

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

Minutes of a meeting of the Planning Sub-Committee held on
Wednesday, 11 October 2006 at 2.00pm

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Councillors: SGM Kindersley Mrs DP Roberts
Mrs DSK Spink MBE NIC Wright

Councillors SM Edwards, Mrs A Elsby and MJ Mason were in attendance, by invitation.

Apologies for absence were received from Councillors Dr DR Bard (Chairman), NCF Bolitho, NS Davies, Mrs HM Smith and TJ Wotherspoon.

1. ACTING CHAIRMAN

In the absence of the Chairman, Councillor Dr DR Bard on Council business, Councillor Mrs DP Roberts, Vice-Chairman, took the Chair as Acting Chairman of the meeting.

The Acting Chairman drew Members' attention to the fact that the reports relating to agenda item numbers 5 (Plot 17 to the rear of Pine View, Smithy Fen, Cottenham) and 7 (Land at the Orchard, Smithy Fen, Cottenham) had not been in the public domain for the full period required by law. However, the Sub-Committee noted that this was because it had been necessary to obtain Counsel's Advice, which had not been possible until after publication of the rest of the agenda. The Acting Chairman agreed to accept the two late reports on the ground of the urgency of the matters to which they referred.

2. DECLARATIONS OF INTEREST

Councillor SGM Kindersley declared a personal interest as a Cambridgeshire County Councillor and stated that, during his term as Leader of South Cambridgeshire District Council, he had met with a number of the people at a number of the sites referred to at various stages of the agenda. All Members present acknowledged that this latter personal interest applied to them all.

In connection with Minute no. 9 (Drainage Issues), Councillor MJ Mason declared a personal interest by virtue of his membership of the Old West Internal Drainage Board.

3. MINUTES OF PREVIOUS MEETING

The Sub-Committee agreed that the Minutes of the meeting held on 8th September 2006 were a true and accurate record, subject to clarification that, in fact, the budget referred to in Point 4 of Minute 6 (Report from the Corporate Projects Officer) fell within the remit of the Planning and Economic Development Portfolio Holder, rather than as stated therein. The reserve budget for the current year stood at £463,000.

4. PINE VIEW, SMITHY FEN, COTTENHAM

Further to Minute no. 6 of the meeting held on 8th September 2006, the Head of Legal Services reported verbally that Counsel had advised against using Rule 45.8 of the Rules of the Supreme Court, and had recommended instead that the Council concentrate on pursuing Section 178 of the Town and Country Planning Act 1990.

Counsel had concluded that RSC 45.8 would have committed the Council to substantial expenditure, and taken up a considerable amount of time. Furthermore, the Authority would have run the risk of the Court deciding not to give its consent, which could have

had a serious impact on the conduct of alternative forms of action. Members should take encouragement from previous judicial statements on the subject but nevertheless be aware of the ever-present possibility that the Council might still be judicially reviewed.

The Head of Legal Services undertook to circulate to Members copies of Counsel's Advice, when available. He added that every effort should be made to secure the co-operation of the adjacent landowner, and confirmed that the access way over which the Council and its agents would have to pass was in the legal ownership of that landowner.

The Acting Chairman commended Counsel's Advice to the Sub-Committee, and noted a series of photographs that had been taken at Pine View on 9th October 2006 and which demonstrated that the Injunction clearly had not been complied with.

Committal papers had already been prepared.

The Sub-Committee considered that, because there was no Traveller presence on the site in question, the Human Rights aspects, Needs assessments, impact assessments and race equality issues did not apply. However, the Sub-Committee accepted the decision by the High Court to grant the Injunction, and the reasons for doing so set out in the judgement.

Officers drew Members' attention to the Council's Race Equality Scheme and the need to make sure that the Council continues to present Traveller issues responsibly (in terms of the terminology used), particularly in the case of specific action being planned.

On the proposal of Councillor SGM Kindersley, seconded by Councillor Mrs DSK Spink, the Planning Sub-Committee

RESOLVED that the Council pursue direct action under Section 178 of the Town and Country Planning Act 1990, by entering onto the relevant land at Pine View, Smithy Fen, Cottenham with a view to taking all necessary steps which, by virtue of section 173(2)(a) of that Act should have been taken by the Travellers affected by the enforcement notices and subsequent Injunction, and recovering from the person who was then the owner of the land any expenses reasonably incurred by the Council in clearing the site and re-instating it to the condition it was in immediately prior to the enforcement notices being served.

5. PLOT 17 TO THE REAR OF PINE VIEW, SMITHY FEN, COTTENHAM

This report had not been published with the original agenda and, therefore, had not been in the public domain for the statutory period. However, in view of the timescales involved, the Acting Chairman agreed that the Sub-Committee should consider the report at this meeting on the ground of its urgency.

The Sub-Committee considered a report on the enforcement action taken so far against Plot 17 (rear of Pine View) Smithy Fen, Cottenham, and the options available for future action.

The Head of Planning Services said that enforcement action against Plot 17 was desirable in principle, but advised Members that such action should not be taken at this stage in case it should prejudice action being taken elsewhere at Smithy Fen.

RESOLVED

- (1) that negotiations continue in order to seek compliance with the enforcement notices
- (2) that in parallel with Resolution no. (1) above, and after the conclusion of the action at Pine View, Smithy Fen, Cottenham, the Council seeks a variation to the "North and South" injunction dated 6th April 2006 requiring compliance with enforcement notices.
- (3) that, if the variation is granted and the occupant does not comply, then a detailed report be prepared that would examine
 - (a) personal circumstances, hardship, interference with A8 rights, justification and necessity
 - (b) whether the occupant had any prospect of getting temporary planning permission under paragraphs 45 and 46 of Circular 1 of 2006 from the Secretary of State, if not from the Local Planning Authority
 - (c) the race equality impact arising from duties conferred by Section 71 of the Race Relations Act 1976 (as amended)

in order to plan action under Section 178 of the Town and Country Planning Act 1990.

6. PLOT 9, ORCHARD DRIVE, SMITHY FEN, COTTENHAM

An Injunction granted on 6 April 2006 prevented Plot 9, Orchard Drive from being occupied by persons unknown. Over the past few weeks, caravans had been stationed on the land and the occupiers informed about the Injunction, As they still remained on the land, the Head of Legal Services advised the Sub-Committee that committal was the best course of action.

RESOLVED that the Head of Legal Services be instructed to institute committal proceedings against the occupiers of Plot 9, Orchard Drove, Smithy Fen, Cottenham.

7. LAND AT THE ORCHARD, SMITHY FEN, COTTENHAM

This report had not been published with the original agenda and, therefore, had not been in the public domain for the statutory period. However, in view of the timescales involved, the Acting Chairman agreed that the Sub-Committee should consider the report at this meeting on the ground of its urgency.

The Sub-Committee considered a report updating Members about the situation at the Orchard, Smithy Fen, Cottenham.

Councillor SM Edwards (a local Member for Cottenham) urged the Sub-Committee to take a sympathetic stance in its discussions with the owner of the orchard land, in view of comments made by the Planning Inspector.

In response, the Head of Legal Services stated that relations between the Council and the landowner were good, and agreed that an element of joint-working was essential. Counsel's Advice was being sought in relation to the extent of the Council's statutory powers to assist. He referred to a letter received from Councillor N Bolitho (another local Member for Cottenham). Councillor Bolitho had been unable to attend the meeting: he had a personal and prejudicial interest by virtue of having once been the

landowner's landlord.

Councillor SGM Kindersley pointed out that the landowner still had the option of seeking a possession Order and, indeed, should be encouraged to do so. He suggested that the Council should help in this regard so as to reinforce its standing in the eyes of the Court. Councillor Mrs DSK Spink agreed, but added that all options must be considered.

The Sub-Committee noted that there were a number of legal difficulties had still to be addressed.

RESOLVED

- (1) that no action be taken on the Orchard land at Smithy Fen, Cottenham before the 31 December 2006 deadline;
- (2) that the landowner continue to be encouraged to seek a possession Order, enabling the courts to take action on the land; and
- (3) that following 31 December 2006, and the resolution of issues at Orchard Drove (adjacent), a further report be presented to the Planning Sub-Committee outlining the options available under the well-being powers, and the possible use of injunctions.

8. MOOR DROVE, HISTON

The Sub-Committee considered a report outlining the next steps following the site occupiers' failure, within the extended time-limit ending on 5th October 2006, to judicially review the Local Planning Authority's decision not to determine their planning application and also their continued occupation of the site in breach of planning control.

The Head of Planning Services referred to contact between the applicants' agents and the Local Planning Authority in connection with exploring the availability of alternative sites.

There was significant ongoing harm being caused in this instance, and Members accepted that action had to be taken soon subject to clarification of ownership and the receipt of an update from the Enforcement Officer (Development Control).

RESOLVED

- (1) that the Head of Legal Services be instructed to seek an injunction forthwith in order to enforce the requirements of Enforcement Notices E502 dated 11 December 2003, E502A dated 16 January 2004 and E502C dated 17 March 2004; and
- (2) that officers meet with the site occupiers and their agents in an effort to agree to an alternative, acceptable site.

9. DRAINAGE ISSUES

This item had not been published with the original agenda and, therefore, had not been in the public domain for the statutory period. However, in view of the timescales involved, the Acting Chairman agreed that the Sub-Committee should consider the issues raised at this meeting on the ground of their urgency.

Councillor MJ Mason declared a personal interest by virtue of his membership of the Old West Internal Drainage Board, but remained in the room and contributed to the debate.

The Planning Sub-Committee noted that a drainage ditch, which ran parallel to the site's entrance road at Smithy Fen, Cottenham, had been subjected to fly tipping, and that the resultant blockages were causing areas to be flooded. This issue amounted to one of health and safety, but the Council's Environmental Health Service had no budget to deal with it. In any event, as the flooding was on private land, the Council would not usually get involved. The Old West Internal Drainage Board had said it would repair the ditch if the Council would dispose of the rubbish removed.

Councillor Mrs DSK Spink pointed out that the maintenance of drainage ditches on private land was the responsibility of the owner of that land. Noting that the issue of drainage was beyond the remit of the Planning Sub-Committee, she proposed that the Acting Chairman be instructed to encourage discussion between the Council's Chief Environmental Health Officer and the landowner with a view to the landowner paying for the Council to dispose of the material.

10. DATE OF NEXT MEETING

The Sub-Committee agreed that its next meeting should be convened as and when matters had progressed sufficiently to warrant such a meeting.

The Meeting ended at 3.05 p.m.
