

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Enforcement Sub-Committee

21 July 2010

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### SMITHY FEN COTTENHAM UNAUTHORISED TRAVELLER SITES

#### Purpose

1. To advise members on the current situation in relation to unauthorised Traveller plots at Smithy Fen, Cottenham, and to seek members' decision as to the best way forward.
2. This is a key decision because
  - It could result in the Council incurring expenditure which is, which are, significant having regard to the Council's budget for the service or function to which the decision relates.
  - It is of such significance to a locality, officers are of the opinion that it should be treated as a key decision.

#### Background

3. The Planning Committee in March considered a proposal by the occupier of plot 12 Victoria View to grant temporary permission to allow him and his wife to continue to occupy the plot until such time as their medical issues were resolved. Members are asked to refer to agenda item 9 of the 3 March 2010 meeting for further detail.
4. The Committee **refused** the application contrary to the recommendation and referred the matter to a future meeting of the Planning Enforcement Sub-Committee consideration of enforcement options. Members agreed the reasons for refusing the application on the basis that:
  - (a) It would have a significant adverse effect on the character and appearance of the area by eroding the openness between the lawful sites;
  - (b) Create a precedent that planning permission should be granted for other gypsy sites across Smithy Fen and that the cumulative impact of such developments would be seriously harmful to the character and appearance of the surrounding landscape; and
  - (c) The applicants' existing personal circumstances did not outweigh the harm it would cause.

#### Considerations

5. During the late 90's and early 2000, the Council worked with the Travelling and settled community in Cottenham to regularise development in Smithy Fen. The situation changed rapidly in the mid-2000s following the arrival of a significant number of Irish Travellers who acquired the existing permitted sites that up to that time had been occupied by English gypsy families. The main problem was that the new population set up a significant number of additional sites on land at Smithy Fen. The effect of this was to "fill-in" a large area of land between the authorised sites creating a very urban form of land development.

6. The Council has since that time tried to work with the settled community and the Irish Travellers to resolve frictions that resulted from the unauthorised development, while taking whatever action was needed to control the development. While this has been a long and costly process, its success can be judged by the accompanying plan that illustrates the scale of the unauthorised development at its peak and the current situation.
7. The challenge of controlling the situation has been compounded by the displacement of the English Travelling Community that followed the influx of Irish Travellers, since this led to a significant number of unauthorised sites within the District, primarily in Willingham, Rampton and Histon parishes.
8. There now remain the following unauthorised plots:
  - (a) Plot 12 – Members will be aware of the situation that led to this plot being omitted from the successful clearance of the Victoria View site. At the March 2010 Planning Committee, Members refused a proposal that would have given Mr & Mrs McCarthy a personal consent to allow them to continue to live on the plot
  - (b) Plot 5 Orchard Drive
  - (c) Plot 5a Orchard Drive
  - (d) Plot 6 Orchard Drive
  - (e) Plot 10 Orchard Drive
  - (f) Plot 11 Orchard Drive
  - (g) Plot 15 Water Lane
9. From the details of the families in breach of planning, there are issues of health and education for families that have had children at school in Cottenham since they arrived in the Parish sometime in 2005/06; further detail is provided within the attached confidential appendix.
10. The land that has been the subject of the direct action has been banded to discourage breaches of planning re-occurring (i.e., Pine View and Victoria View). The remainder of the land that the Council has cleared is not banded and is generally unsightly and degraded.
11. There continues to be problems with the maintenance of the pump that is needed to make the septic system serving some of the authorised plots as well as the unauthorised plots to do its job. The problem stems from there not being a local consensus as to who is responsible, and also in funding necessary works to maintain it working properly.

### **Legal Advice**

12. To help members consider the options Counsel's advice has been sought on a number of considerations and is provided as a confidential appendix (i.e., the advice is subject to legal privilege). The main points on the public area of the agenda may be referred to as follows:
  - (a) Advice upon the merits / demerits and likely prospects of successfully securing further injunctive relief finally requiring vacation of the plots described, in the context of the personal circumstances that are believed to variously relate and the presently incomplete policy background.
    - In respect of plot 12 Victoria View it would be unlikely to have good prospects of success at any proceedings for an injunction;
    - In respect of **plots Plots 5, 5a, 6, 10 and 11 Orchard Drive** and 15 Water Lane it would be necessary for the Council to undertake the full balancing exercise having regard to all material considerations

including the lack of alternative sites before reaching a decision whether it is expedient in the public interest to proceed with such action in respect of these plots. If the Council considers it necessary to seek such an order, there is no guarantee that a Court will exercise its discretion in favour of the Council; however, proceeding with seeking injunctive action would be a consolidation of the action the Council has previously taken successfully in respect of other plots at Smithy Fen.

- (b) Advice upon the risks of any such proceedings, if successful, giving rise to 'unintended consequences', such as engaging duties of the Council in its capacity as statutory Housing Authority to furnish suitable (for Gypsies / Travellers) alternative accommodation and / or emergency storage facilities for the chattels of people who may become homeless as a result.
- Successful injunctive action will give rise to obligations under the Housing Acts. In all cases it would appear that the occupants would be adjudged to be likely to be in priority need or entitled to interim accommodation. The Court would have to be satisfied that their needs would be met if the Council proceeded with this option.
- (c) Advice upon, in the event that further toleration without authorisation is decided as a way forward, the risk of the Council being successfully challenged by judicial review (or by any other available means) on the basis of its assessment of 'expediency' given the circumstances that are described, and the factors that should be expressly considered in order to protect against this.
- If the Council undertakes its decision-making having regard to the relevant factors and provides proper reasons for so doing, officers' view is that it is not likely that a challenge would have good prospects of success.
- (d) Advice generally.
- No specific general advice is given other than that contained in the specific advice received.

### **Education**

13. The views of the County education have been sought on the following:
- (a) The numbers of children attending school
  - (b) Their record of attendance
  - (c) Any special consideration that are accepted either locally or nationally in respect of Travelling children, e.g., finishing term early to allow the children to travel with their families
14. In respect of the latter point, two reports have been sourced from county Education and are attached to this report. They confirm that Traveller children would be removed from a school roll if their parents do not comply with the relevant protocols. It is understood that none of the children have been removed from the school roll.
15. With regard to the first two issues, most of the children are confirmed as attending the local school and are doing well. Further detail is contained in the attached confidential appendix.

### **Changes in Guidance on Traveller Applications**

16. The Council has slowed work on the Gypsy and Traveller Development Plan Document (GTDPD) until clarification is given as to what need is has to be met given the demise of the targets set in the former Regional Spatial Strategy (RSS). There is

likely to be a new target base upon meeting historic local need. It is also clear that Circular 1/2006 will be replaced in due course.

## Options

17. There are number of options that are available to Members, and they are evaluated with as assessment of the pros and cons as follows:
- (a) Authorise the plots as they are – either permanently or just for as long as the special needs remain
- Pros:**
- Children remain in education.
  - Continuity of medical care.
  - Meeting part of the unmet need for the Travellers, removing the stress of uncertainty from the families.
- Cons:**
- The fundamental planning objection to this development will not be resolved: this is the harm that consolidating the authorised development by developing on the land in-between significantly harms the area's rural character, and the council's approach has been supported at all level of challenge through both the Courts and Planning appeal.
  - Loss of confidence in the Council by the settled population as a result of it not properly enforcing the Planning regulations.
  - Setting a precedent that could encourage others to breach planning controls elsewhere within the District.
  - Creating gaps between the authorised sites at Smithy Fen that would weaken the Council's case to resist further loss of the area's rural character and would further consolidate the area covered by lawful caravan sites at Setchell Drove and Water Lane, Cottenham, and have a significant adverse effect on the character and appearance of the area by eroding the openness between the lawful sites.
- (b) Grant Temporary consent for all or some of the plots until acceptable alternatives become available through the GTDPD or until children leave school, etc.
- Pros:**
- As above, but with less certainty for the families concerned.
- Cons**
- As above, and at all stages of the planning and legal process the option of a temporary consent has been considered and judged to be unacceptable because of uncertainty of the time period involved. Given the market situation for development and delays to the GTDPD resulting from the uncertainty as to what constitutes local need, it would be difficult to predict when a site could be made available to meet their needs.
- (c) Provide a site near Cottenham that is acceptable in planning terms.
- Pros:**
- As above.
- Cons:**
- The families concerned have limited resources to provide a site from scratch.
  - There are very limited opportunities to find an acceptable site due to planning constraints.

- If such a site were found it would engender significant local opposition that would disrupt the still-delicate local relationships between the communities and be difficult to get agreement to additional permanent sites in the village.
- (d) Relocate families to vacant authorised sites at Smithy Fen.
- Pros:**
- As above.
- Cons:**
- Difficult to trace owners – and the Council would be trespassing, if that were the case
  - Uncertain outcome, as the attitude of the owners is difficult to predict.
  - If it were to work, it would be breaking new ground as this is not an arrangement with which Travellers are familiar.
- (e) Compulsory Purchase authorised unoccupied sites at Smithy Fen.
- Pros:**
- As above.
- Cons:**
- Difficulties in tracing owners.
  - Uncertain outcome.
  - Cultural aversion for Travellers to occupy a site acquired in this way.
- (f) Enforcement as the authority has done in the past to clear the unauthorised sites.
- Pros:**
- Would achieve the planning aim.
  - Would reassure settled community that the Council is serious about enforcement.
  - Would send a clear message to those that may be taking action in advance of the relevant planning approval that the Council will take strong action to control.
- Cons:**
- Further legal action required that would be strongly contested, and difficulties in providing continuity of education and medical support. The authority would be moving on people who have established local connections, and have no alternative provision to offer.
  - Potential need to provide suitable alternative accommodation to those made homeless. This would have to be bricks and mortar and this, for cultural reasons, should be single storey with space to accommodate a touring caravan.
  - Social challenge of integrating the Traveller families concerned within the settled community.
  - Significant additional cost as a result of these actions and potentially from taking direct action to clear the sites and secure them.

### **Way Forward**

18. Given the educational and medical needs of the families concerned and the need for the Council to continue to enforce against the breach of control and the strength of the planning case, it is considered that an action plan be prepared based on the following:
- (a) That the authority discuss as a priority with the families concerned all the options;
  - (b) That a commitment is given by the families concerned that their children will continue at the local schools;

- (c) That the plots be tolerated until a suitable alternative is secured that provides continuity for education and medical care.
- (d) That, as a first priority and for a finite period, the Council attempts to broker an arrangement where the families can relocate onto authorised sites;
- (e) If after 3 months there is no success the Council will attempt to bring forward a site that meets the families need in a location acceptable to planning;
- (f) In any case the matter be brought back to the Planning Enforcement Sub-Committee after 9 months to review progress, and any need to change approach.

19. Financial	There is dedicated budget for Traveller issues and the Council's decision will be considered against this budget once the costs are known.
Legal	Advice from Counsel has been obtained and is contained within this report.
Staffing	The Council's actions will have to be resourced from within existing staff.
Risk Management	Depending upon what is decided, a comprehensive risk plan will be needed.
Equal Opportunities	The Council will have regard to its Equal Opportunities in deciding what action to take.
Climate Change	None of any significance.

### **Consultations**

- 20. The report has been circulated for comment to colleagues from across the authority and they include, legal, New Communities, Policy, Environmental Health, Housing and Travellers Liaison. In addition, County Education has been consulted and Counsel's advice sought.
- 21. In the run-up to preparing this report there have been briefing meetings with local Members and Cottenham Parish Council.

### **Effect on Strategic Aims**

- 22. The proposal cuts across a number of the authority's aims since it is concerned with listening to and engaging with our communities, and ensuring that South Cambridgeshire is a safe and healthy place to live.
- 23. The proposal is also concerned with health inequalities and focussing on areas of need, while protecting the countryside

### **Conclusions / Summary**

- 24. In summary, the report outlines three (i.e., with the variations identified above) options:
  - (a) To move on all the occupants of the unauthorised pitches. This action would have to be supported at court given the education and welfare needs of all the families;
  - (b) To give temporary consent, although this is not recommended as the timescale is so uncertain; or
  - (c) To continue to tolerate whilst we develop a plan for Smithy Fen with the residents.

25. If the latter option is chosen, a set of improvements and objectives the Council would wish to see, including proper plan for the drainage, improved security and play space, would have to be agreed. This would form a management plan for Smithy Fen, developed up in consultation with the residents of Smithy Fen and the Parish Council and local members. The Council would also need to talk about sorting out use of the unoccupied authorised pitches. The first objectives would be to agree a set of objectives within three months, develop a plan to achieve short-term objectives by six months, and begin implementation within nine months, although this may be sooner.
26. It is recommended that option 3 be the agreed as the way forward.

**Background Papers:** the following background papers were used in the preparation of this report:

Planning Committee Agenda 3/03/2010

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