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South Cambridgeshire District Council

8 November 2007

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This item had not been published with the original agenda and, therefore, had not been in the public domain for the statutory period. The Chairman admitted the report at the meeting on the ground of its urgency. At its meeting on 2 November 2007, the Planning Sub-Committee had requested that the parent committee consider the item because its consideration was essential as part of a court hearing later in November, prior to the next scheduled meetings of either the Planning Committee or Planning Sub-Committee.

AGENDA

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Agenda Item 18

IN THE MATTER OF PLOTS 1,2,6,8 AND 11 VICTORIA VIEW, SMITHY FEN

AND

SECTION 70A TOWN & COUNTRY PLANNING ACT 1990

1. A planning application has been made by Bridget Gammell, Margaret O'Brien, Nellie Quilligan, Elizabeth Sheridan, Kathleen Sheridan, ("the Applicants") for Plots 1, 2, 6, 8 and 11 Victoria View, Smithy Fen, Cottenham respectively. They are seeking "retrospective change of use of land to site one mobile one touring caravan and one day room on each plot (5 plots) for gypsies and travellers."
2. The Secretary of State dismissed appeals on 7 December 2005 seeking personal permissions for the occupation and use of Plots 1, 2, 6, 8 and 11 (along with plots 4 and 10) by Bridget Gammell and her father David Gammell, Margaret O'Brien, Anne Sheridan and Jimmy O'Brien, Nellie Quilligan and Philomena Sheridan and Kathleen Sheridan; and John and Elizabeth Sheridan. The appeals were seeking the permission to site 2 residential caravans on each of the plots (which as noted included plots 4 and 10 at that time).
3. A challenge to the decision of the Secretary of State was instituted under section 288 of the Town and Country Planning Act 1990. This challenge was dismissed by His Honour Judge Gilbart QC (sitting as a Deputy High Court Judge) on 20 December 2006. An application for permission to appeal his judgement was refused by the Court of Appeal in June 2007.
4. Following dismissal of all legal challenges to the Secretary of State's decision to refusal planning permission on the relevant plots the Council instituted injunction proceedings to remedy the harm caused by the breaches of planning control as the occupants of Plots 1,2,6, 8 and 11 (amongst others) remained on the Land despite the refusal of planning permission and in breach of enforcement notices.
5. On 31 July 2007 His Honour Judge Reddihough granted an interim injunction against a number of defendants who are no longer on site but who have not removed the unlawful development sited in breach of planning control on various Plots at Victoria View. The question of whether an injunction will be granted against the occupants of Plots1, 2, 6, 8 and 11 will be determined at a hearing commencing on 19 November 2007.

6. The issue of injunctive proceedings had been held in abeyance pending the final determination of the appeals and challenges against the Council's refusal to grant planning permission on the Plots.

7. The proceedings for an injunction against the Applicants and others was issued in July 2007 and as noted above His Honour Judge Reddihough granted an interim injunction in those proceedings on 31 July 2007 against a number of occupants with the decision in respect of the Applicants to be determined at a hearing commencing on 19 November 2007. Following this, the Applicants made an application for planning permission in the terms set out in paragraph 1 which application is dated 16th August 2007. That application was invalid for a number of reasons and was finally registered on 19th October 2007. The statutory time limits within which the application would fall to be determined expires on 14th December 2007. As the application has been made within 2 years of the dismissal of a planning application by the Secretary of State on the same land, the Council may also consider, subject to the application meeting the relevant statutory requirements and having regard to the guidance in Circular 14/91, whether to exercise its powers to decline to determine the application under section 70A of the Town and Country Planning Act 1990.
8. Having considered the application made by the Applicants and the information in the accompanying documents Officers think that the previous application made in respect of these Plots and dismissed by the Secretary of State on 7 December 2005 is similar to that now applied for as it is for the same or substantially the same development on the same Plots.
9. Officers also think that in so far as it relates to the present application, there has been no significant change in the development plan or any other material considerations.

10. The Secretary of State in dismissing the appeal concluded that no material considerations outweighed the serious harm caused by the development to the countryside. The degree of harm to the countryside has not changed since the dismissal of the appeals.

11. Although the Secretary of State assessed the issue of harm to the countryside having regard to Local Plan Policy HG 23 which has not been saved, the Council has alternative policies in its Development Control Policies DPD that seek to prevent adverse impact on the landscape and Circular 1/06 which was published in its final form after the decision of the Secretary of State does not advocate that sites causing serious harm to the countryside should be granted planning permission in the absence of other material considerations. There is nothing in the Circular which alters the critically important planning judgment in this regard. Indeed, even in the context of considering temporary planning permissions, the Circular requires regard to be given to the guidance on conditions in Circular 11/95 which states that where the harm to amenity cannot be accepted temporary permission would not be appropriate.

12. In any event, the Secretary of State had regard to the draft guidance 01/06 when reaching his decision on the appeals. The Guidance was published in its final form a few weeks later.

13. Therefore, although there have been policy changes, Officers think that they are not significant in the context of this application as they would not significantly alter the weight to be attached to any of the material considerations of importance in the decisions taken by the Secretary of State or the Council.

14. Circular 01/06 does bring about a number of changes in the way that sites for gypsies are to be allocated in development plans and transitional arrangements. However, in this case it is clear that the Secretary of State had regard to the relevant considerations and that he considered the harm to the landscape outweighed other matters. It is reasonable to conclude that the degree of harm to the landscape is not likely to change. The Secretary of State also had regard to the emerging Circular. The draft Circular did not give the guidance it does in its published form in respect of temporary permissions which states that where there is unmet need and no alternative provision and the planning position is likely to change at the end of the temporary period Council's should consider granting a temporary position. In those circumstances substantial weight should be given to the unmet need.

15. In this case, Officers think that, for the purposes of this application, there has not been a significant change because the Secretary of State in his December 2005 decision letter was not satisfied that there was no alternative provision for these applicants. There has been no material change in the availability of the sites referred to by the Secretary of State.

16. The Court has held that it is not the purpose of Circular 01/06 to "restart the clock" on all decisions made prior to its publication. (Bath & North East Somerset Council v Eileen Connors and others[2006] EWHC 1595 (QB)). However, each decision needs to be considered in light of the impact that any changes would have on previous decisions.

17. It is also noteworthy that although Local Plan Policy HG 23 was a factor in the appeal decisions, those elements that did not accord with the Circular such as the definition of gypsies were not applied by the Secretary of State in any event. Indeed, the superseded definition of gypsies was a key factor in the policy not being "saved". Furthermore, the Secretary of State found compliance with Local Plan policy HG 23 other than in respect of the harm to

the character and appearance of the countryside any event. It is apparent that it was the adverse harm to the landscape that outweighed any other factors.

18. Therefore, Officers think that this planning judgment will not change and that this application is substantially similar and that no significant change has taken place in the relevant considerations pertinent to its determination of this application since the Secretary of State's decision.

19. Officers also consider that no attempt has been made to revise the application to take account of the objections raised by the Secretary of State in the previous applications and that there have been no other material changes to the personal circumstances of the Applicants since the decision of the Secretary of State.

20. Officers believe having regard to the above and the planning and enforcement background to this matter and the ongoing injunction proceedings that Applicants are intending to exert pressure to wear down the resistance of the local planning authority by submitting repeated similar applications.

21. In the circumstances, it is considered that having regard to all the relevant material considerations including the guidance in Circular 14/91 that the local planning authority should exercise its power under section 70A to decline to determine the application made by the Applicants.