

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Sub-Committee

11 October 2006

**AUTHOR/S:** Strategic Officer Group

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### LAND AT THE ORCHARD, SMITHY FEN, COTTENHAM

#### **Purpose**

1. To update members on the situation at the Orchard, Smithy Fen and to seek confirmation of the next steps.

#### **Background**

2. 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 11<sup>th</sup> March 2005.
3. 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 hard-standings 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.
4. 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**

5. 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.
6. 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.
7. 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 16<sup>th</sup> March 2005. Some of the occupants of the land have since moved off, but some still remain.

## The Enforcement Notice

8. 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.
9. 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.
10. 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.
11. 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, hard-standings and restoration of the land was extended from three to twelve months.
12. The decision therefore means that the unauthorised occupation of the land should have ceased on or before 14<sup>th</sup> March 2006 and the remedial works completed on or before 14<sup>th</sup> 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

13. 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.
14. 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.

## **Development and Conservation Control Advisory Committee**

15. At a meeting of the D&3C AC on 20 April 2006 it was agreed:
- (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.
16. The landowner has not yet enforced the possession order and there remain unauthorised caravans on the land.

### **Considerations**

17. Since the decision made on 20 April 2006, the situation on land adjacent to the orchard has moved on. Following the expiry of the first injunction deadline at Pine View on 7 September 2006, the Planning Sub-Committee resolved to take action against the owners of plots 1-17 Pine View. The second deadline expires on 7 October and members will discuss the next steps with regard action on 11 October.
18. Officers have been asked to consider whether any action could be taken on the Orchard at the same time as Pine View. Legal advice has been sought on this issue and Counsel believed it would complicate matters if action at Pine View and the Orchard were undertaken in the same operation, since there are different circumstances and planning/legal history with both areas. In summary:
- (a) The Council does not have the same legal powers over the orchard land as it does with Pine View. There is no injunction requiring the occupants to leave.
  - (b) As there are currently occupied caravans stationed on the land, the Council would have to consider needs assessments and human rights issues before any action could be considered.
  - (c) The decision to take action could be judicially reviewed.
  - (d) The landowner has a possession order which if enforced would allow the Court bailiffs to remove the occupants from the land.
19. Counsel advised that the Council could consider taking action on the Orchard land at a later stage using powers under Section 2 of The Local Government Act 2000 (i.e. the general well being powers) or under Sections 93 to 98 of The Local Government Act 2003. They might even consider injunction action to work alongside those already granted on the site, and those, which may come forward at a later date.
20. The Council has received planning applications from plots 5, 5a, 6, 10 and 11 Orchard Drive all of which except plot 11 had previous applications dismissed on appeal in May and June of this year. The Council is currently taking legal advice on whether these applications should be determined for a second time. If they are not determined then enforcement action will need to be taken on these plots, three of which are adjacent the Orchard. Potentially injunctive action could be sought on these plots in association with the Orchard.

### **Options**

21. Members could decide to:
- (a) Assist the landowner and look to clear the land within the planned operation at Pine View.
    - (i) This would delay the operation at Pine View and is subject to the issues outlined at paragraph 18.
  - (b) Review the situation following the 31 December deadline (outlined at Paragraph 15)
  - (c) If there has been no change in the situation, request a report outlining the options available under Section 2 of The Local Government Act 2000 (i.e. the general well being powers) or under Sections 93 to 98 of The Local Government Act 2003.

### Implications

22. 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.

23.

Financial	There are significant costs involved with both direct action and a strategy in respect of injunctions. The Council is in a very difficult financial position but should act in the best interests of the district.
Legal	Previous legal advice has stated that the Council cannot offer specific legal advice or support to the landowner. The Council can however take action under the general well being powers if it believed there was a good reason for doing so.
Staffing	Significant amounts of officer time have been spent on this case. Resources are stretched, and to take action which may increase this workload further would need to be considered in detail.
Risk Management	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.
Equal Opportunities	Please see paragraph 22 above.

### Consultations

24. Counsel has been consulted in the drafting of this report.

### **Effect on Annual Priorities and Corporate Objectives**

25.	Affordable Homes	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".
	Customer Service	
	Northstowe and other growth areas	
	Quality, Accessible Services	
	Village Life	
	Sustainability	
	Partnership	

### **Conclusions/Summary**

26. It would not be in the Councils interest to combine action at the Orchard with that at Pine View; however there is the possibility that assistance could be given in the future.

### **Recommendations**

27. Members are asked to recommend that:

- (a) No action be taken on the Orchard land before the 31 December 2006 deadline;
- (b) The land owner continue to be encouraged to enact the possession order, enabling the courts to take action on the land;
- (c) Following 31 December, and the resolution of issues at Orchard Drive a report be bought back to this committee outlining the options available under the well-being powers and possible use of injunctions.

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

- Minutes of D&3C AC on 20 April 2006
- Planning appeal APP/W0530/C/04/2001008
- ODPM Circular 01/2006
- Application to the High Court claim number HQ05X02057

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