

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Committee 2<sup>nd</sup> July 2008  
**AUTHOR/S:** Corporate Manager – Planning &  
Sustainable Communities

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### **APPEALS AGAINST PLANNING DECISIONS AND ENFORCEMENT ACTION: SUMMARIES OF DECISIONS OF INTEREST – FOR INFORMATION**

#### **Purpose**

1. To highlight recent Appeal decisions of interest forming part of the more extensive Appeals report, now only available on the Council's website and in the Weekly Bulletin.

#### **Summaries**

##### **Mr J Brown – Construction of bund and placing containers on the land to store Go Karts – Land adjacent to Church Farm, Church Farm Lane, Steeple Morden – Appeals against enforcement notices dismissed.**

2. Between them, these two appeals sought to argue that planning permission was not required for the siting of five storage containers and a bund that partly surrounds them. If planning permission was required, planning permission should be granted.
3. The appeals were determined by way of a public inquiry. Councillor Mrs Murfitt, a representative of the parish council and a local resident all gave evidence.
4. The inspector's main task was to first identify the appropriate planning unit(s) and any lawful use or uses thereof. The appellant argued that an existing meadow and Go Kart track comprise a single planning unit. As such the placing of the containers in the meadow to store Go Karts did not require planning permission. The inspector accepted the Council's argument, however, that the meadow and track comprise separate planning units. The placing of the containers in the meadow had therefore resulted in a material change of use for which planning permission is required.
5. The appellant further argued that the containers are not buildings, or building works and did not constitute operational development. Applying what have become the three primary tests of size, permanence and physical attachment, the inspector agreed with the Council that the containers should be considered as buildings and that planning permission is required. As the land is separate to the Go Kart track, a material change of use had also occurred. The inspector further agreed that the containers are an incongruous feature in the landscape. He therefore refused to grant planning permission for their retention.
6. So far as the bund was concerned, the appellant produced independent evidence to the effect that it had been created more than four years before the enforcement notice was issued. It is therefore now immune from enforcement action.
7. The inspector extended the period for compliance with the enforcement notices from three to six months. This would be sufficient to allow the appellant enough time to

apply for planning permission for an alternative site to accommodate his Go Karts. The containers are therefore required to be moved from the field on or before 6 December 2008.

**Circle Anglia Housing Group – Demolition of 14 dwellings and erection of 28 affordable dwellings with associated roads, car parking and landscaping – Site at Silverdale Avenue, Coton – Appeal allowed**

8. This application proposed the redevelopment of four small sites, two of which raised objections from the Committee in respect of their impact on the character and appearance of the area and from the proposed parking arrangements. The appeal was considered at a hearing attended by nine local residents.
9. The Council's first reason for refusal was that the proposed courtyard form of the proposed layout would be out of character with the existing pattern of development. The inspector agreed it would differ, but did not accept it would be harmful. The appearance of the courtyards could be mitigated by the materials used and appropriate planting (albeit the opportunities are small). Site visits made to Peakes Close and Pendrick Close elsewhere in the village and to a site in Elsworth had demonstrated that skilful and well maintained planting of small areas could be effective. The distances between existing and the proposed dwellings and their relationship to the existing green were acceptable.
10. Following prior discussions with the appellant, the Council had accepted an amendment to increase the number of parking spaces in the south-east court from 12 to 15. Nonetheless, the layout still required some fine tuning to make it work effectively and this could be controlled by way of a condition. This would comply with the advice in Manual for Streets. High quality walls boundary walls and screening would be required to mitigate the effect of vehicles on the living areas of adjoining properties.
11. The inspector acknowledged that the sites are surrounded by established and typical examples of low-density suburban housing. However, the proposed redevelopment of these two sites could be absorbed into the area as a complimentary rather than a conflicting irregularity. It would provide variation within the area without detracting from its overall context.
12. The appeal was allowed subject to conditions relating to an agreed car parking layout, sample materials, landscaping, visibility splays for parking bays, foul water drainage, a restriction on some pd rights, details of any external lighting, no removal of trees and hedges during the bird breeding season and control over the times of use of power operated machinery during demolition.

**Mr S Duncan – Alteration, refurbishment and extension to dwelling – Wildfowl Cottage, Baits Bite Lock, Horningsea – Planning and listed building appeals allowed. Appellant's application for costs against the Council dismissed.**

13. These appeals concerned works to a listed building close to the river Cam. The works of refurbishment and alteration had subsequently been approved so the Council's remaining objection was the impact of the rear extension on the listed building and on the Green Belt.
14. The entire upper storey of this grade II listed building has been lifted and a new ground floor inserted. This is in order to reduce the risk of flooding and make the building habitable. The inspector accepted that the extension would be very

prominent when seen from the access to the rear, but the proposed location for the extension was the only space available. The need to raise the floor level of the extension above that of the main dwelling resulted in a necessarily complex arrangement between the extension and the existing building.

15. The inspector concluded that the appellant's architect had put a great deal of careful thought into the design. The choice of simple natural materials – cedar shingles – would still ensure the extension was perceived as a subservient feature of the original building. The extension would relate well to the building and would possess considerable merit in its own right. In doing so, it would make a positive contribution to the appearance of the cottage.
16. The Council had refused the planning application on the grounds that it was inappropriate development in the Green Belt. The inspector did not agree. He concluded that the size of the extension would not be disproportionate in terms of its size. While an earlier scheme had been dismissed at appeal because of its harm to the Green Belt, the current proposal was not as tall or bulky.
17. Planning and listed building permission were granted subject to conditions regarding sample materials, the need for more details to show details of glazing and doors, landscaping, and flood alleviation measures.
18. In his application for costs, the appellant argued that the Council had failed to have due regard to the earlier appeal decision. The inspector had given clear guidance, which had been addressed. The Council's Conservation and Design Manager had indicated the proposal would be supported, yet there was confusion leading to a decision to refuse under delegated powers. This amounted to unreasonable behaviour.
19. In response, the Council maintained that it had properly interpreted the inspector's decision and there was nothing inherently unreasonable about its approach. Any perceived confusion among officers was irrelevant; what matters is whether the ultimate decision was reasonable in the circumstances.
20. The inspector concluded that each scheme has to be considered on its merits. In his view, the Council acted reasonably in doing that, basing its decision on both national and local planning policy. Suitably qualified officers had put the evidence forward at the hearing. In the light of this, the Council's internal procedures for handling applications were irrelevant. No award of costs was justified.

**The Strategic Land Partnership LLP – Erection of four residential units– Land at 49 and rear of 51 – 55 Station Road, Histon – Appeal allowed.**

21. This application was one of several attempts to successfully develop the former Bishop's Cycles site. Three previous appeals had all been dismissed. This application was acceptable in most respects but was refused because of the Committee's concerns with the contemporary design of the new dwellings, in particular the pattern and style of windows set within timber panels. As such, the development would harm the character and appearance of the conservation area.
22. In the inspector's opinion, the principle of a modern design within a more historic setting is acceptable so long as the new development is not set apart from its neighbours, "but woven into the fabric of the area". This requires close attention to the form, scale, proportions, rhythm, materials and colours of the new development. He was of the opinion that the scheme successfully achieved this. The end result was

a development that would contribute positively to the locality.

23. Permission was therefore granted subject to an undertaking regarding a financial contribution towards education provision in the area. Conditions were also imposed in respect of materials; landscaping; details of dormer windows; archaeological investigation; visibility splays, turning and parking space; a restriction on permitted development rights and control over the times of use of power operated machinery in connection with demolition.

**Michael O'Brien et al – Plots 5, 5a, 6, 10 and 11 Orchard Drive, Smithy Fen, Cottenham – Appeal allowed**

24. These five plots were the subject of unsuccessful enforcement appeals in June 2005. A planning application seeking temporary planning permission was submitted in August 2006 and refused in April 2007. A public inquiry opened on 11 March 2008, but was promptly adjourned with the agreement of the main parties. The appellant's agent had withdrawn from the appeal and the appellants found had been put in a position where they could not represent themselves. It was agreed that the appeal should proceed on the written evidence already submitted with an opportunity given for further comments to be received. Both the Parish Council and the Smithy Fen Residents Association had intended to speak at the inquiry.
25. The appellants had continued to occupy their plots and there was no dispute that they have gypsy status. The Council's objections were largely the same as in earlier appeals, these being the impact on the character and appearance of the area, precedent, highway safety and whether these concerns were outweighed by other circumstances including the general need for and availability of sites and the personal circumstances of the appellants.
26. The inspector concluded that the harm to the character and appearance of the landscape would be unacceptable. This view was consistent with earlier decisions taken by inspectors and the Secretary of State. While the former Local Plan Policy H23 had not been 'saved', policies in the Development Control Policies DPD are nevertheless relevant. Allowing the appeals would also create a precedent for further development at Smithy Fen and the Council would find it difficult to resist other similar proposals. The cumulative impact would further erode the gap between the two authorised areas of occupation. This would lead to substantial harm to the surrounding area.
27. Highway safety was not a concern raised by the Council. It was, however, raised by the Parish Council, the Residents Association and other interested parties. The inspector found that the additional traffic arising from this proposal would not be so significant to justify refusal. She was mindful that the local highway authority had not raised any objections. She did, however, accept that the cumulative impact of continued development at Smithy Fen might cause a problem at some stage.
28. The inspector acknowledged there is a shortage of sites both locally and across the country. This was a material consideration that weighed in favour of the appellants. They would clearly benefit from a settled base, but their need for access to healthcare and education were not specific to the appeal site and could be met elsewhere, should sites be available. While they had provided details of their personal circumstances, they were given limited weight. There were limited opportunities for the appellants to find an alternative site and this was also a consideration weighing in their favour.

29. This was a case where only a temporary permission was sought and inspectors across the country have generally been granting approvals in line with advice in Circular 01/2006. The inspector's conclusion in this case at paragraph 35 of her decision accurately sums up the Council's position in this case. She concludes:
30. "In deciding whether to grant a temporary permission, substantial weight must be attributed to this unmet need. This must be balanced against the significant adverse harm that would arise to the countryside even if only for a temporary period. I am also mindful that the area has proven to be very attractive to gypsies. The Council has consistently sought to avoid any dilution of the gap between the lawful areas that would further impact on the surrounding countryside. This has been supported on appeal on numerous occasions. There are no overriding personal circumstances in this case that are likely to distinguish this case from other gypsy families with children at school. If I were to allow the appeal, even for a temporary period, I consider it would seriously undermine the ability of the Council to resist other similar proposals on the land in between the lawful areas. In my view, the cumulative harm that could arise, even if only for a temporary period, would outweigh the unmet need for further sites in this particular case".
31. While dismissal of the appeal would interfere with the appellant's rights under Article 8 of the ECHR, this action would be proportionate given the harm to the wider public interest.
32. The decision means that the Council will need to decide what action, if any, to take given that the enforcement notices have already come into effect and the appellants remain on their sites.

**Mr P Jordan – Change of use from former public house to dwelling, erection of new garage and garden wall – The former White Horse PH, High Street, West Wickham – Appeal dismissed. Appellant's application for costs against the Council dismissed.**

33. The main issue in this appeal was whether the permanent closure of the public house would lead to an unacceptable reduction in community facilities in the village and if so, whether the use was still viable. The appeal was determined by way of a public inquiry held at West Wickham village hall. Cllr Ford, parish councillors, and several local residents all gave evidence, almost all of them objecting to the proposal.
34. A similar appeal had previously been refused in 2000 when the pub was still run by Greene King. The White Horse continued to trade until January 2005, where after the brewery decided to sell it. The appellant purchased it in June 2006 with the intention to reoccupy it as a dwelling.
35. Based on the evidence given by local people, the inspector was satisfied that the pub had, until recently, played an important part in village life. While the village hall provides for a range of activities, these are invariably structured and do not make up for the loss of the village pub as a venue for casual and spontaneous socialising. The pub therefore remains an important community facility within the village.
37. The nearest available alternatives are a significant distance away. No public transport is available in the evenings and walking and cycling is not an attractive option at most times during the year. The realistic alternatives are only available by car. This would weaken village cohesion in West Wickham and would not contribute to the wider aim of reducing the need to travel.

38. The Council commissioned an independent appraisal of the pub's likely viability. A potential purchaser of the pub had also carried out a similar exercise. Both suggested that a modest living could be achieved, particular for an operator attracted as much by the lifestyle as the financial rewards. While the pub had experienced considerable trading difficulties after 2000, the inspector was satisfied this was due as much to how the business was run, with a succession of temporary landlords in place.
39. The appellant's claim that the pub had been properly marketed for over a year without finding a buyer was not accepted. Potential operators had shown an interest and for most of the time the property was offered at a price, which did not reflect its true value as a public house. This may have deterred potential purchasers. The appellant has subsequently offered to sell the pub to "the village". While there was some interest, no sale was concluded. Nonetheless, the inspector was not convinced that the property had been offered at a price, which reflected its true viability.
40. Thus while there was no conclusive proof that the pub would remain viable in the future, the Council was justified in resisting its loss while there was a still the possibility of securing its future.
41. The appellant's claim for an award of costs was based on what he considered to be an unnecessary delay in determining the application. At no time did the Council seek further information on marketing. In the absence of any decision, the appellant had been forced to appeal against the non-determination of the application. The Council had also failed to show that the White Horse could be viable and had not provided an expert witness to deal with this issue.
42. In response, the Council argued that its independent appraisal confirmed the true value of the pub. The appellant could have concluded from this that the Council would not approve the application. Even if the Council had acted more quickly, its conclusion would have been the same and an appeal would not have been avoided. The Council's planning witness was also competent to make the necessary planning assessment taking into account the viability report.
43. The inspector accepted that the Council had been too slow to deal with the application. However, he saw no reason to doubt that a quicker decision would have resulted in refusal. The Council could have communicated better with the appellant, although he had already appealed against an earlier, similar application and he was aware of the Council's position some time before. The Council properly defended its refusal based on Policy SF/1. The fact there was no expert evidence on the valuation report did not weaken the Council's case, because the conclusions of the report were not disputed. The Council's case had been soundly based and substantiated. It followed that the Council had not acted unreasonably and no award of costs was justified.

*Comment: This is a case where community involvement has played a significant part in ensuring that a potentially valuable and viable community asset has not been lost. It remains to be seen how, or indeed if, the property will now be marketed to ensure village services are protected and retained wherever possible.*