

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Development and Conservation
Control Advisory Committee

20 April 2006

AUTHOR/S: Strategic Officer Group on Traveller Issues

REPORT ON ENFORCEMENT PROCEEDINGS ON PRIVATELY-OWNED ORCHARD LAND AT SMITHY FEN COTTENHAM

Purpose

1. To brief Members on issues and options for the way forward following the expiry of the deadline for compliance with an enforcement notice served on the owner and illegal occupants of the orchard land at Smithy Fen, Cottenham.

Effect on Corporate Objectives

2.	Quality, Accessible Services	Traveller issues have implications for all four corporate objectives, especially 'Quality Village Life'. The Council's policy on Traveller Issues includes a commitment to: "apply planning policy fairly and firmly in relation to Traveller sites" and "uphold the rights of all local residents and Travellers to live peacefully and safely, with mutual respect for the rights of others".
	Village Life	
	Sustainability	
	Partnership	

Background

3. The site lies directly between Plots 1–5, 5a, 6 and 7 Orchard Drive (also known as Kennedy Croft) and an access road known as Pine View (see map at Appendix A). Plots 1-3 are authorised by planning permission granted in July 1995. Plots 4-6 Orchard Drive are unauthorised and an appeal was dismissed in October 1993. Plot 7 was part of the appeals dismissed by the Secretary of State on 11th March 2005.
4. The land was previously an orchard, which has since been subject to the removal of trees and incursion by Travellers who now occupy part of the site as residential caravan plots. The land has been surfaced with hardstandings and access roads and occupied by caravans, vehicles, sheds and containers. Connections for electricity, water and drainage have been made. Access is off Orchard Drive except to the self-contained plot behind 1 Orchard Drive. This is accessed off Water Lane.
5. In December 2004, following further unauthorised incursions onto the land, the Council served enforcement notices against the illegal occupants and the owner of the land, in line with standard practice.

Relevant Planning History

6. By August 2003 part of the orchard had been encroached upon behind Plots 1-3 Orchard Drive and had been removed behind Plots 4, 5 5a, 6 and 7. The 2003 aerial photograph (Appendix B) shows that there were caravans by that time to the rear of all of the plots except for 3 and 7.

7. The Council was aware that the use of the land amounted to trespass of private land. There were remedies open to the landowner to get the trespassers moved off the land by making an application to the County Court. This was not achieved and as the trespass continued to escalate, the Council finally considered it expedient to take formal enforcement action in December 2004.
8. The landowner had not previously taken court action or other steps that led the Council to believe that the breach of planning control could be stopped other than by way of an enforcement notice. Since the issue of the notice, steps have been taken, by the landowner, which led to the grant of an immediate possession order by the County Court on 16th March 2005. Some of the occupants of the land have since moved off, but some still remain.

The Enforcement Notice

9. The enforcement notice served on 22 December 2004 required the use of the land to cease; for the caravans/mobile homes and ancillary development to be removed and the land to be restored to its condition before the breach of control took place. The landowner subsequently appealed the enforcement notice following trespass by others. It was made on the grounds that the steps required were excessive and the time for compliance was too short. The appeal was heard by way of written representations.
10. It was claimed that the notice was invalid because more than one breach of control had been identified and the notice also required the land to be restored to its condition before the change of use had taken place. The fairness of the notice was also questioned as it was served on the landowner, rather than the contravener. The inspector subsequently found nothing wrong in the Council's approach.
11. On 14 December 2005 the Inspector dismissed the appeal and upheld the enforcement notice with variations. The inspector found that to remedy the breach of planning control and the harm to amenity, that all of the unauthorised development should be removed from the site. The landowners concern was of bearing the cost of this alone and within a limited timescale. The inspector acknowledged this fact in concluding "... I urge the Council to adopt a sympathetic attitude to the appellant's plight and to defray the costs of a situation that was not of her making ... (but) that is as far as I am able to go". The decision on how to seek compliance remains with the Council. The Council had already conceded that the land need not be returned to an orchard, but to the condition it was in immediately prior to serving the enforcement notice.
12. The period for compliance was also tied in to that for enforcement appeals at Pine View and Victoria View, Smithy Fen, Cottenham. Taking those decisions into account, the inspector confirmed that the use of the land should not be extended beyond three months. This was as the Council had requested. However, the period for removal of drains, septic tanks and other services, accesses, hardstandings and restoration of the land was extended from three to twelve months.
13. The decision therefore means that the unauthorised occupation of the land should have ceased on or before 14th March 2006 and the remedial works completed on or before 14th December 2006. A Council inspection of the orchard land on 15 March showed that the occupiers of plot 1 had left but there remained breaches of the enforcement notice further along the land at plots 2, 5 and 5a Orchard Drive.

The Injunction

14. The Council obtained an interim injunction from the High Court on Thursday 6 April 2006 on what is known as the “Northern” and “Southern” land at Smithy Fen Cottenham (see map at Appendix C). The hatched area on the map within the Southern area is part of the orchard land, which the Council included in its legal proceedings. The injunction requires:

a. *Subject to the proviso below all the Defendants forthwith be restrained from causing or permitting any caravan, mobile home, day room or shed to be stationed within the Northern and Southern areas*

Provided that Defendants 4, 6 and 11-15 are permitted to continue to station caravans, mobile homes, sheds and day rooms within the Northern and Southern area (or any replacement caravan, mobile home, shed or day rooms of a similar type) as follows –

i. Defendant 11 – occupied plot within Northern area – 1 mobile home

ii. Defendant 13 – plot 5 in Southern area – 1 mobile home, 1 shed

iii. Defendant 4 – plot 5a in Southern area – 1 mobile home

iv. Defendant 12 – plot 6 in Southern area – 1 touring caravan, 1 mobile home, 1 shed

v. Defendant 14 – plot 10 in Southern area – 1 mobile home, 1 dayroom

vi. Defendant 15 – plot 11 in Southern area – 1 touring caravan, 1 dayroom

vii. Defendant 6 – plot 15 in Southern area – 1 touring caravan, 1 mobile home, 1 dayroom;

b. *The Defendants be restrained forthwith from occupying any caravan, mobile home, shed or other residential accommodation brought on to the Northern or Southern areas in breach of a. above;*

c. *The Defendants forthwith be restrained, whether by themselves or their servants or agents, from causing or permitting any material suitable for the use in the creation of hard surfacing or drainage to be brought onto the Northern or Southern areas;*

d. *The defendants forthwith be restrained, whether by themselves or their servants or agents, from causing or permitting excavations to be made or building operations to be carried out preparatory to or associated with the creation of hard surfacing or drainage on the Northern or Southern areas.*

15. In brief, the injunction prevents any future occupation of the Northern and Southern areas with caravans etc. or hard surfacing. The current occupiers are allowed to continue in occupation subject to further orders, but prevented from bringing on additional caravans etc or hard surfacing. This injunction prevents any further occupation of the orchard land within the hatched area of Appendix C, almost 50% of that owned by the landowner referred to in this report.

Considerations

16. It is accepted that the landowner has not encouraged the trespass to take place. In respect of both the Victoria View and Pine View sites, the Council's case that the scale of development at Smithy Fen is unacceptable has been agreed by the ODPM. The Council continues to try and work with the Travellers on unauthorised sites so that their needs are met and that they comply with our reasonable planning

requirements to limit the scale of the development in the area.

17. It is the Strategic Officer Group's view that enforcement action against the landowner would not be justified. However, this would not be the case in respect of those trespassing on the land. Following Legal Advice the Council has adopted an approach that involves the use of injunctions to achieve its aims. Most of those on the orchard land have plots on adjacent land. While not all this land has the benefit of planning permission (see the accompanying map at Appendix A), there are no immediate human rights issues if they are made to comply with the enforcement notice.
18. Legal advice has previously been reported to Cabinet to the effect that the Council cannot either fund or take action on behalf of an individual in respect of a private interest. The landowner has also now obtained a possession order from the County Court as referred to in paragraph 8 of this report. It would be possible for the landowner to enforce the order on application to the County Court and payment of a one off fee.
19. A further issue is the decision that is awaited from Silber J, in respect of the adjacent Pine View site. The council's application under the injunction was resisted by those enforced against on the basis that they should be granted temporary permission while the Council is producing its Development Plan Document in respect of Travellers' needs (i.e. as allowed for in Circular 1/2006 Planning for Gypsy and Traveller Caravan Sites). If our arguments are not accepted, it would be a factor for the Council in determining the approach in respect of those that are in breach on the orchard land.

Options

20. The Council has the following options:
 - a. Enforce the notice against all the occupiers of the Orchard land and consider direct action against the unauthorised development on the land;
 - b. Continue and enforce the interim injunctive action against future occupiers of the orchard land;
 - c. Consider injunctive action to remove the current occupiers of the Orchard land;
 - d. Take no action but recommend the landowner seek legal advice on enforcing the possession order.

Financial Implications

21. There are significant costs involved with both direct action and a strategy in respect of injunctions. Although no figures have been sought for this site, experience elsewhere suggests that these costs will be considerable. As an example the cost to the Council of gaining the injunction for the Northern and Southern area is approximately £15,000. The cost for the landowner to enforce the possession order is £95.00.

Legal Implications

22. The Council has powers pursuant to section 187b of the Town and Country Planning Act 1990 to seek injunctions from the courts to restrain breaches of planning control. It is a powerful tool in a local authority's armour as it enables the Council to seek an injunction against anticipated as well actual breaches of planning control. However, it should be noted that, although the provisions enable such applications to be made to

the grant of an injunction, it is entirely at the courts' discretion. That discretion is exercised taking into account all the factors relevant to the application (including human rights issues) and in accordance with the principle of proportionality. Previous legal advice has stated that the Council cannot offer specific legal advice or support to the landowner or any other private individual.

Staffing Implications

23. Significant amounts of officer time have been spent on this case, and further time would be required to carry forward any action, other than advising the landowner to pursue the possession order.

Risk Management Implications

24. There is a risk that if the Council takes no action, the unauthorised breaches of control on the orchard land could remain. In addition there has been considerable press coverage, some of it unfavourable towards the Council, on the basis that the landowner is not receiving the support deserved.

Consultations

25. The Strategic Officer Group has been party to all the discussions and preparations of this report.

Equal Opportunities Implications

26. In line with duties under the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000, the Council operates a Race Equality Scheme (RES) in order to eliminate unlawful discrimination and to promote race equality and good race relations. The 2005 – 2008 Scheme identifies planning enforcement & appeals and corporate co-ordination of the Council's approach to Traveller Issues amongst the most relevant services through which the Council can fulfill its general statutory duty. The RES gives priority to actions relating to Travellers as the biggest ethnic minority in South Cambridgeshire (estimated to be around 1.7% of the district's population).
27. Having been contacted by the landowner of the orchard land, the Commission for Racial Equality (CRE) got in touch with the Council earlier this month about this particular case. This has provided the opportunity for officers to clarify to the CRE that the Council:
 - is well aware of its statutory responsibilities to promote race equality and good race relations;
 - is making sure that planning control requirements are applied fairly and consistently to everyone;
 - has made all district councillors aware of a CRE briefing about Gypsy and Irish Travellers that the Commission for Racial Equality published last month as part of an information pack published in the run-up to the May 2006 local government elections;
 - has made significant progress over the last year in working towards a realistic and mutually acceptable solution to Traveller issues in the district;

- continues to invite the CRE to provide constructive suggestions and examples of good practice that would help the Council to address the specific circumstances that South Cambs faces.

Conclusions/Summary

28. Negotiations with the landowner are not straightforward. Perceptions of the Council's actions are deemed unreasonable. However the landowner is apparently willing to co-operate with the Council.
29. As the Council has been successful in its application for an injunction on the Northern and Southern areas of Smithy Fen, we are now able to control further occupation of part of the orchard land (Hatched area on map at Appendix C). If the landowner enforced the possession order and the illegal occupiers were removed by the County Court Bailiffs, the Council could then prevent the hatched area from being re-occupied by way of the injunction granted on 6 April 2006.
30. The Inspector has urged the Council to adopt a sympathetic attitude to the appellant's plight and to defray the costs of a situation that was not of her making. This certainly would be the case if the approach adopted does not involve action against her, and this would be the case if we direct any action against the occupiers of her land

Recommendations

31. That the Council take no direct action against the Landowner.
32. That the landowner is encouraged to enforce the possession order against the occupiers of the orchard land, and the Council work with the owner to agree on a suitable way of protecting the land from future incursions.

Background Papers: Planning appeal APP/W0530/C/04/2001008
Circular 1/2006
Application to the High Court claim number HQ05X02057

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