

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

**REPORT TO:** Development and Conservation  
Control Committee

10<sup>th</sup> May 2006

**AUTHOR/S:** Deputy Director of Development Services

### MOOR DROVE, HISTON (LATE REPORT RELATING TO AGENDA ITEM 5)

#### Purpose

1. To inform Members about the submission of a further application for the use of this site to accommodate Gypsies

#### Effect on Corporate Objectives

2. Quality, Accessible Services	Not applicable
Village Life	Village life has been significantly harmed by the establishment of unauthorised travellers sites in the parish. Travellers need access to education and healthcare
Sustainability	Not applicable
Partnership	We are working with the County and other Districts to address travellers' needs in the sub-region.

#### Background

3. The application follows the publication of Circular 1/2006. One of the significant changes in the approach to be taken towards Gypsy and Traveller sites contained in this Circular, is a requirement to consider the grant of temporary planning permission on a without prejudice basis, until such time as there is a Development Plan Document in place that properly meets Gypsy and Traveller' needs. The Council has previously assessed the suitability of this site under planning application S/2230/03/F. The application was primarily refused on 2 grounds (i.e. site in the Green Belt and harm to highway safety). Although this decision was not appealed, the enforcement notices served in parallel were. The appellant argued that planning permission should be allowed. However the Secretary of State supported the Council's case and dismissed the appeal, and in doing so he also agreed that there was significant harm to the amenities of a neighbour. Under the Town & Country Planning Act 1990, as modified by Circular 08/2005 Guidance on Changes to the Development Control System, a Local Planning Authority (L.P.A.) can under section 70(A) decline to determine an application where there are no significant changes since the refusal. If an LPA has acted unreasonably in declining to do so, the applicant may seek Judicial Review of the authorities decision.

#### Considerations

4. The Circular clearly requires Planning Authorities to consider, on a without prejudice basis as to the final decision, whether there's a reason to grant a temporary consent to cover the period until a Development Plan Document is in place. In effect, a balance has to be struck between the harm caused by the on-going breach of control

and the harm to those in breach i.e. putting them back on the road, difficulties in accessing education and medical services.

5. In this particular case, the application has not been invited. Indeed officers take the view that it is unlikely to be a case considered to be suitable for a temporary consent. Since the legislation is still so new, there's little steer provided by determined cases. However in the one case that has, involving South Bucks, the Judge found in favour of the Travellers. In granting an injunction against them (on a site where the first enforcement notice was served on them in 1975!), he suspended it until their new application for temporary consent under the auspices of 01/2006 was determined, together with any appeal. In summary, he did not consider that the on-going harm was sufficient to justify immediate action.  
Applying the same logic to Moor Drove would not necessarily result in the same outcome since there's a continuous risk to road safety and harm to the neighbour's amenity (the harm to the Green Belt and rural protection policies would however not be so immediate in terms of harm)  
In view of the real ongoing harm that the use of the site causes to the immediate neighbour and the highway safety issue, and the need to resolve these harms as soon as possible, Counsel's opinion has been sought as to the best way forward on this site.

### **Counsel's Opinion**

6. Counsel advises that Section 70(A) gives the Local Planning Authority discretion to refuse to determine an application if the Secretary of State has determined an appeal within the previous two years or if there is an absence of a new significant relevant consideration. It is a subjective test and it is therefore the L.P.A.'s judgement as to whether there's a significant new relevant consideration. However the benefit of any doubt should be given to the applicant. It is well known the L.P.A. can be Judicially Reviewed for failure to determine. It is a discretion, so the L.P.A. could still determine. Counsel is assuming that the only change is Circular 01/2006.  
Therefore the District Council would be lawful to determine it because the Council exercised its discretion. On the other hand, if Council refused to exercise its discretion, and was Judicially Reviewed, the applicant would stand a good chance of success.
7. Circular 01/2006 introduces new considerations. The only matter for debate is, is it significant and relevant. A number of H.M. Judiciary are grappling with the relevance of Circular 01/2006, this seems to point to the Circular not being easy and therefore could be seen as significant and relevant.
8. The conclusion is therefore that the application should be determined and that we should save our resources to the appeal rather than fight both a possible Judicial Review and the appeal.

### **Appeals Manager**

9. The indications are that the LPA is likely to refuse the repeat application. The First Secretary of State (FSS) concluded that the appeal should be dismissed for several reasons. These included the fact that any increased vehicular use of Moor Drove should be "firmly resisted" (para. 18) and the use of the site has led to a "significant loss of residential amenity" for the occupants of Beck Farm (para. 20). These are significant objections given they both involve individual harm rather than harm to the wider environment.
10. In dismissing the Appeal, the FSS acknowledged his inspector's conclusions that there is a "substantial" need for further gypsy sites in the District. This did not,

however, amount to very special circumstances sufficient to outweigh the harm to the Green Belt and the other identified harm.

11. The possibility of a three year temporary permission was considered and rejected (para. 26). The FSS concluded that "such a period would be excessive bearing in mind the harm caused by the development." This is significant. The harm cannot be undone so long as the use continues. The Gale's will continue to be adversely affected and there remains the potential for accidents that could endanger lives.
12. The repeat application is not supported by any material change in circumstances. There is therefore nothing to be gained from determining the application. There is the potential for further delay with an appeal at the expense of the identified harm being allowed to continue.
13. Paragraph 45 of the new Circular states that local planning authorities should give consideration to granting a temporary planning permission where there is unmet need but no available alternative site provision. That was exactly the same position adopted by the FSS when he refused to grant a temporary permission. The time required to allocate sites as part of a DPD may yet be considerable. Thus the circumstances remain the same, while the harm continues.
14. Even if this application had not been resubmitted, it would have been incumbent of us to consider the terms of the new circular when pursuing an enforcement action. Refusing to consider the application (i.e. returning the application) will not change the Council's responsibilities in seeking to find additional sites.
15. In short, consideration and refusal of the application will not take this site any further forward. If anything, it will be a retrograde step as the Council will be prevented from taking remedial action for some time.

#### **Head of Legal Services**

16. It is considered that the thrust of what both Counsel and I were saying is that it is for the L.P.A. to make a decision on each case based on the facts as to whether to exercise its discretion and determine or not determine the new application taking into account new significant relevant considerations.  
Counsel then advises, based on the current treatment of Circ.1/2006 by the Courts, as to whether the Circ. would be seen as a new significant relevant consideration and comes to the initial view that it would. Counsel continues to say if a decision not to re-determine the application is made, then any J.R. of that decision may succeed.

#### **Financial Implications**

17. Enforcement of planning control and costs associated with homelessness applications and legal action are the subject of separate budgets.

#### **Legal Implications**

18. The Council has statutory responsibilities to both the travellers that may become homeless as a result of their developing a site without permission, and our action to enforce the decision of the ODPM requiring the travellers to vacate the sites, and to protect the amenities of the neighbouring property and highway safety.

#### **Staffing Implications**

19. Additional workload to officers within Community Development, Housing and Development Services Departments in relation to considering these applications, the travellers' needs and following through the ODPM's decision to support the Councils enforcement against these sites.

#### **Risk Management Implications**

20. If the Council does not have regard to the travellers' needs, its attempts to enforce the decisions made by the ODPM may be prevented. If the travellers are not re-housed, they may be forced back onto the road and this may be harmful to their health and educational needs.

#### **Consultations**

21. This is a legal question where the normal consultation procedures do not apply.
22. The views of the Head of Legal Services and Appeals Manager have been sought.

#### **Equal Opportunities Implications**

23. The Council has a statutory duty under the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000 to eliminate unlawful discrimination and to promote race equality and good race relations. Romany Gypsies and Irish Travellers are officially recognised as ethnic minorities by the Commission for Racial Equality. Extrapolations from the January 2005 caravan count suggest that Travellers could make up around 1.7% of the district's population.
24. The Council's policy on Traveller Issues "upholds the rights of all local residents and Travellers to live peacefully and safely, with mutual respect for the rights of others." The three-year review of the Council's Race Equality Scheme (being reported to the Cabinet in January 2006) identifies development control amongst the most relevant services through which the Council can fulfil its general statutory duty for race equality.
25. The Council has already made good progress in promoting race equality in relation to Travellers. South Cambridgeshire has more caravans on authorised private plots than anywhere else in the country. It is also in the top 10% of all districts for the number of caravans on council-run sites. The Council continues to call on the Government for a national policy on Traveller Issues, a duty on all councils to make provision for Travellers, and for sites to be kept to a reasonable size.

#### **Conclusions/Summary**

26. Clearly there will be some sites where a temporary consent is an appropriate course of action. Officers take the view that this site, because of the on-going harm to neighbours and highway safety, is not such a case. However, in recommending that we do determine the application, we are mindful that the alternative is to risk further delays i.e. a successful Judicial Review application by the applicants requiring us to determine the application.

## **Recommendations**

27. That the application continues to be processed, and determined

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

Local Plan 2005 South Cambridgeshire Local Plan  
Planning & Compensation Act 1991  
Circular 01/2006 on Gypsies & Travellers  
Town & Country Planning Act 1990  
Circular 08/2005 Guidance on Changes to the Development Control System  
Report to Cabinet for the 12<sup>th</sup> January 2006 on Race Equality Scheme (Item 4)  
Judgement in the High Court between South Bucks District Council and Andrew and James Smith

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