

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Planning Sub-Committee

11 October

AUTHOR/S: Head of Planning / Head of Legal Services

PLOT 17 (REAR OF PINE VIEW) SMITHY FEN

Purpose

1. This item is to advise Members on the enforcement action taken to-date against Plot 17 (rear of Pine View) Smithy Fen, Cottenham, and the options available for future action.

Background

2. A planning application for the use of the site as a Traveller site was submitted in 2004, S/2037/04/F refers. The relevant fees were not submitted and the application was not determined. The occupant was informed of this on 27 February 2006, and she was also informed that were the relevant fee paid, the application would be refused.
3. As a result of the planning application not being determined an enforcement notice was issued and took effect on 15 May 2006. This required the occupier of the land to cease using the mobile home for residential purposes, to remove it from the land, take up the hard surfacing and remove it and to take up and remove the electricity and water supplies on the land. No appeal was made against the enforcement notice.
4. The time for compliance with the notice was three months from the date it came into effect. This date passed on 15 August 2006 and as at 4 September 2006 the notice had not been complied with.
5. A letter was handed to the occupant on 24 August 2006 and the circumstances of her occupation of the land were reiterated to her. She stated that she was not going to move off the land.
6. On 4 September 2006 the mobile home was still on the land as were the gravel, electricity and water connections.

Considerations

7. On 6 April 2006 the Council obtained an interim injunction preventing any further stationing of caravans on two areas of land at Smithy Fen, referred to as the 'Northern Area' and the 'Southern Area'. Plot 17 falls within the Northern Area. At the time of the proceedings there were several caravans stationed within these Areas of which this mobile home was one. None had the benefit of planning permission. However, as the purpose of the interim injunction was merely to prevent the arrival of *further* caravans, it contained a proviso making it clear that caravans already stationed in the two Areas did not have to leave.
8. The Council understands that the occupant does not live in the caravan all the time, having accommodation elsewhere on Smithy Fen. A lease company own the caravan and they are trying to reclaim it following non-payment of hire fees.

According to the Land Register the occupant known to the Council is not the registered owner of plot 17.

Options

9. There are effectively three options available.
 1. action under S178 of the TCPA;
 2. action by way of an eviction injunction;
 3. a variation to the “North and South” injunction and then action under S178.

Action under S178 TCPA

10. The Council could take action under S178 of the TCPA to remove the caravan. Following the concern that this was inconsistent with the current approach to enforcement through the use of injunctions (as at 1-17 Pine View), advice was sought from Counsel on this issue.

11. Counsel’s view was:

”I accept that the intended approach is different but I do not think that this matters. In no sense would it be unfair to the occupant for the Council to choose direct action rather than injunction proceedings. Nor could it be said that the Council has created a legitimate expectation that injunction proceedings would be preferred. As for the procedural advantages that injunction proceedings would offer to the occupant, I think it is relevant that she has not shown any inclination to avail herself of procedural protections – she has just ignored her right to appeal against the enforcement notice (unlike the residents of plots 1-17). I also think that the Council is entitled to take into account the fact that the Pine View injunction proceedings, though successful, were fairly lengthy.”

12. Any decision to take action under S178 of the TCPA would need to take account of:
 - (a) personal circumstances, hardship, interference with A8 rights, justification and necessity;
 - (b) whether the occupant has any prospect of getting temporary planning permission under paragraphs 45 and 46 of C1/2006 from the Secretary of State, if not from the Council;
 - (c) The race equality duty imposed in the amended s71 of the Race Equality Act 1976.
13. Once the Council had considered a report listing the details above, action under S178 could then be immediately. If a judicial review is started but permission is refused, this would delay the action by 1-3 months. If permission is granted, the substantive might not take place until perhaps 9-12 months after the start of proceedings, although the Council could apply to have the proceedings expedited. If the Council wins, it could resume action at once. If it loses, it would have to start the decision-making process afresh, in accordance with the court’s judgment.

Eviction Injunction

14. The Council could choose to take the same approach as with 1-17 Pine View and apply to the Courts for an eviction injunction. If this was the approach taken the timescale is likely to be similar to that for Pine View. A full hearing might not take place for 3-6 months. Any injunction granted by the court would have its own period

for compliance.

Variation to existing Injunction

15. There is already an injunction (granted in April 2006) covering the area where the caravan is stationed. This states:

'IT IS ORDERED THAT until trial or further order –

'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 or 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 Area and Southern Area (or any replacement caravan, mobile home, shed or day rooms of a similar type) as follows ... Defendant 11 - occupied plot within Northern Area – 1 mobile home ... '

16. Defendant 11 is the occupant of plot 17. There was concern that taking any action could be in breach of this injunction as it states defendant 11 is permitted to remain on the site. Advice from Counsel on this was:

"Given the use of the term 'permitted' in the proviso. I can understand this concern, but I think that it is misplaced. An injunction is an instruction of a positive or a negative nature. If the court does not prohibit a certain act, it is, in a sense, 'permitting' that act. But the absence of a prohibition in an injunction in no sense grants an authorisation for that act and does not prevent the act from being prohibited in some other way. In the present case the proviso merely defines the extent of the prohibition imposed by the court. It certainly does not give any kind of 'permission' for the mobile home to remain. Nor does it operate as any kind of restraint on the Council's power to serve and enforce an enforcement notice.

Having said this, I can see that the use of the term 'permit' is apt to create confusion and that, given the sensitivity of the site and the high level of public interest, any suggestion that the Council is acting in breach of a court order should be avoided. I can see no reason why the injunction should not be varied so as to make the correct position quite clear, for example by redrafting the proviso to read 'Provided that nothing in this injunction prohibits Defendants 4, 6 and 11-15 from continuing to station ... Such an application would be relatively straight forward, involving only a short witness statement.'

17. In respect of timing, any such action should not in anyway interfere with what is being planned for 1-17 Pine View. Accordingly, the next steps against plot 17 must await the resolution of that action.

Implications

18. In line with general and specific statutory duties under the Race Relations Act 1976 and Race Relations (Amendment) Act 2000, the Council operates a Race Equality Scheme (RES). This was last revised and agreed by the Council in July 2006, with an update of the 2005 - 2008 action plan.

- (a) The Council is committed to treating everyone fairly and justly, whatever their race or background.
- (b) The Scheme gives priority to actions relating to Travellers as the biggest ethnic minority in the district (around 1.0% of the district's population).
- (c) Planning is identified as being amongst the services most relevant to promoting race equality.
- (d) The lead Cabinet Member for Race Equality, Councillor Edwards, is establishing an RES Member Working Group. This will highlight to the Cabinet and GTDPD Member Reference Group findings and recommendations from ODPM Circular 1/2006 and the Commission for Race Equality's "Common Ground" report, which may be appropriate to the Council's strategic approach to Traveller issues and the Gypsy and Traveller Development Plan Document. The first meeting of the Working Group is being arranged to take place in October.

19.	Financial	Enforcement action would be met through the budget identified by the Cabinet in January 2006.
	Legal	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 against breaches of planning.
	Staffing	Resources are stretched but this is an important issue, which demands resolution.
	Risk Management	If the Council takes no action then the breach of planning may remain and have implications for other unauthorized developments within the district.
	Equal Opportunities	Please see paragraph 18 above.

Effect on Annual Priorities and Corporate Objectives

20.	Affordable Homes Customer Service Northstowe and other growth areas Quality, Accessible Services Village Life Sustainability Partnership	The need to address Gypsy and Traveller issues has implications for all three Council priorities and all four corporate objectives. This is also reflected in the Council's policy on Traveller issues, agreed in July 2004 which 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".
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Conclusions/Summary

21. While it is hoped that the Notice will be complied with, the Council has to be prepared to take the necessary legal action to ensure compliance.

Recommendations

22. It is recommended that;
- (a) Negotiations continue to achieve compliance with the notices
 - (b) In parallel with this, and after the conclusion of the action at Pine View, the Council seeks a variation to the "north and south" injunction requiring compliance with enforcement notices.
 - (c) If the variation is granted and the occupant does not comply then the Council will prepare a detailed report outlining the issues in paragraph 12 in order to

plan action under S178 of the TCPA.

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

- (d) South Cambridgeshire Local Plan 2004
- (e) Town & Country Planning Act 1990
- (f) ODPM Circular 08/2005 Guidance on Changes to the Development Control System
- (g) Report to Cabinet July 2006 on Race Equality Scheme
- (h) ODPM Circular 01/2006 on Gypsies & Travellers

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

Colin Tucker – Head of Legal Services
Telephone: (01954) 713060