

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

At a meeting of the Development and Conservation Control (Advisory) Committee held on
Thursday, 20 April 2006 at 1.00 p.m.

PRESENT: Councillor Dr DR Bard – Chairman
Councillor Mrs DP Roberts – Vice-Chairman

Councillors: SGM Kindersley Mrs DSK Spink MBE
NIC Wright

Councillors MJ Mason, EJ Pateman, Dr SEK van de Ven and TJ Wotherspoon were in attendance, by invitation.

Apologies for absence were received from Councillor SM Edwards and Dr JPR Orme.

1. APOLOGIES FOR ABSENCE

Apologies were received from Councillors SM Edwards and Dr JPR Orme.

2. DECLARATIONS OF INTEREST

None.

3. MINUTES OF PREVIOUS MEETING

The minutes of the meeting held on 14 June 2005 were agreed as a correct record, subject to the inclusion of the following comments made by Councillor SM Edwards, which the Advisory Committee members acknowledged as forming part of the Council's existing policy:

Advice for Development and Conservation Control Committee – Next Steps (Minute 9)

“Councillor SM Edwards advocated the use of a two-pronged approach in respect of breaches of enforcement notices: proceeding down the route of injunctions while also prosecuting for breach of enforcement notice under the Town and Country Planning Act. Continuous prosecution for each day a party found guilty of remaining in breach could result in steadily increasing fines.”

Members noted that prosecution for breach of enforcement notice was existing Council policy. Legal advice was that fines might not reach high enough levels to encourage the party in breach to vacate the area.

4. DISTRICT-WIDE PROHIBITIVE INJUNCTION

The Advisory Committee received Counsel's advice that it was unlikely to be successful with an application for a district-wide injunction prohibiting travellers from setting up an unauthorised site anywhere in South Cambridgeshire. Counsel had suggested that pre-emptive injunctions be sought against identified “hot spots”, but there would be difficulties involved in demonstrating to a judge the criteria for a “hot spot” and how the Council could prove that “persons unknown” had been made aware of the existence of the injunctions.

Members commented that:

- The Council could be accused of discrimination if it identified particular areas as “hot spots”;

- “Hot spots” could change;
- Parish Councils might not have the financial resources to cover legal costs of applying for their parish to be designated as a “hot spot”;
- Only the District Council, as Local Planning Authority, had the legal power to seek injunctions;
- There was an apparent conflict as the government’s recent circular on Gypsy and Traveller sites made allowance temporary consent for unauthorised sites on a “without prejudice” basis, yet the District Council had been advised that a district-wide injunction would be seen as prejudging planning merits of any unauthorised sites.

The Advisory Committee **AGREED** to invite Counsel to address their next meeting and to request officers to prepare a further report detailing the likely time and costs involved in applying for injunctive action relating to specific locations.

5. EXCLUSION OF PUBLIC

Following legal advice, the Advisory Committee, with three votes in favour and one abstention, **RESOLVED** that the press and public not be excluded from the meeting during consideration of the following item, but reserved the right to move into private session if necessary.

Councillor Mrs DP Roberts regretted that the advice had not been given in time to allow the press and public to attend the meeting and asked that in future such advice be given before agenda publication.

6. COTTENHAM: ENFORCEMENT PROCEEDINGS ON PRIVATELY-OWNED LAND AT SMITHY FEN

The Advisory Committee’s attention was drawn to maps and aerial photographs of the land at Smithy Fen and Members were advised of the legal circumstances of the various areas. Officers’ view was that the Council should not take direct action against the landowner, but, whilst Members acknowledged the personal circumstances of the landowner, they were also aware of race relations legislation which required the Council to treat the landowner and adjacent residents equally. It was clarified that racial equality was not a consideration as it had been proven in court that the property belonged to the landowner.

Members noted that the landowner had received a possession order from the Court and was now in a position to apply for possession proceedings, which would be undertaken at the Court’s expense until the land was cleared. This, in addition to the Council’s enforcement action, presented a two-pronged approach to clearing the illegal encampments and it was noted that possession proceedings could progress far more quickly than enforcement action. Members also remarked upon the difference in costs between approximately £15,000 of taxpayers’ money for injunctive action, versus a cost to the landowner of £95 for enforcement of the possession order. The Council would not be seen to be doing all it could to resolve the situation unless it encouraged the landowner to make use of the possession order.

On the proposal of Councillor SGM Kindersley, seconded by Councillor NIC Wright, the Advisory Committee **AGREED** that an additional recommendation be made to the Development and Conservation Control Committee: “if the landowner does not pursue a possession order by 31 December 2006, then the Council review its decision not to take direct action against the landowner”.

Members considered that land ownership came with certain responsibilities, including securing the boundaries of that land, and queried whether the Council could assist with securing the boundaries to prevent future encroachment. Legal advice was that this was inappropriate, but it was noted that Basildon District Council had done so without challenge.

On the proposal of Councillor Mrs DP Roberts, seconded by Councillor Dr DR Bard, the Advisory Committee **RESOLVED** that the press and public be excluded from the meeting during the next part of the discussion on the grounds that it was likely to disclose exempt information as defined in Paragraph 6 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended).

Members received an update relating to specific sites and an estimate of the likely timescale before the next steps in the legal process could be taken. The meeting then returned to open session.

The Advisory Committee **RECOMMEND TO THE DEVELOPMENT AND CONSERVATION CONTROL COMMITTEE** that:

- (a) The Council take no direct action against the landowner;
- (b) The landowner be encouraged to enforce the possession order against the occupiers of the orchard land, and the Council work with the owner to agree a suitable way of protecting the land from future incursions; and
- (c) If the landowner does not pursue a possession order by 31 December 2006, then the Council review its decision not to take direct action against the landowner.

The Meeting ended at 2.15 p.m.
