to explore their planning options, but time had now run out.

Councillor Nick Wright (Planning Portfolio Holder) thanked Planning Enforcement Sub-Committee members for their helpful comments, and Jackie Smith, Councillor Edwards, Councillor Wotherspoon and Cottenham Parish Council for their invaluable contributions.

The Planning Enforcement Sub-Committee **resolved** that South Cambridgeshire District Council take enforcement action against the occupiers of Plots 12 Victoria View, 15 Water Lane, and 5, 5A, 6, 10 and 11 Orchard Drive, Smithy Fen, Cottenham in order to be consistent with its previous actions under similar circumstances, to achieve planning objectives, and to demonstrate its commitment to treating everybody equally and fairly.

The Meeting ended at 3.40 p.m.
