

## **SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL**

At a meeting of the Planning Sub-Committee held on  
Friday, 8 September 2006 at 2.00pm

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PRESENT:

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

Councillors: SGM Kindersley Mrs HM Smith  
Mrs DSK Spink MBE NIC Wright

Councillors SM Edwards, Mrs A Elsbey and MJ Mason (local Members for Cottenham, Gamlingay and Histon respectively) were in attendance, by invitation.

Apologies for absence were received from Councillor TJ Wotherspoon (a local Member for Cottenham)

### **1. DECLARATIONS OF INTEREST**

Councillor SGM Kindersley declared a personal interest as a Cambridgeshire County Councillor.

### **2. MINUTES OF PREVIOUS MEETING**

The Sub-Committee agreed that the Minutes of the meeting held on 4<sup>th</sup> August 2006 were a true and accurate record.

### **3. PLANNING ENFORCEMENT (VERBAL REPORT)**

The Enforcement Officer (Development Control) gave a short, verbal update of the situation at Pine View, Smithy Fen, Cottenham, following expiry of the 7<sup>th</sup> September 2006 deadline given by the High Court for complying with the relevant parts of the Injunction Order dated 7<sup>th</sup> June 2006. Photographs had been taken of the site as it was on 4<sup>th</sup> September, and it was reported that no significant change had been noted since then, with the photographs still representing an accurate picture of the site.

Some fencing existed on the site and, while this represented permitted development, the Head of Planning Services said it did not in itself permit use of the land enclosed within it.

### **4. LEGAL ISSUES (VERBAL REPORT)**

The Assistant Solicitor reminded Members of the options available to the Local Planning Authority in relation to further action at Pine View, Smithy Fen, Cottenham, and informed them about an additional alternative course of action contained within Rule no 45/8 of the Rules of the Supreme Court, which states:

#### ***“COURT MAY ORDER ACT TO BE DONE AT EXPENSE OF DISOBEDIENT PARTY***

*If a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to its powers under section 39 of the Act and its powers to punish the disobedient party for contempt, the court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment*

*was obtained or some other person appointed by the court, at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs."*

She argued that the benefit of using this particular provision was that the Council would then have the sanction of the Court if such an Order was granted, and be empowered to recover its costs by placing a charge on the land involved. In reply to concern about the timescales involved, the Assistant Solicitor said that it should only be a matter of days to get to Court, and that it would then be in the Court's discretion to decide, dependent on the evidence before it and it being satisfied that the injunction had been properly served.

There was concern that any process that appeared to simplify matters might actually serve to provide the Court with more latitude than the Council would want, and even prejudice the Authority's best interests. If the RSC route failed, the Council could always revert to the provisions for action set out in the planning legislation: the RSC option was simply an alternative measure that might save some time. The Head of Legal Services referred to the Court's inherent jurisdiction, and summarised the benefits of using the Rules of the Supreme Court, namely the protection afforded to both Councillors and Officers, and the opportunity made available for the Council to recover its costs, depending on its priority in the list of creditors.

The Head of Legal Services confirmed that South Cambridgeshire District Council should be able to take possession of the land recovered for itself, if it so wished. A Member recognised the benefit of retaining possession, and said that, while Direct Action had its attractions, it was not the complete answer.

The Chairman noted that the second deadline referred to in the Injunction Order was on 7<sup>th</sup> October 2006, and asked whether the Council could apply to the High Court under RSC 45/8 before then. In reply, the Assistant Solicitor said such a pre-emptive move would not succeed as there would be no proof of breach of the Order until after the deadline for complying with it. However, officers could be preparing papers in respect of the first breach (of the 7<sup>th</sup> September deadline) and, in any event, there were cost benefits to be achieved in making a single application. Councillor SGM Kindersley urged the Sub-Committee not to do anything now that might pre-determine action that could be taken after the 7<sup>th</sup> October deadline. The Assistant Solicitor assured Members that actions under the Town and Country Planning Act 1990 and Rules of the Supreme Court were mutually exclusive.

Councillor Mrs DP Roberts raised concern about preparing to take action to clear the site at a time of year when the days were getting shorter, and wondered why the site was now deserted. In reply, the Enforcement Officer (Development Control) voiced a personal opinion that the Travellers were unlikely to return.

The Chairman asked what the timescale would be were the Council to seek committal proceedings. The Head of Legal Services suggested that this would be days rather than weeks. Those present then discussed a number of issues surrounding committal.

The Sub-Committee instructed the Head of Legal Services to obtain Counsel's Opinion on using RSC 45/8. However, the Assistant Solicitor reminded Members that two advantages of the RSC route were that the Council would have the protection of the Court, and be able to recover its costs.

## **5. EXCLUSION OF PRESS AND PUBLIC**

Upon the proposal of Councillor Mrs DSK Spink, seconded by Councillor Mrs DP Roberts, the Planning Sub-Committee **RESOLVED** that members of the Press and Public be excluded for the first part of Item 6 (Verbal Report from the Corporate Projects Officer) in accordance with Section 100 (A) (4) of the Local Government Act 1972 (As Amended) on the grounds that, if present, there would be disclosure to them of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A to the Act.

The Chairman invited those Members of Council present, who were not members of the Sub-Committee, to remain in the room.

## 6. VERBAL REPORT FROM THE CORPORATE PROJECTS OFFICER

The Corporate Projects Officer outlined the costs, extent and timescale involved in clearing the site.

The cost of taking two separate actions was unknown but, inevitably, would be higher.

Councillor SM Edwards, Portfolio Holder for Resources, Staffing, Information and Customer Services, gave a rough estimate of the total budget available for Traveller issues, and undertook to identify the exact figure.

The Assistant Solicitor gave an estimate of court costs.

The Policy and Communications Manager confirmed that all necessary Needs and Impact Assessments had been carried out already. In any event, none was now required as there were no Travellers on site.

Councillor Mrs HM Smith asked that the Chief Environmental Health Officer's views be sought with regard to using the hardcore on site to help construct the bund.

Members discussed issues arising out of the Council's Contract Standing Orders.

At this stage, the Sub-Committee

**RESOLVED** that the meeting should again become public, and members of the Press and Public were invited back into the room.

On the proposal of Councillor SGM Kindersley, seconded by Councillor Mrs DP Roberts, it was

**RESOLVED** unanimously

1. That the Council takes Direct Action at Pine View, Smithy Fen, Cottenham under the Town and Country Planning Act 1990;
2. that Counsel's Opinion be sought on using Rule 8 of RSC 45;
3. That should Counsel recommend it, officers seek a High Court Order under RSC 45/8;
4. That the Portfolio Holder for Resources, Staffing, Information and Customer Services be requested to make £80,000 available, in the first instance, with the Chairman and Vice-Chairman of the Planning Sub-Committee being given delegated power to exceed that sum where appropriate;

5. That tactical decision-making as to which kinds of action to take be delegated to the Chairman and Vice-Chairman of the Planning Sub-Committee, in conjunction with officers; and
6. that the Council issue a Press Release once the Chairman and Vice-Chairman have made their decision to take action.

Councillor SM Edwards, as a local Member for Cottenham, thanked the Planning Sub-Committee (and its predecessor body) for all of its work in seeking a satisfactory resolution at Smithy Fen, Cottenham.

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**The Meeting ended at 3.45 p.m.**

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