

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Planning Sub-Committee 17 March 2009
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PLOT 4 MOOR DROVE, HISTON FURTHER ENFORCEMENT ACTIONS – UNAUTHORISED DAYROOM

Purpose

1. To update members in connection with the breach of development control affecting the above site, and to seek instructions on any further enforcement action to be taken.

Information

2. Members will recall the verbal report received by this sub-committee on 12 December 2008, when councillors heard that a single storey, brick-built, day room building had been erected on Plot 4 without the necessary grant of planning permission.
3. Sub-committee will be aware this site is one that has secured retrospective planning permission for the stationing and residential occupation of caravans at appeal (decision 3 September 2008 – S/1895/07/F), and that a significant enforcement history relates, including ultimately unsuccessful injunctive action. The consent secured at appeal does not authorise the construction of the day room building.
4. The meeting also heard that a Temporary Stop Notice pursuant to Section 171E Town and Country Planning Act 1990 had been issued on 7 November 2008 whilst construction was ongoing but, despite this prohibiting further building works, the building has been substantially completed. A copy of the Temporary Stop Notice is appended to this report as **Appendix A**.
5. Subsequent to the December sub-committee, an Enforcement Notice requiring demolition of the unauthorised structure and reinstatement of the site came into force on 12 January 2009 and this provided for the required steps to be taken by 13 February 2009. A copy of this notice is appended as **Appendix B**.
6. Such steps to remedy the breach of planning control have not been taken, nor has the Enforcement Notice been appealed. Any appeal should have been made by 12 January 2009 to be valid so is now out of time.
7. A retrospective planning application for the retention of the day room building has since been submitted and awaits determination. This was validated on 12 February 2009 and at the time of this report being prepared, is being formally consulted upon.

Possible enforcement avenues

8. The breach of the Temporary Stop Notice represents an offence contrary to Section 171G Town and Country Planning Act 1990 for which those served and in breach might be prosecuted. It is considered there is sufficient evidence so as to give a realistic prospect of securing a conviction. Sanctions available to the Court on

successful prosecution are limited to the imposition of a fine although in setting the level of this the Court must have regard to any financial benefit accrued in consequence of the offence. Here, given there is considered only to have been ancillary domestic use of the unauthorised structure, any financial benefit appears minimal.

9. Similarly, the breach of the Enforcement Notice also gives rise to an offence capable of being prosecuted, contrary to Section 179 of the same Act and similar provisions relate to the setting of the level of any fine imposed upon the Court convicting. Once more, a financial penalty is the provided sanction and it is again considered there is sufficient evidence so as to give a realistic prospect of securing conviction.
10. Prosecution for either offence cannot result in the Court ordering any regularisation of the breach of development control although members will likely be aware the offences concerned are 'continuing' ones and further prosecutions may be brought in the absence of compliance.
11. Where an Enforcement Notice has been issued and is in force (as here), it is open to the council to undertake 'direct action' so as to regularise the breach pursuant to Section 178 of the 1990 Act. The costs incurred in undertaking such steps are recoverable as against the owner of the affected land (including by securing against the land itself). Clearly, this is a robust remedy and one that should only be invoked in a proportionate manner given it represents an interference with property and especially where it impacts upon the use or enjoyment of an individual's home.
12. To complete the enforcement toolkit available to the council, it is also possible for an application to be made under section 187B of the Act for an injunction so as to restrain the breach of planning control. The Court may impose such Order as it considers appropriate in the circumstances (such as to remove any unauthorised structure and reinstate the land to its former condition), and any failure to comply does represent a contempt of court for which any party in breach may be imprisoned or fined. The sub-committee will be aware this has been a favoured and generally effective enforcement measure employed elsewhere, albeit unsuccessfully in the case of the original unauthorised development of the Moor Drove complex as a caravan site.
13. Members will be aware the policy purpose of the legislation affording these remedies is to secure the remediation of breaches of planning control and not one of punishment for its own sake.

Toleration

14. In assessing and commencing enforcement action, the Local Planning Authority must have regard to 'expediency'. Where a planning application remains undetermined that is capable of regularising any breach of control if permitted, any assessment of the expediency of enforcing must include consideration of whether the development should be tolerated pending determination. Clearly, reasonableness might become an issue if (say) an unauthorised structure is removed under Section 178 powers, only to be permitted upon a positive determination of a retrospective planning application. Conversely, toleration may not be appropriate if the planning harm resulting from the unauthorised development was considered to be of overwhelming weight.
15. If toleration is favoured, this could be on the basis that enforcement options are revisited in the event of the planning application being refused (although any refusal would itself be liable to being appealed).

Recommendation

16. That the sub-committee notes the current position and confirms its instructions as to any further enforcement action to be taken from the measures described at paragraphs 8 to 13 of this report, and when (if considered appropriate).

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

- Appeal Decision APP/WO530/A/08/2067087 (3 Sept 2008)
- Record of decisions – Planning sub-committee 2 Dec 2008
- Planning Application S/1968/08/F
- Temporary Stop Notice – 7 Nov 2008
- Enforcement Notice – 8 Dec 2008

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