

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Committee  
**AUTHOR/S:** Corporate Manager – Planning & Sustainable Communities

6<sup>th</sup> May 2009

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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. These form part of the more extensive Appeals report, which is now only available on the Council's website and in the Weekly Bulletin.

#### **Summaries**

##### **Lancashire Industrial and Commercial Services Ltd – Certificate of Lawfulness to confirm that planning permission S/2103/01/F can be implemented in full – Milton Golf Course, Penfold Farm, Milton – Appeal allowed. Full award of costs against the Council allowed.**

2. In September 1997, planning permission was granted for change of use to golf practice centre including clubhouse, golf courses, shop/office, car park and access. That permission has since expired. In May 2002, planning permission was given for a change of use to golf practice centre including club house, par 3 golf course, shop/office, car parking access and bridle path/pedestrian link to rowing lake and park. The golf course has been formed and is in use. One building has been built.
3. The appeal was made against the failure of the Council to give notice as to whether the planning permission authorises any further development. As the bridle path/pedestrian link to rowing lake and park has not yet been implemented, the inspector concluded that any certificate should be issued at least to reflect this aspect.
4. The central issue, however, was a condition, which required details of a further building (singular) to be submitted. This is notwithstanding that planning permission had been requested for both a club house and a shop/office (plural). The position was not helped by the fact that of the various plans submitted at planning application stage, only some were stamped as approved. There was also extensive correspondence from the appellant on what had been allowed. The appellant therefore sought confirmation that he was still entitled to erect another building and in particular the amount of floorspace that was permitted.
5. It was the appellant's intention that two buildings be erected. The inspector was satisfied that the Council had had several opportunities to clarify its position if it had felt that only one building had been allowed, despite the wording of the condition in question. The condition had required details of just the clubhouse to be provided. The fact that the condition failed to control details of the proposed shop/office was considered "to be more likely to be an error" on the Council's behalf.

6. The Council also argued that the condition required full details of the proposed building before any development was carried out. If further details were now submitted, then all the development that has taken place is therefore in breach of the condition and is therefore unauthorised. The inspector did not accept this approach. He concluded that, rightly or wrongly, in 2003 both parties were working on the basis that the condition could be applied to the shop building, rather than to the clubhouse building. The details approved were for a Pro's shop building (notwithstanding it includes a bar, restaurant and first floor stewards flat and office). It therefore follows that a clubhouse potentially remains to be built. Although the development had started without all of the details having been approved, the inspector reasoned that the condition did not go to the heart of the proposal. The clubhouse had been approved in principle and it was reasonable for the appellant to be able to submit the actual details at the appropriate time.
7. Having assessed the nature and extent of what had been built to date, the inspector went on to conclude that a clubhouse with a further 495 m<sup>2</sup> of floorspace can still be erected.
8. The appeal was allowed and a Lawful Development Certificate granted. This allows "the implementation in full of planning permission S/2103/01/F by (1) the formation of a Bridle Path/Pedestrian Link to Rowing Lake and Park; and (2) the construction of a golf clubhouse with a maximum total floorspace of 495 m<sup>2</sup>, in both cases subject to all the relevant conditions imposed upon the grant of the said planning permission."
9. The appellant applied for costs in respect of the Council's failure to substantiate a case against issuing a Certificate and for procedural unreasonableness during the pre-application, application and appeal process. The Council resisted all these claims.
10. Having assessed the Council's approach to the original application and to the discharge of conditions, the inspector concluded the Council had provided insufficient evidence to substantiate its argument that the condition restricted development to a single building. The Certificate should have been granted. The appellant had therefore been put to unnecessary expense in pursuing the appeal.

**Mr and Mrs J Sheridan - Change of use of land to a caravan site for four caravans and one mobile toilet unit, retention of the existing hardstanding and boundary walls/fences and gateway - Plot 16 Water Lane/9a Orchard Drive, Cottenham – Appeal dismissed**

11. This appeal involved the two remaining plots at Smithy Fen for which there was an outstanding planning application. The site has remained vacant since the Council was granted an injunction in 2006 preventing the land from being occupied. The appellants, who are of pensionable age, have been living on the roadside since then. Permission was also sought to allow their son Danny and his family to live on the site. The appeal was considered by way of a hearing attended by both the Parish Council and the Smithy Fen Residents Association.
12. The main issues, as in previous appeals, were the effect of the proposal on the character and appearance of the countryside; whether a grant of planning permission would create a harmful precedent; and whether and resulting harm was outweighed by the appellants' need for accommodation and their personal circumstances.
13. In line with previous appeal decisions, the inspector found there would harm to the character and appearance of the countryside. He also found that allowing the appeal

would create a harmful precedent leading to similar planning applications elsewhere at Smithy Fen.

14. The Council accepted there is a local, regional and national shortage of gypsy and traveller sites. There was an urgent need for improved provision in the region. The appellants are aged 68 and 73 and have uncontested medical problems. Their need for a site was not disputed. The Council was unable to offer an alternative site. The inspector concluded that the age and health issues were weighty considerations and acknowledged the Council's tolerated occupation of Plot 12 Victoria View in view of medical circumstances. The appellants sought a temporary permission pending the delivery of suitable sites through the emerging DPD.
15. In undertaking the necessary balancing exercise, the inspector accepted that occupation of the site would lead to serious environmental objections. Refusal of planning permission was therefore a proportionate action such that even a temporary consent was unwarranted.