

# Agenda Item 13

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Committee

2 October 2013

**AUTHOR/S:** Planning and New Communities Director

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**PROPOSED APPLICATION FOR INJUNCTION TO REQUIRE THE REMOVAL OF UNAUTHORISED STORED VEHICLES, INCLUDING MOBILE HOMES, OTHER ITEMS AND MATERIALS NOT REQUIRED FOR THE PURPOSES OF AGRICULTURE AND TO PREVENT FUTURE UNAUTHORISED USE FOR STORAGE OF SAME TOGETHER WITH CESSATION OF USE OF LAND FOR THE UNAUTHORISED SALE AND REPAIR OF VEHICLES AND PREVENTION OF FUTURE USE OF SAME AT HILL TREES, BABRAHAM ROAD, STAPLEFORD - MR FLEET COOKE**

### **Purpose**

1. To seek authorisation from the Planning Committee to apply to the court for an injunction to secure the cessation of uses on the land for the storage of vehicles, including mobile homes, and other items and materials that are not required for agriculture or in connection with the residential use, within its curtilage, and removal of the existing vehicles, including mobile homes, and other items and materials currently stationed on the land, that are not required for agriculture or in association with the residential use, within its curtilage, and for the cessation of the use of the land outside the residential curtilage for the sale and repair of motor vehicles and to prohibit any sales or repair of motor vehicles from within the residential curtilage that are not consistent with a residential use.

### **Recommendations**

2. That the Planning Committee authorise officers to apply to the court for an injunction under powers at Section 187B of the Town and Country Planning Act 1990.

### **Reasons for Recommendations**

3. The site lies within the Cambridge Green Belt and within an area of undeveloped open countryside which is of significant visual quality. It lies close to the southern edge of Cambridge and the general area contributes strongly to the setting of the city and the nearby villages of Stapleford and Great Shelford. The site is being used in a haphazard manner for the sale of motor vehicles and the storage of vehicles, including mobile homes, and a range of other items such as an old Nissen Hut and various other materials. The appearance of the site has been described locally as an 'eyesore'. It harms the quality of its surroundings and thereby the setting of Cambridge and the nearby villages of Stapleford and Great Shelford. In addition there are highway safety concerns in relation to the sale of vehicles from the site as customers are accessing directly from the A1307. The site sits in a highly visible part of the countryside lying as it does alongside the A1307 exacerbating the harm as it is seen by hundreds of passing motorists entering or leaving Cambridge each day.
4. Past actions to address the breaches of planning permission have had only limited success and it is considered that pursuing the matter further through the serving of further Enforcement Notices will only cause further delay and cost.

## **Background**

5. The site lies just south of Cambridge off the A1307 to the north east of the villages of Stapleford and Great Shelford. To the north lies the Gog Magog golf course and to the south east Wandlebury Country Park.
6. A map of the site and a series of aerial photographs showing how the site has changed over time is attached as Appendix 1. It has been divided up into three distinct planning units as identified by a Planning Inspector in his planning appeal decision letter dated 2 November 2005 at paragraph 5 (see attached at Appendix 7)
7. The westernmost part of the overall site, Area A, comprises a residential unit and its curtilage. The building is a former public house granted planning permission for residential use in 1972. The house is not currently believed to be regularly occupied. A mobile home is situated within this part of the site which may be in use in connection with the residential use and if so would not therefore be considered to be unauthorised development.
8. The central portion of the site, Area B, has been used in the past for the growing of flowers, a permitted agricultural use. No planning permission has been granted on the site so it benefits from the base use of agriculture only.
9. The eastern portion of the site, Area C, has similarly not been granted planning permission for any uses. Like Area B it therefore benefits from the base use of agriculture only. It has been considered separately from Area B in the past due to it historically having been in separate ownership.

### *Extant Enforcement Notices*

#### *Areas A and B*

10. The extant Enforcement Notice (for Areas A and B) ref PLAENF.3837 is attached as Appendix 10
11. The Enforcement Notice alleges that Area A, forming the residential property and its curtilage, and Area B, forming an agricultural use, became a mixed use of residential and the sale and repair of motor vehicles. At the time of serving the notice it is understood there was no substantive storage of vehicles taking place other than in connection with the sales and repair business and the notice addressed only the breach that was evident. The notice took effect on 15 March 2010 and required the use of the land for motor vehicles sales and repair to cease.

#### *Area C*

12. The extant Enforcement Notice ref. E499 is attached as Appendix 5.
13. The Enforcement Notice alleges a change of use of land from agriculture to the storage of motor vehicles, caravans/mobile homes, container, trailers, timber, bricks, scrap metal and other items not associated with or requisite for agriculture. The notice took effect on 31 March 2005 and required the removal from the site of all motor vehicles, caravans/mobile homes, container, trailers, timber, bricks, scrap metal and other items not associated with or requisite for agriculture.

*Current breaches of extant Enforcement Notices*

*Area A*

14. There is no evidence to suggest any unauthorised sales or repair of motor vehicles is currently taking place.

*Area B*

15. It is apparent that vehicles are being stored in this area. It is unclear whether these are for sale or repair.

*Area C*

16. Vehicles in various states of repair including those clearly un-roadworthy which are claimed to be for sale by Mr Cooke in his response to the Planning Contravention Notice ref PCN02/2013 issued 15 April 2013 (PCN) (Attached as Appendix 13) are present on the land. Mr Cooke has also indicated, in the response to the PCN, that he is storing vehicles on the land. This is in breach of the Enforcement Notice. There is also storage of a caravan, a container, a trailer, timber, bricks, scrap metal and other items such as an old Nissan hut currently stored in broken up sections being stored on the land in breach of the Enforcement Notice.

*Additional breaches of planning control not covered by the Enforcement Notices*

*Area A*

17. None identified provided the mobile home that lies within the residential curtilage is being used for purposes in association with the residential use of the dwelling. In his response to the PCN, Mr Cooke stated that he had a mobile home that is for "security around the house" but it is unclear what he means by this. These matters continue to be investigated, however, the most recent visit to the site on 6 September 2013 was not able to establish how the mobile home was being used. The situation will continue to be investigated.

*Area B*

18. Storage of a mobile home, motor vehicles including cars, lorries, vans, construction vehicles, trailers, storage of fuel storage tanks, disused chest freezers, a low level Nissen hut and the construction of a roadway running east west across the site running perpendicular to the existing access.

*Area C*

19. Sale of motor vehicles as stated by Mr Cooke in his response to the PCN. Attached as Appendix 13 are a collection of photographs taken 6 September 2013 showing vehicles for sale within this area. In addition to this use a new roadway has been constructed within the site running perpendicular to the existing access onto the A1307 and curling back and round within the site. It does not appear that this is in connection with any known agricultural use taking place within the site. It is not known if vehicle repairs are currently taking place.
20. It appears that broadly speaking on the land where enforcement action against storage was taken (Area C) there are currently sales taking place and on the land where enforcement action against sales was taken (Area B) there is storage taking place.
21. None of the above identified breaches are considered to be associated with the permitted use of the land (Areas B and C) as agriculture.

22. Attached at Appendix 3 is a collection of aerial photographs of the whole site taken 10 May 2013
23. Attached at Appendix 4 is a collection of photographs taken from within the site taken at various times showing the range of vehicles, items and materials stored and for sale.
24. None of the items shown in the photographs are believed to be in use in connection with any substantive agricultural operation taking place within or in the vicinity of the site.
25. Members will be shown an up-to-date set of photographs with explanation given verbally at the meeting.

#### *Content of Injunction*

26. It is proposed that if Members are minded to grant authorisation to seek an injunction the requirement set out in that injunction will be as follows:  
  
“All vehicles, including mobile homes, items and materials that are stationed on the land that are not used in association with any agricultural operation, including those listed within Enforcement Notice ref. E499, within Areas B and C, shown on the attached plan, shall be removed from the site within one month from the coming into effect of the injunction. Any new items, of the same description, shall not be brought onto the site, again within Areas B and C at any time in the future such that the land shall remain open and undeveloped save for development required for agriculture. In addition, the sale and repair of all vehicles from within these areas shall cease and no new sales or repairs of vehicles shall take place at any time in the future. Within Area A there shall be no storage of vehicles, including mobile homes, items or materials that are not used in connection with the permitted residential use of the existing dwelling and neither shall sales or repair of vehicles take place that are not commensurate with a residential use (approximately 1 vehicle per month).”
27. The injunction would not seek to prevent any small scale ancillary sales of motor vehicles that could take place within any residential curtilage as an ancillary use to the residential occupation of Area A and neither would it seek to remove or prohibit the stationing of a mobile home that is used in connection with the residential use. In other words the injunction would not seek to restrict the normal rights householders enjoy to station a caravan within their garden or sell cars at a scale and nature commensurate with a residential use.

#### *Detailed Planning History*

##### *Area A*

10/06/1948 – Permission granted to develop land for chalk working. Ref. C/48/6  
 25/03/1955 – Permission granted for alterations and additions. Ref. C/55/58  
 11/08/1955 – Permission granted for erection of power plant. Ref. C/55/351  
 02/12/1968 – Permission granted for filling and landscaping of discussed chalk pit on land rear of Hill Trees Public House Ref. C/68/502  
 18/12/1969 – Permission refused for alterations plus 60 seat restaurant. Ref. C/69/676  
 25/02/1972 – Permission granted for change of use from Public House to flats. Ref. C/0969/71

#### *Area B*

03/05/1985 – Permission refused for one dwelling. Ref. S/0436/85

#### *Area C*

15/09/2006 – Permission refused for Nissen hut and mobile home. Ref. S/1469/06

29/01/2008 – Appeal dismissed against refusal ref. S/1469/06 for Nissen hut and mobile home.

#### *Detailed Enforcement History*

28. 23 February 2005 – Enforcement Notice issued ref E499 in relation to Area C alleging an unauthorised material change of use of land from agriculture to the storage of motor vehicles, caravans/mobile homes, container, trailers, timber, bricks, scrap metal and other items not associated with or requisite for agriculture. The notice required the removal from site of all motor vehicles, caravans/mobile homes, container, trailers, timber, bricks, scrap metal and other items not associated with or requisite for agriculture (copy attached as Appendix 5).
29. 28 February 2005 – Stop Notice ref. E499A issued prohibiting those served with a copy from carrying out or continuing on the land (Area C) the following activities: “Using the land for the storage of motor vehicles, caravans/mobile homes, container, trailer, timber, bricks, scrap metal and other items not associated with or requisite for agriculture” (copy attached as Appendix 6)
30. 29/03/05 – Appeal submitted in respect of Enforcement Notice ref. E499
31. 2 November 2005 Appeal against ref. E499 dismissed and Enforcement Notice upheld (Copy attached as Appendix 7)
32. As a result of Mr Cooke not subsequently complying with the Enforcement Notice a prosecution file was raised and Mr Cooke attended the Cambridge Crown Court on 11 December 2007. He faced two charges of failing to comply with planning Enforcement Notices. The first related to another parcel of land at Riverside Stables, Bourn Bridge Road, Babraham Road, Stapleford where an Enforcement Notice had been served in January 1999 and the second was in relation to Enforcement Notice ref. E499 (detailed above). Mr Cooke pleaded guilty to the first notice but no evidence was offered against him on the second charge (re E499) following advice officers received from Counsel in relation to technical difficulties with the case. However, the notice ref. E499 remains in force and the outcome of this prosecution does not compromise the notice.
33. 2 April 2008 – Direct action was authorised by the Planning Committee in respect of the land at Area C. There were no significant breaches occurring on the remainder of the whole site at this time. The report and minutes are attached as Appendix 8.
34. 7 May 2008 – Direct action was taken and the unauthorised items, namely a caravan and a small vehicle were removed.
35. Following the direct action the site was closely monitored and during 2009 further breaches of planning control were identified. A series of correspondence with Mr Cooke followed in an attempt to remedy the breaches through negotiation.
36. 26 August 2009 – A Planning Contravention Notice ref. PCN21/2009 was issued in relation to sales of vehicles on Area A. A copy of the notice and its response is attached as Appendix 9

37. 3 February 2010 – Enforcement Notice was issued ref. PLAENF.3837 in relation to Areas A and B. It alleged “Without planning permission, the change in use of residential accommodation to a mixed use of residential and motor vehicles sale and repair.” The notice required the cessation of “the use of the land for motor vehicles sales and repair”. A copy of the notice is attached as Appendix 10
38. 18/03/10 – Appeal submitted in respect of Enforcement Notice ref. PLAENF.3837. The fees were not paid so the appeal proceeded into the matter of whether the site was immune from enforcement action through the passage of time only and not on the planning merits.
39. 4 November 2010 – Appeal against PLAENF.3837 dismissed and the Enforcement Notice upheld. The Inspector found there was no lawful use by the virtue of time. A copy of the appeal decision is attached as Appendix 11. The Inspector did however, correct the notice by rewording the allegation as follows: “Without planning permission, the material change of use of the land from use as residential accommodation and for purposes incidental thereto to a mixed use comprising residential accommodation, purposes incidental thereto and the sale and repair of motor vehicles”
40. Following the appeal Mr Cooke ceased to advertise vehicles for sale and repair and in the absence of any evidence that sales were still taking place it was considered he had complied with the Enforcement Notice.
41. Throughout 2011 there continued to be breaches in relation to unauthorised storage within the site.
42. 15 February 2012 – Authority to employ direct action to clear the site of all unauthorised development contained within the two Enforcement Notices was granted by Planning Sub-Committee. A copy of the report and minutes are attached as Appendix 12. The action was challenged in the High Court ,however, and the Council conceded before the challenge was heard recognising that, in very broad terms, the land covered by the Enforcement Notice for storage was being used for sales and the land covered by the notice for sales was being used for storage and it would therefore not be possible to clear the site in the manner authorised by the Planning Sub-Committee.
43. 15 April 2013 – A Planning Contravention Notice ref. PCN02/2013 was issued and on 1 May 2013 a response was received. A copy of both is attached as Appendix 13
44. In recent months the level of activity on Areas B and C of the site has increased to its current level.

#### *Land Registry Details*

45. Areas A and B are believed to be comprised in an unregistered title owned by Mrs Freda Cook (no relation to Mr Fleet Cooke) now recently deceased and therefore forming part of her estate, which awaits administration. There is currently a caution registered, however, in favour of Fleet Stother Cooke protecting interests in the land that he asserts. (Copy attached as Appendix 14)
46. Area C is a registered with possessory title vested in Fleet Stother Cooke. (Copy attached as Appendix 14)

### *Relevant Planning Policies*

47. The site lies outside any village framework and within the Cambridge Green Belt
48. Local Development Framework 2007(LDF) Policy GB/1 contains a presumption against inappropriate development in the Green Belt, as defined within PPG2, which has since been superseded by the National Planning Policy Framework 2012 (NPPF).
49. LDF Policy GB/2 states that any development considered appropriate within the Green Belt must be located and designed so that it does not have an adverse effect on the rural character and openness of the Green Belt.
50. NPPF Paragraph 87 states that “Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances”.
51. NPPF Paragraph 88 states that “...local authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.”
52. NPPF Paragraph 89 lists the types of buildings that may be appropriate and paragraph 90 lists other uses of land which may also be appropriate:
  - mineral extraction;
  - engineering operations;
  - local transport infrastructure which can demonstrate a requirement for a Green Belt location;
  - the re-use of buildings provided that the buildings are of permanent and substantial construction; and
  - development brought forward under a community Right to Build Order.
53. LDF Policy ST/1 paragraph 2.1 states “The Cambridge Green Belt serves a number of purposes... The Green Belt keeps land open and free from development over a long period, which extends beyond the plan period, in order to give assurance that its boundaries will endure.
54. LDF Policy ST/1 paragraph 2.2 states “The Cambridge Green Belt is relatively small in extent. It’s purposes are defined as:
  - To preserve the unique character of Cambridge as a compact, dynamic city with a thriving historic centre;
  - To maintain and enhance the quality of its setting;
  - To prevent communities in the environs of Cambridge from merging into one another and with the city.”
55. LDF Policy ST/1 paragraph 2.3 states “In defining the Green Belt and the policies which should be applied to it, regard will be given to the special character of Cambridge and it’s setting, which include:

- Key views of Cambridge from the surrounding countryside;
  - A soft green edge to the city;
  - A distinctive urban edge;
  - Green corridors penetrating into the city;
  - Designated sites and other features contributing positively to the character of the landscape setting;
  - The distribution, physical separation, setting, scale and character of Green Belt villages;
  - A landscape which retains a strong rural character.
56. LDF Policy DP/2 states (in part) that all development must be of high quality design and, as appropriate to the scale and nature of the development, should preserve or enhance the character of the area and conserve or enhance important environmental assets of the site.
  57. LDF Policy DP/3 states (in part) that planning permission will not be granted where the proposed development would have an unacceptable adverse impact on the countryside and landscape character area. It also resists development that that would have an unacceptable adverse impact from traffic generated.
  58. LDF Policy DP/7 states that, outside village frameworks, only development for agriculture, horticulture, forestry, outdoor recreation and other uses that need to be located in the countryside will be permitted.
  59. LDF Policy NE/4 states that development will only be permitted where it respects and retains or enhances the local character and distinctiveness of the individual Landscape Character Areas in which it is located.
  60. Proposed Submission Local Plan 2013 (PSLP) Policy S/4 states that the Government attaches great importance to Green Belts, and this is set out in the NPPF. It restates the fundamental aim of Green Belt policy, including to preserve the setting and special character of historic towns such as Cambridge and restates the purposes and factors that define its special character as set out in LDF Policy ST/1.
  61. PSLP Policy S/7 restates LDF Policy DP/7 in relation to developments appropriate outside of village frameworks.
  62. PSLP Policy HQ/1 states (in part) that all new development must be of high quality design, with a clear vision as to the positive contribution the development will make to its local and wider context.

## **Considerations**

### *Local representations*

63. The site has been the subject of much local concern for some years. Attached at Appendix 2 are copies of statements from the District Councillor, Mr Nightingale and from Stapleford Parish Council along with copies of correspondence from both



Stapleford Parish Council and Great Shelford Parish Council, Cllr Nightingale and local residents. Cllr Nightingale's statement also contains a letter from The Rt Hon Andrew Lansley CBE MP expressing the local concern raised with him and requesting that the Council continue to pursue all avenues available to seek a satisfactory resolution to the local concerns raised.

64. The main areas of concern are the visual impact of the site on its surroundings, its impact on the setting of Cambridge, the time it is taking to secure the restoration of the land to its former green and open condition and highway safety concerns in relation to access from the A1307 for the motor sales business.

*Planning land use*

65. The authorised use of the site is essentially in two parts. Area A contains a building that is authorised for residential use with the remainder of the land within Area A forming its residential curtilage. Areas B and C have not been granted any planning permissions and hence the authorised use of this land is for agriculture only. Hence Areas B and C are not previously developed, or 'brownfield', land for the purposes of planning considerations.

*Planning issues*

66. The key issues for consideration are:
- The principle of the development in the Green Belt
  - The visual impact on the surroundings
  - Highway safety
  - Sustainability

*Principle*

67. The use for the sale and open storage of vehicles is inappropriate in the Green Belt. It is not recognised by either local or national policy as appropriate. Areas B and C are not previously developed land so there can be no suggestion of a consideration of re-use. As a result, this development in the Green Belt is harmful by definition. Mr Cooke has not put forward any very special circumstances that could be measured against this. For this reason alone the development should not be allowed to remain.

*Visual Impact*

68. There is clear and strong local opinion that this site is an eyesore. The area around the site is gently undulating open countryside of considerable visual quality that forms an important part of the setting of Cambridge especially as the land is so close to the southern edge of the city. The development does not respect this landscape character and is therefore contrary to LDF Policy NE/4. The site also forms an important part of the open and rural character of the surroundings of the nearby villages of Stapleford and Great Shelford. The site in its present form harms the openness of this land and hence the openness of the Green Belt. It directly conflicts with the stated purpose of the Green Belt in LDF Policy ST/1 – "To maintain and enhance the quality of its [Cambridge City] setting". The Green Belt was defined in this location having regard to its important function as part of the setting of Cambridge.
69. The site is covered with vehicles in various states of repair and a host of other items and materials all referred to elsewhere in this report. It is clear that much of this has the appearance of having been dumped on the land which adds significantly to the poor appearance of the site and its detrimental impact on its surroundings.

*Highway safety*

70. The Local Highway Authority comments:

“The A1307 in this location is a main arterial route within Cambridgeshire and is subject to the national speed limit of 60mph. The carriageway is straight which encourage the majority of motorists to travel at or near to this speed. The site is located at reasonable distance from the roundabout, to the north, that this feature will have little or no effect on the speeds of vehicles passing the site. The most recent data collected in 2012 shows that this length of the A1307 carries about 12,798 motor vehicles a day of which 386 are either HCV's or PSV.

The Highway Authority has concerns relating to the creation and or use of random and irregular accesses off the main arterial routes within the County. Clearly given the rural nature of the area there are many field accesses, however these are very lightly used and the drivers accessing the same are usually well aware of the local conditions/hazards. For agricultural needs most vehicles are easily identifiable (e.g. tractors), slow moving and most motorists expect them to turn into accesses that may not be readily apparent under normal driving conditions. The same cannot be said for this site.

The use of the site as a car sales area represents a significant intensification of use of the access well above that usual for agricultural use.

The present access is of insufficient width to enable two domestic motor vehicles to pass each other which has the potential to create a situation where motor vehicle attempts to reverse out onto the A1307.

The signing to the site is inadequate and would require motorists to slow significantly and or brake to read the same, which would be an unexpected manoeuvre representing an unnecessary hazard within the adopted public highway.

Taking the above into consideration the present use of the site represents a detriment to highway safety”.

71. The use increases the volume of traffic entering and leaving the site which has an adverse effect on the safety and free flow of traffic on the adjoining public highway contrary to LDF Policy DP/3 which resists development that has an unacceptable adverse impact from traffic generated.

*Sustainability*

72. The storage and sale of motor vehicles is not a use that needs to be located in the countryside. It is therefore contrary to LDF Policy DP/7. Anyone visiting the site will be making a special journey by car. There is no public transport access and neither can the site realistically be reached by foot or cycle. It cannot therefore be demonstrated that the use for motor sales is sustainable.

*Previously identified harm*

73. The two previous Enforcement Notices served in relation to the site are attached as Appendices 5 and 10. The harm identified above is wholly consistent with the given reasons for the serving of both notices and with the Inspectors decision into the planning merits of the first appeal.

74. Although not a planning matter, as a matter of context, Mr Cooke was, in May 2012 ordered by Cambridge Magistrates Court to pay in excess of £1000 in relation to non-payment of fixed penalty notices for the sale of cars from outside his property along the roadside.

*Prospect of success of any future planning application*

75. Officers are satisfied, for the reasons given above in relation to the harm that is caused by the unauthorised uses, including the in principle objection, that should any planning application be submitted for these developments that there would be no prospect of any grant of planning permission.

*Justification for further action/other remedies*

76. The site as a whole is being used for the sale and storage of motor vehicles and other items and materials without the benefit of planning permission. Previous attempts to serve Enforcement Notices have led to direct action but this has not remedied the breaches. In addition the notices alleged only the unauthorised activities that they were able to i.e. those that were taking place at the time - storage on Area C and sales and repair on Areas A and B but it would appear that Mr Cooke has decided to reverse the activities in an attempt to be outside the scope of both Enforcement Notices. Notwithstanding this, however, it remains the case that none of the storage or sales activities (listed above) are taking place with the benefit of planning permission.
77. It is the view of officers that it is now necessary to take action across the whole of the site and against all of the unauthorised activities. Clearly one option would be to serve a further Enforcement Notice against the current breaches of planning control across the whole site. However, it is clear that Mr Cooke has a history of breaching planning controls on this and other sites (see reference to Riverside Stables, Bourn Bridge Road, Babraham Road, Stapleford above) and it is not considered that there is any realistic prospect of Mr Cooke complying with such action. Therefore to seek to resolve this matter through the normal planning enforcement route would put further pressure on the limited resources of the Council and would likely result in significant further delays. In addition officers consider there may be yet further breaches that may occur generating increased harm and it cannot be guaranteed that these would fall within the scope of any Enforcement Notice we may serve resulting in yet further delays in returning the site to its former green and open condition. Officers therefore consider it necessary to apply to the courts for an injunction to bring the matters to resolution in a timely and effective manner.

*Health and Safety*

78. There are no known health and safety concerns in relation to Mr Cooke clearing the site. Repeated visits to the site show vehicles and materials have been moved onto and within the site. Mr Cooke has experience of moving the materials found within the site and nothing suggests to officers that either his health or his safety will be compromised if he is required to clear the site.

*Reasonableness*

79. For similar reasons to those given above officers believe that Mr Cooke would be able to comply with any requirement to clear the site and therefore if the courts order that the site should be cleared it is considered that this should be possible for Mr Cooke to achieve and therefore such action is not deemed unreasonable.

#### *Personal circumstances of Mr Fleet Cooke*

80. If the court was to grant the injunction this would result in Mr Cooke's business on the site needing to cease which will no doubt have an impact on his livelihood and wellbeing. However, the scale of the current business of motor sales from the site appears small and Mr Cooke tends to deal in low value vehicles such that the profit he receives will be low. It is not therefore apparent that this business currently provides Mr Cooke with his sole income. Mr Cooke is known to operate on land elsewhere such that he is not without assets. It is concluded therefore that the consequences of clearing the site and the unauthorised uses ceasing would not have such a significant impact on Mr Cooke's wellbeing that such considerations would outweigh the need to remedy the harm identified above.

#### *Human Rights considerations*

81. The statutory framework of the Town and Country Planning Act 1990, including Part VII that contains the Section 187B power to seek injunctions for planning enforcement purposes, has been held by the Courts to be compliant with Human Rights principles to the extent that proportionate actions against individuals may sometimes be necessary in the wider public interest. The action contemplated here is considered to both be proportionate and indicated in the wider public interest given the planning harm being caused as is described in this report.

#### *Expediency*

82. For the reasons given above officers consider it is necessary, proportionate and expedient to enforce against each of the matters that remain extant within the Enforcement Notices referred to as well as to seek to remedy the other breaches of planning control identified above that are not covered within the said notices. As detailed above officers believe that Mr Cooke has a track record of non-compliance and it is not believed that any action other than an injunction will secure a remedy without significant further delay and cost whilst ultimately futile appeals and statutory challenges are exhausted. In addition Mr Cooke has shown in the past, on this site and at least one other, that he is prepared to implement development without first gaining consent. He appears to have escalated his operations within the site recently with the construction of a roadway and the inclusion of sales signs within vehicles. Officers believe there is a risk of yet further breaches for which action through the normal planning enforcement route would take time and resources to pursue. It is therefore concluded that it is necessary, proportionate and expedient to seek an injunction in this case.

#### **Options**

83. The following options are for consideration
- (a) To take no further formal action
  - (b) To address the breaches through the serving of further Enforcement Notices
  - (c) To seek an injunction

#### **Implications**

84. Option A – The harm identified would continue and likely increase
85. Option B – This may resolve the current harm but not before significant further delays and costs are incurred and any new harm arising from any further breaches may exacerbate this yet further

86. Option C – The court can grant an injunction to address the harm now and for the future.

Financial	None significant – officer time in seeking the injunction
Legal	The remedy of an injunction pursuant to Section 187B of the Town and Country Planning Act 1990 is a discretionary one that will depend on the Court being satisfied on the evidence that an injunction is warranted and appropriate. As the litigation will be commenced in the High Court, there is the need for Counsel to be engaged to advise and advocate; and also the potential for legal costs to further accrue in the event the proceedings are defended or any order obtained is appealed to the Court of Appeal.
Staffing	There are no direct staffing implications arising from this report.
Risk Management	No significant risks identified. Should the courts not grant an injunction, alternative planning enforcement powers remain available although these may be subject to appeal and statutory challenge.
Equality and Diversity	The action may impact on Mr Cooke's business activities and therefore on his income. He has recently been supporting an elderly person not related to him, Mrs Cook, but who has recently died. Mr Cooke clearly has assets and access to benefits should these assets not be sufficient to meet his needs.
Equality Impact Assessment completed	No There are no significant implications arising from this report
Climate Change	No impact

### Consultations

87. Consultation with the Local District Councillor and the Parish Council  
See Appendix 2 for statements from the District Councillor, Mr Nightingale and from Stapleford Parish Council

### Consultation with Children and Young People

88. None

### Effect on Strategic Aims

89. **Aim 1:** "We will listen to and engage with residents, parishes and businesses to ensure that we deliver first class services and value for money".

**Aim 2:** "We will work with partners to create and sustain opportunities for employment, enterprise and world leading innovation."

**Aim 3:** "We will make sure that South Cambridgeshire continues to offer an outstanding and sustainable quality of life for our residents." The Council has a duty to secure sustainable development. This lies at the heart of the draft Local Plan and covers all three aspects of sustainability – economic, social and environment. The Plan has a focus on sustaining and enhancing the qualities of South Cambridgeshire that in national surveys consistently identify the District as one of the best places to live in the UK.

90. Whilst Aim 2 does not apply, the recommendation is fully consistent with Aims 1 and 3.

### **Conclusions / Summary**

91. Conventional planning enforcement has failed over a prolonged period of time to address what is a flagrant and prolonged defiance of planning control and nothing short of an injunction is considered likely now to be effective. Officers consider there is no alternative as it is evident breaches will continue unless addressed. Officers also consider there is no hardship that would outweigh continued and persistent disobedience of planning control. Officers have considered all of the circumstances and nonetheless resolved that it is necessary, expedient and proportionate to seek the injunction proposed in the public interest, including an injunction (i) on a permanent basis, and (ii) against breaches of planning control not subject to Enforcement Notices and also apprehended future further breaches of planning control.

### **List of Appendices**

Appendix 1 - Map of site showing Areas A, B and C and aerial photographs showing the change in the site over time.

Appendix 2 - Statements from District Councillor Mr Nightingale and from Stapleford Parish Council and copies correspondence from Cllr Nightingale, Stapleford and Great Shelford Parish Councils and local residents.

Appendix 3 – Aerial Photographs taken of the site 10 May 2013

Appendix 4 - Photographs from within the site taken on various dates

Appendix 5 - Enforcement Notice ref. E499 dated 23 February 2005

Appendix 6 - Stop Notice ref. E499A dated 28 February 2005

Appendix 7 - Planning Appeal Decision Letter ref. APP/W0530/C/05/2001784 dated 2 November 2005

Appendix 8 - Report and Minutes Planning Committee dated 2 April 2008

Appendix 9 - Planning Contravention Notice ref. PCN21/2009 and response dated 26 August 2009 and 28 September 2009 respectively

Appendix 10 - Enforcement Notice ref. PLAENF.3837 dated 3 February 2010

Appendix 11 – Planning Appeal Decision Letter ref. APP/W0530/C/10/2124575 dated 4 November 2010

Appendix 12 – Planning Sub-Committee Report and Minutes – 15 February 2012

Appendix 13 - Planning Contravention Notice ref. PCN02/2013 and response dated 15 April 2013 and 1 May 2013 respectively

Appendix 14 – Land Registry Documents in relation to Areas A and B and Area C

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

- Enforcement notices ref E499 and PLAENF 3837
- Stop Notice ref. E499A
- Planning Appeal decision notices ref. APP/W0530/C/05/2001784 and APP/W0530/C/10/2124575
- Planning Contravention Notices ref. PCN21/2009, PCN02/2013 and responses
- Report and Minutes of Planning Committee 2 April 2008
- Report and Minutes of Planning Sub-Committee 15 February 2012
- Site photographs
- National Planning Policy Framework
- South Cambridgeshire District Council Local Development Framework 2007
- South Cambridgeshire District Council Proposed Submission Local Plan 2013
- Statement of Councillor Mr Nightingale
- Statement of Stapleford Parish Council
- Land registry entries in relation to the site

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