

REPORT TO: Planning Committee

13 January 2021

LEAD CABINET MEMBER: 146 Cambridge Road Wimpole

LEAD OFFICER: Stephen Kelly/Cllr Tumi Hawkins

Enforcement Action: 146 Cambridge Road, Wimpole

Executive Summary

1. Planning permission was granted (on appeal) for the continued use of the above site as a residential caravan site for one gypsy family with two caravans including one static caravan and the erection of an amenity building in February 2015. The permission was for a 2-year temporary period. In June 2018 the Council issued a breach of condition notice seeking compliance with condition 1 (which required cessation of the use, removal of the caravan and associated works). In December 2018 and again in May 2019 the owner of the site was convicted for failing to comply with the BCN. Whilst an initial pre-application request for advice was made by the owner in February 2019, the continued occupation and use of the site is in breach of the original planning permission and no subsequent permission is in place to authorise the continued use.
2. The Planning Inspector who considered the appeal against the Council's initial refusal of the application, identified harm arising from the continued use of the site. The inspector gave special consideration to the applicant (at that time) and owner's circumstances in granting permission for a 2-year period only. The Council has sought to engage with the occupier/owner to determine their housing need, but without successful responses.
3. Officers are of the view that securing compliance with the conditions of the original planning permission is in the public interest. Advice sought has suggested that, in view of the successful convictions for non-compliance on two separate occasions but the use still continuing, the most appropriate means to achieve this object is for an injunction.
4. The Council's constitution provides that, save in cases of an emergency, authorisation for the pursuit of an injunction to address planning breaches is required from the planning committee.

Key Decision

5. No

Recommendations

6. It is recommended that the Planning Committee authorise the Head of Legal Services, in consultation with the Joint Director of Planning and Economic Development that in the event that engagement with the owner/occupiers of the site is unsuccessful in securing compliance with the condition, to initiate measures required to secure compliance with condition 1 of Planning Permission S/0583/14/FL through an application to the Court for an injunction under S187 B of the Town and Country Planning Act 1990 as amended.

Reasons for Recommendations

7. The continued use of the site gives rise to planning harm. The temporary planning permission granted by the planning Inspector in their decision dated 20 February 2015 was subject to a time limit. The Council has sought to enforce compliance with the condition in order to remedy the harm identified. Despite two successful convictions for the breach of the condition, the planning harm identified remains and the use of the site continues. Attempts to engage with the owner of the site to assess the needs have been unsuccessful.
8. The LPA has considered whether there are any other remedies available to it to address the breach identified and the continued planning harm. The applicant has not responded to attempts to provide an updated needs assessment or to otherwise engage with the LPA to assist in the consideration of any change in planning circumstances. Securing authorisation for injunctive proceedings will assist the LPA in its attempts to engage with the applicant (to consider their specific needs as required) or in the absence of such engagement, to pursue injunctive proceedings to secure compliance with the planning condition.

Details

9. Planning Permission for the Use of a parcel of land at 146 Cambridge Road Wimpole was refused in June 2014 for four reasons. The Council had also issued an enforcement notice on 26 March 2014 relating to the unauthorised change of use of the land and for operational development. Both the planning refusal and enforcement notice were the subject of an appeal. The appeal, having confirmed the planning harm arising from the development, considered the personal circumstances of the occupier/owner and by way of a conditional approval, granted temporary planning permission for the continued use of the site for a period of 2 years from February 2015. Following the continued use of the site after the 2-year period, the Council served a breach of condition notice on 21

June 2018 following which it has successfully secured 2 separate prosecutions (in December 2018 and May 2019) for failure to comply with the notice in the court.

10. The Council has made previous attempts to engage with the applicants who submitted pre-application advice in 2019 around the time of the previous conviction. A request for the occupier to complete a needs assessment was also made in early 2020. Officers intend to seek to engage again with the owner/occupier to enable both an up to date needs assessment to be undertaken (and to consider the planning harm against the Article 8 rights of the occupiers and the provisions of the Equalities Act to allow an assessment of the planning “merits” of the case – particularly having regard to Covid 19 statements, the adopted Local Plan Policy H22 and the NPPF. In the absence of the owner/occupier taking the opportunity provided by the Council however and given the lack of compliance with the planning condition despite two successful prosecutions, officers are seeking authorisation of the Committee to progress with injunctive proceedings.

11. S187B of the Town and Country Planning Act provides that;

(1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction whether or not they have exercised or are proposing to exercise any of their other powers under this Part.

(2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.

(3) Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.

(4) In this section “the court” means the High Court or the county court.

12. An injunction is a court order. Whether or not to grant an injunction is a decision for the court. However, it should be noted that the decision to issue a s.187B application and the actual issuing of the application are amenable to challenge by way of judicial review. In this case, the Council has tried to secure compliance by other means. The owner/occupier has unfortunately chosen not to cooperate with Council or the planning process. Given the identified and continuing planning harm, and in the absence of any overriding personal circumstances that have been drawn to the attention of the Council by pro-active engagement by the owner/occupier, attempts to resolve the matter have proved unsuccessful to date. Advice provided to the LPA indicates that previous authorities on the matter suggest that the court's judgment will need to be exercised with due regard to the purpose for which was conferred, namely, to restrain breaches of planning control. Flagrant and prolonged defiance by a defendant of the relevant planning controls and procedures may weigh heavily in favour of injunctive relief.

13. Given the advice to the LPA on the facts in this case and having regard to the other options available (see below) the application for an injunction requiring the

cessation of the use and the sites restoration in line with the condition is considered by officers to be the most expedient approach in this case if attempts to engage with the applicants prove unsuccessful

Options

1. As an alternative to the pursuit of injunctive proceedings, the LPA has considered whether to secure compliance with the BCN by means of default action – notably the service of an enforcement notice and if required, the use of its own contractors to bring effect to the condition. Given the further delay associated with the need to issue a new enforcement notice, and periods for compliance and potential consideration of an appeal, and taking account of the owner/occupier's failure to act following conviction in respect of the BCN, this alternative approach is not considered likely to be an effective alternative option.
2. Do nothing. The Planning Inspector recognised and gave weight to the planning harm arising from the continued use – notably at that time in respect of the visual impact upon the locality and having regard to the principles for sustainable development. In granting a temporary permission, the inspector considered that having regard to the status of the occupants, the harm caused by the development was acceptable for a temporary period of 2 years whilst the occupiers sought an alternative location to live. A decision to “do nothing” would not resolve the planning harm identified and is not recommended in this case.

Implications

14. In the writing of this report, taking into account financial, legal, staffing, risk, equality and diversity, climate change, and any other key issues, the following implications have been considered: -

Financial

15. Securing an injunction will involve the Council in incurring direct costs associated with the Court process and indirect costs associated with the deployment of existing staff resources in Planning, Housing and 3C Legal Services. The legal process can be expensive. The Shared Planning Service has a financial reserve available to address the legal costs of enforcement which is considered to be sufficient at this stage to enable the action identified to be pursued without adverse impacts upon other service budgets.

Legal

16. The pursuit of injunctive proceedings will be overseen by the Councils Legal Advisors. The recommendation above accords with the advice received by Planning Officers from the Councils Legal Advisor.

Staffing

17. The recommendation will result in staff from Planning, Housing and legal teams being engaged. The resource impact upon other work of the Planning and Housing teams is considered to be modest at this time.

Risks/Opportunities

18. The pursuit of court action carries financial risks to the organisation (see above).

Equality and Diversity

19. One or more of the occupiers of the site, at the time of the planning application and appeal, identified as gypsies. Any action arising as a result of the recommendation will have full regard to all of the occupiers' Article 8 Rights, the Council's duties under the Equalities Act and obligations arising from the Covid pandemic to help manage health risks through the application of the Council's enforcement activities. It will also have regard to the specific planning policy considerations applying to gypsies. Before initiating any action under S187B, the LPA will therefore carefully consider the personal circumstances of the owner and occupiers of the site, recognising that the Court will also consider whether, and the extent to which, the local planning authority has taken account of the personal circumstances of the defendant and any hardship that injunctive relief might cause.

Climate Change

20. The Planning Inspector concluded that the continued use of the land would compromise the sustainable development objectives of the Council at that time if allowed to remain. The growing focus on climate change since the appeal hearing has not, in officers' view, changed the significance of that objective.

Health & Wellbeing

21. Officers would seek to determine from the site occupiers any specific considerations in this regard prior to beginning any action under S187B. In the event that the site occupiers fail to engage with the Council, officers will have regard to the Council's corporate plan objectives around promoting health and Wellbeing in their pursuit of action through the Court.

Consultation responses

22. None

Alignment with Council Priority Areas

Housing that is truly affordable for everyone to live in

23. The Council's priority supports the delivery of new housing in the right place that is affordable for everyone. The proposal provides residential accommodation to a family but having regard to the assessment in this case, the residential use has been found to give rise to a planning harm that it is in the public interest to prevent.

A modern and caring Council

24. The efficient and effective enforcement of planning controls is in the interests of everyone in the community. The Council has previously sought to address the planning harm arising from this breach through formal action and prosecution in this case, but this has not, to date, been effective in securing compliance with the planning conditions. The measures contained in this report are considered to be proportionate having regard to the effective use of resources and seek to do resolve an ongoing planning breach that is in the public interest.

Background Papers

Planning Application S/0583/14/FL
Appeal ref APP/W0530/A/14/221703
South Cambridgeshire District Council Local Plan 2018
National Planning Policy Framework

Appendices

None

Report Author:

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