

## **SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL**

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**REPORT TO:** Planning Sub Committee 19<sup>th</sup> May 2009  
**AUTHOR/S:** Executive Director / Corporate Manager - Planning and Sustainable Communities

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### **B/1/45/20 – COTTENHAM**

#### **TAKING OF DIRECT ACTION TO REMEDY BREACH OF PLANNING CONTROL**

##### **Land at Victoria View, Smithy Fen Cottenham, Cambridgeshire CB24 8PY**

#### **Purpose**

1. This item is to inform Members of the current situation regarding the breach of the Enforcement Notice, No E498, relating to land at Victoria View, Smithy Fen, Cottenham, and to request from the Planning Sub Committee authority to proceed with “Direct Action” to ensure compliance with the Enforcement Notice.

#### **Background**

2. Cottenham lies on the B1049, some five miles north of Cambridge, on the edge of the Fens. The Parish boundaries follow the old waterways of the River Ouse to the north and Oakington Brook to the south and east, an ancient track way via Regia to the southwest, and Beech Ditch on the southeast.
3. Following a complaint and subsequent investigation that a mobile home and other vehicles and materials had been moved on to land situated to the rear of plots 3,4 and 5 Setchel Drove, Smithy Fen Cottenham without planning permission, Planning Enforcement Notices, SCDC Reference No: E353B, E353C and E353D were issued on the 9<sup>th</sup> June 1999.
4. Since that time a planning application reference S/0761/04/F was made by the occupants of Victoria View (8<sup>th</sup> April 2004) but was later refused. In June 2004 a site visit confirmed that there was still a breach of the Notice and committal proceedings were instigated. A further Enforcement Notice was issued on the 7<sup>th</sup> February 2005, reference number E498 refers. The Enforcement Notice E498 was appealed and subsequently a Public Inquiry was set for the 12<sup>th</sup> July 2005. In January 2006 the appeal was dismissed and the Enforcement Notice duly took effect.
5. In 2006 a further challenge was made against the Inspectors decision by the occupants of Victoria View to the High Court and heard in April 2007. The challenge was dismissed
6. In August 2007 an Injunction was granted with a deadline of March 2008 against 28 defendants who were required to carry out the following (i) Shall remove no later than 28 days from the date of the Order the hard surfacing from the area shown on the attached plan (ii) Shall no later than 14 days from the date of the Order cease the use of the land or any part of it for the stationing of residential mobile homes and /or caravans (iii) Shall remove no later than 14 days from the date of this Order the

residential mobile homes and /or caravans from the land (iv) Shall remove no later than 14 days from the date of this Order the vehicles, sheds, ancillary structures and other materials placed and /or stored on the land associated with the residential use of the land. (v) Shall cease no later than 14 days from the date of this Order the use of the land for the stationing of residential caravans (vi) Shall rip and break up the ground of the site and spread a minimum depth of 25cm of topsoil of a local type over the land no later than 28 days from the date of this Order (vii) Shall cease no later than 14 days from the date of this Order to use the access road shown edged black on the attached plan for the purposes of accessing the land for residential use and associated development. In turn, this was appealed with that appeal being dismissed on the 28<sup>th</sup> October 2008. In accordance with the Order made as a result of the Appeal, the deadline for compliance was stayed until the 2<sup>nd</sup> January 2009. A further appeal by way of Petition to the House of Lords was made in March 2009 but permission for the Appeal was subsequently refused. The committal hearing set for the 13<sup>th</sup> March 2009 was adjourned for two weeks as a result of the defendants failing to appear in Court and being unrepresented.

7. Given that the breaches continued, committal proceedings against those believed to be in contempt were commenced. At a hearing on the 13<sup>th</sup> March 2009, the matter was adjourned for two weeks as a result of the defendants failing to appear in Court and being unrepresented.
8. The events summarised in paragraphs 1 to 7 above have previously been reported to the Sub Committee in more detail.
9. On the 27<sup>th</sup> March 2009 his honour Mr Justice Holroyd found the defendants to be in contempt on the basis of evidence that included live witness testimony. In summary the Court imposed orders to the effect as follows.
  - a. Against Thomas Boswell, Nora Boswell, Johann Boswell and Kathleen Boswell immediate imprisonment for four months. Warrants issued.
  - b. Against Margaret O'Brien, Nellie Quilligan and Hannie Flynn, three months imprisonment suspended for twelve months
  - c. Against Bridget Gammell, Margaret Sheridan and David Sheridan, four months imprisonment suspended for twelve months
  - d. Against Kathleen Sheridan, no order
  - e. In relation to the three static caravans remaining, the injunction deadline was further extended for twenty-eight days for these to be removed, sold, demolished or otherwise dealt with so as to comply with the other requirements of the injunction.

### **Considerations**

10. A site inspection on the 30<sup>th</sup> April 2009 has confirmed that three static caravans still remain on plots 2,6, and 11 Victoria View in breach of the current Injunction, following expiry of the extended period for final compliance.

### **Implications**

#### **▪ Financial**

11. The cost of direct action is estimated to be £42,650.00 for bailiffs to be in attendance with specialist contractors to dig up the site and create an earth bund to the 11 plots, including retaining a road access for plot 12 and the disconnection of any electrical or water supplies to the area. In addition to this a further £650 will likely be required for

the removal of each static caravan remaining on any of the 11 unauthorised plots in Victoria View and a further £200, per week for storage charges for each caravan held in storage. These have to be retained for a minimum period of 7 days to allow the owner to claim his property. Policing and SCDC staffing costs are not known at this time.

▪ **Legal**

12. The power to exercise all planning enforcement functions is provided Part VII of the Town and Country Planning Act 1990. In this respect, the statutory power to take direct action is derived from section 178(1) of the Act. Which gives the power to execute outstanding works where any steps required by an enforcement notice to be taken are not taken by the deadline imposed The Act gives the Local Planning Authority the power to enter the land and take steps; and to recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.
13. Access to the site can only be taken by crossing land in the ownership of a third party who has previously put the Council on notice that such access should not be taken without her prior consent and licence. In anticipation of direct action being necessary but without attempting to pre-empt the decision of the Sub Committee, such formal request has been made but, so far, without any response being received.

**Recommendations**

14. That direct action now is taken to remove the unauthorised static caravans from the land, rip up hard surfacing and secure by bunding the site.

**Background Papers:**

The following background/ case file papers were used in the preparation of this report:

- a) Enforcement Notices E353B, E353C, E353D and E498
- b) Appeal Notices for Victoria View
- c) Injunction Notices
- d) Previous reports to Planning Sub Committee

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