

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Development and Conservation Control Sub-Committee 4th August
AUTHOR/S: Head of Planning

PINE VIEW, SMITHY FEN, COTTENHAM

Purpose

1. This item is to advise Members following a decision in the High Court (7 June 2006) of possible action against the Travellers on Pine View Cottenham. Members need to consider the next steps to be taken to ensure compliance with the decision.

Legal Advice

2. Due to the current staffing situation in the Legal section, this report has not had the normal level of legal input, and while our Counsel has seen the draft report, she is preparing more detailed comments that will be made available to Members before the meeting, addressing some of the matters relating to the options available to the Council should the injunction not be complied with.

Effect on Corporate Objectives

3.

Quality, Accessible Services	The Council works hard to apply planning law and policy fairly and consistently to development across the district. This is embedded in the Council's policy on Traveller issues
Village Life	
Sustainability	
Partnership	

Background

4. In early 2003 an access track and a bund on area I and J marked on the attached plan (appendix A) were constructed with area H then being occupied by Gypsy caravans.
5. On 19 March 2003, the first enforcement notice was served and it prohibited use of area H as a residential caravan site and the ancillary provision of drains, accesses and hard-standings. The first defendant (listed in appendix B) appealed against this notice.
6. On 19 March 2003, a second enforcement notice was served relating to areas I and J and it required the removal of the earth bund and the track. A stop notice was also served. The thirty-fourth defendant (listed in appendix B) appealed against the second enforcement notice.
7. In April 2003 caravans arrived on area I and plots 9 and 10 of it were occupied. On 28 August 2003, a third enforcement notice was served which related to area I and J and it prohibited its use as a caravan site and ancillary provision of drains, accesses and hard standings. The second defendant appealed against this enforcement notice. A stop notice was also served.

8. On 18 November 2003, the Inspector upheld the first and second enforcement notices. Applications were also made for planning permission to use areas H, I and J as caravan sites but the Council refused these applications and the applicants then appealed to the Secretary of State.
9. The deadline for compliance with the first and second enforcement notices was 18 February 2004 but they still have not been complied with.
10. Thus three enforcement notices have been served in respect of different parts of the land and they have all been upheld on appeal. Many of the defendants applied for planning permission to use the land as a caravan site. After an eight-day inquiry into these applications for planning permission, the Inspector on 10 January 2005 recommended, first that the applications for planning permission be refused and second, that the appeal against the third enforcement notice be dismissed.
11. On 11 March 2005, the First Secretary of State who also refused to extend the time for complying with the third enforcement notice upheld these recommendations on appeal. After the deadline for complying with each enforcement notice passed, the Council resolved to seek an injunction, with the purpose of seeking compliance with the enforcement notices against the occupiers of the site, who were described in their counsel's written skeleton argument as "a family group of ethnic 'Irish Travellers'". The injunction was granted on 7 June 2006.
12. The defendants named in the Order (appendix B) are responsible to the courts for complying with the injunction, and there is still time for them to do so. In the meantime, it is reasonable that this Sub-Committee start to consider different scenarios and appropriate courses of action, without making firm decisions on the way forward until after the deadline dates.
13. Prior to the Council's application for an injunction, the former Development and Conservation Control Sub-Committee on 10 May 2005 went through a similar process, and Members may wish to refer to the minutes of that meeting as background information. It is important that members consider whether/ how we should proceed in light of this decision having regard to all other material issues.

ORDER FOR AN INJUNCTION

14. The Injunction (areas H, I, and J are shown on the attached plan) required that:
 - a. Subject to the proviso below the Defendants forthwith be restrained from causing or permitting any caravan, mobile home, day room, shed or other residential accommodation to be stationed on the Land

Provided that Defendants 2-7, 18, 28 and 29 are permitted until 7 September 2006 to station the caravans, day rooms and sheds present within H at the date hereof, namely –

Plot 1 – 1 caravan and 1 shed
Plot 2 – 1 day room and 1 shed
Plot 3 – 1 caravan and 1 shed
Plot 4 – 1 caravan and 1 shed
Plot 5 – 1 caravan, 1 day room and 1 shed
Plot 6 – 1 shed

- b. The Defendants be restrained forthwith from occupying any caravan, mobile home, day room, shed or other residential accommodation brought onto the Land in breach of a. above
- c. Defendants 1, 8, 14, 20, 22, 24, 26, 27, 30 and 32-36 remove the hard surfacing within the plots on the Land by 7 October 2006
- d. Defendants 2-7, 18 and 28 remove the hard surfacing (but not the access road) within H by 7 October 2006
- e. Defendants 1, 12 and 14 remove the access roads on I and J by 7 October 2006
- f. All the Defendants forthwith be restrained, whether by themselves or their servants or agents, from bringing any material capable of being used to create hard surfacing or drainage onto the Land, or from creating any area of hard surfacing or laying any drains on the Land, or from causing or permitting the same

A copy of the Final Order is attached (appendix A), as well as a brief history of the unauthorised development on the site (appendix C).

Considerations

- 15. Firm and fair enforcement of planning control, official decisions and orders form a key part of the Council's approach to Traveller issues. This sits alongside strengthening community relations and contributing to the regional response to meeting Travellers' needs for accommodation and other services. Relevant actions are set out in the 2006/07 Traveller Issues service plan, the 2005-08 Race Equality Scheme and the report to Cabinet in June 2006 on preparations for the Gypsy and Traveller Development Plan Document (GTDPD).
- 16. The different requirements of the Order come into force on different dates. In effect, the vans etc on plots 1-6 to be removed after the 7th September, and all the other works on these and the other plots have to go by the 7th October. The September date is for those plots that were occupied at the time of the hearing, and the Council's case was opposed on their behalf. None of the other defendants made any representations or adduced any evidence and it appears that they have now left the land.
- 17. The September date was apparently chosen to allow the occupiers of the sites to make alternative arrangements including the schooling of their children. However, since the date of the Hearing (February 2006), all the plots have been unoccupied and the families are, reportedly, currently in Spain. At the time of the Hearing the Judge commented, "It was pointed out that attendance rate of the defendants' children *"was well below that of the majority of students at the college"*. Officers continue to visit Pine View on a regular basis and will make themselves available to discuss housing and homelessness issues with the illegal occupants should they return before 7 September.
- 18. In coming to his decision on the case, the Judge had regard to the new Circular, human rights and race issues and all the arguments advanced before confirming the Order the Council sought. The Injunction will allow us to take immediate and effective action by commencing committal proceedings for breach of a court order, against anyone bringing on a new van through the Courts. Indeed, as noted above, the

Councils' actions have been effective in preventing further incursions. Further, any one occupying any van on the site after the 7th September can also be subject to the same committal proceedings.

19. After the 7th October, the same committal proceedings can be taken against those specified in the Order if they have not complied with its terms. However, if these notices are not complied with and the Council takes the view that it will have to carry out these works, a further application may have to be made to the Courts to give the necessary authority. Whether this is in fact necessary is a point being checked by our Counsel. Further, if the Caravans etc on the specified plots are not removed, a further application will have to be made to the Courts to give the necessary authority to remove them (see comments above). In respect of all the existing defendants and any persons at present unknown, needs assessments will have to be either updated, or if relevant, carried out.

Options

20. If the named defendants do not comply with the injunction deadlines, they will be in breach of the courts' Order and the Council will need to institute committal proceedings. The Court may either impose a custodial or other sentence or suspend any sentence on the condition that the Order is complied with and the contempt of court purged. This approach has been effective in the past.
21. This would not, in itself, address the issue of empty caravans, out-building and hard-standing still on the unauthorised development. Unless the gypsies undertake to do so as part of the basis for a suspended sentence further applications would possibly have to be made to the courts in order to give the Council the necessary authority to act. Before the Council could instigate such applications, needs assessments would have to be updated in respect of all the existing defendants, and carried out in relation to any new individuals on site who are currently not yet known to this Council.
22. Counsel is reviewing the course of action the Council would need to take if it wanted to clear the land. Every effort would be taken to have the costs paid for by those subject to the Orders. However, experience suggests that this might not be achievable. Attached at appendix D is a working document outlining the ongoing issues that officers will have to continue to address, and some of these will need further involvement of Members.

Financial Implications

23. The scale of the financial implications will depend on whether and how far the illegal occupants of Pine View comply with the Order. If land clearance proved necessary, the extent of the costs could depend on whether the site was occupied and whether such action was physically contested.
24. In January 2006, the Council agreed that:
 - a) money from the 2005/06 Traveller Issues budget that is not spent in the current year be transferred into a specific ear-marked reserve for spending on any aspect of addressing Traveller issues in the District; and
 - b) use of the £550,000 allocated in the Medium Term Financial Strategy for planning enforcement on any unauthorised Traveller site in the District in 2006/07 may be extended to all forms of enforcement action on such sites.

Legal Implications

25. 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 DCLG (ODPM) requiring the Travellers to vacate the sites.

Staffing Implications

26. Again, the scale of the staffing implications will depend on whether and how far the illegal occupants of Pine View comply with the Order. The Strategic Officer Group is actively considering how any additional workload would affect Planning, Housing, Community and Environmental Health services, as well as the corporate centre. It may prove necessary for relevant Service Heads and Portfolio-holders to agree revisions to targets and timescales within original 2006/07 service plans.

Risk Management Implications

27. If we do not have regard to the Travellers' needs, the Council's 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.

Counsel's Opinion

28. Attached at appendix E.

Equal Opportunities Implications

29. 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.
30. 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.
31. 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

32. While it is hoped that the Orders will be complied with, the Council has to be prepared to take the necessary legal action to ensure compliance with both the Secretary of State's decision and that of the Judge when confirming the Orders.

33. It follows that if those named are in breach at the relevant date, we take whatever court action necessary to ensure their compliance, and if necessary, compliance with the Enforcement Notices. Counsel will need to be satisfied that the recommendations are the most effective way forward

Draft Recommendations

- 34.
- 1) Before the 7th September anybody found to be breach of the Orders be prosecuted.
 - 2) After the 7th September, any persons in breach of the order are prosecuted.
 - 3) After the 7th October all those in breach of the Orders be prosecuted.
 - 4) Action is taken to ensure compliance with the enforcement notices if required.
 - 5) All these actions to have regard to proper consideration of the individuals concerned needs assessment.

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

- Local Plan 2005 South Cambridgeshire Local Plan 2004
- 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
- Judgement in the High Court between South Bucks District Council and Andrew and James Smith
- Report to Cabinet for the 12th January on Race Equality Scheme

Contact Officer: G.H.Jones – Head of Planning
Telephone: (01954) 713151