

Planning Committee – 27 September 2006

Report of the Chief Solicitor

Enforcement action in respect of unauthorised gypsy site at Oxen Lane North Curry.

1. Background

- 1.1 Members will recall that in October 2004 an unauthorised gypsy residential site was set up at Oxen Lane, North Curry with sixteen plots being laid out over a weekend. An Enforcement Notice and Stop Notice were served. In December 2004 an application for planning permission for the use of the land at Oxen Lane as a residential gypsy site with the provision of 16 mobile homes, 16 tourers and 16 day rooms was refused.
- 1.2 In January 2005 an application was lodged with the High Court for an injunction seeking the removal of all the occupiers and caravans from the land and its re-instatement. The proceedings were served on the various parties but were subsequently held in abeyance as a date for a Public Inquiry into an appeal against the Enforcement Notice was set for June 2005. An appeal against the refusal of planning permission was lodged immediately after the Inquiry and the Inspector decided that he had heard sufficient evidence at the Inquiry to enable him to report to the Secretary of State on both appeals.
- 1.3 In September 2005 the Secretary of State confirmed that the Enforcement Notice would be upheld and the appeal against the refusal of planning permission dismissed. He varied the Enforcement Notice to allow twelve months for compliance, in effect requiring the occupiers to vacate the site by the 26 September 2006.
- 1.4 Throughout the subsequent period, the site has been monitored by the Enforcement Officers who have kept records of those living on site. At the date of the Inquiry it was stated that there were sixteen families either living, or intending to live, at the site. However, of the sixteen families who were appellants at the Inquiry, only four have remained on site since that time. These are the Holland family, the O'Neill family, the Packman family and Jim Smith and Launa Price.
- 1.5 Although other families have moved on to and off the site in the intervening period, at the time of the drafting of this report there is only one further family on site, the Dunn/Dolans.

2. Planning Applications

- 2.1 In late August 2006, an application for the stationing of a caravan on Plot 12 was received from the appellants and former occupants, the Loveridge family. They have not lived on site for some considerable time. Their

application is being considered in the usual way and will be reported to a future meeting of the Committee.

- 2.2 Solicitors acting for the Hollands, O'Neills, Packmans and Smith and Price have indicated that individual planning applications will be submitted on behalf of each family. The new occupier, Mr Dolan, has also indicated that he will be submitting an application for Plot 9. As with the Loveridge application any applications will be reported to a future meeting of the Committee.
- 2.3 In the light of the recent guidance in ODPM Circular 1/2006, Members must consider whether it is likely that a temporary planning permission would be granted in response to such applications either by the Council or the Secretary of State. If there is a reasonable prospect that temporary permissions would be granted, it is unlikely that a court will grant an immediate eviction injunction. The gypsies are bound to raise this point if injunction proceedings are resumed.
- 2.4 Circular 1/2006 requires Local Planning Authorities to carry out an assessment of the need for gypsy sites in their areas (a 'GTAA'). Results from all the GTAAs in a region will be submitted to the Regional Planning Authority which will, through the Regional Spatial Strategy (RSS), impose quotas for the provision of gypsy sites in each district. The Local Planning Authority will then be expected to make allocations sufficient to meet this quota. This will mean identifying particular sites. This process of identification will be achieved through the new Development Plan Document (DPD) process: it is contemplated that there may have to be subject-specific DPDs dealing solely with the allocation of land for gypsy sites.
- 2.5 The above scheme contemplates that allocations in DPDs will follow the imposition of quotas in the RSS. Plainly this process may take a considerable time. In the interim the Government has set out transitional arrangements in paragraphs 41-46 of Circular 1/2006. Where there is an obvious present need, site allocations may have to be made in advance of the imposition of quotas (paragraph 43). Further, in the period before allocations are made paragraphs 45 and 46 give guidance on the grant of temporary planning permissions. These are obviously directed at cases where land is already unlawfully occupied by gypsies, as in the present case: paragraph 12(i) indicates that one of the principal aims of the new circular is to prevent gypsies from becoming homeless through being evicted from unlawful sites with no alternative site to go to.
- 2.6 Paragraphs 45 and 46 state:–

“45. Advice on the use of temporary permissions is contained in paragraphs 108-113 of Circular 11/95, The Use of Conditions in Planning Permission. Paragraph 110 advises that a temporary permission may be justified where it is expected that the planning circumstances will change in a particular way at the end of the period of the temporary permission.

Where there is unmet need but no available alternative gypsy and traveller site provision in an area but there is reasonable expectation that new sites are likely to become available at the end of that period in the area which will meet that need, Local Planning Authorities should give consideration to granting a temporary permission.

46. Such circumstances may arise, for example, in a case where a Local Planning Authority is preparing its site allocation DPD. In such circumstances, Local Planning Authorities are expected to give substantial weight to the unmet need in considering whether a temporary planning permission is justified. The fact that temporary permission has been granted on this basis should not be regarded as setting a precedent for the determination of any future applications for full permission for use of the land as a caravan site. In some cases, it may not be reasonable to impose certain conditions on a temporary permission such as those that require significant capital outlay.”

2.7 Several points need to be made about this new guidance.

- 2.7.1 First, there was no equivalent guidance about the grant of temporary planning permissions in Circular 1/1994 or in the draft version of the new circular.
 - 2.7.2 Second, questions of temporary planning permission only arise where there are no alternative sites.
 - 2.7.3 Third, Local Planning Authorities are required to give ‘substantial weight’ to unmet need in deciding whether to grant such a temporary planning permission – that is the need for gypsy sites that is not presently being met by the allocation of sites. There plainly is a level of need in the district: at the present time this is unmet. The present position on the progress that is being made towards meeting this need is set out below.
 - 2.7.4 Fourth, it is made clear that such a temporary planning permission should not be regarded as setting a precedent for allowing permanent occupation of the site in question.
 - 2.7.5 Fifth, paragraph 45 makes express reference to paragraphs 108-113 of Circular 11/95, the circular dealing with conditions and temporary planning permissions. One of the points made in paragraph 109 of Circular 11/95 is that it is never appropriate to grant a temporary planning permission if the injury to amenity caused by the development cannot be mitigated to an acceptable level by the imposition of conditions. This point applies as much to temporary planning permission for a gypsy site as to any other kind of temporary planning permission.
- 2.8 There is recent case law on the approach that the courts will take to a claim for an eviction injunction in a case like the present where there is a

very recent decision of the Secretary of State refusing planning permission, albeit one given before Circular 1/2006. The most comprehensive analysis is set out in *South Cambridgeshire DC v Flynn*, decided in June of this year. In that case the judge was prepared to assess how strong the prospects of the gypsies getting a temporary planning permission were. He assumed that if the prospects were reasonable, it might well be appropriate to defer any injunction until a further inquiry had been held. However, in assessing these prospects, he considered that the pre-Circular 1/2006 findings of the Inspector/Secretary of State remained relevant, especially to the question of harm to amenity and whether this harm could be overcome by conditions, as required by paragraph 109 of Circular 11/95. In *Flynn* the Inspector had found that the gypsy site (which was neither in the Green Belt nor an Area of Outstanding Natural Beauty) was causing significant harm to the countryside and to residential amenity. The Inspector had specifically found that conditions could not overcome this harm and that not even a temporary planning permission should be granted (the appellants had sought a permanent planning permission, as in the present case). On the strength of these findings the judge was prepared to find that the gypsies did not have a reasonable prospect of a temporary planning permission, despite the advent of the new Circular. Accordingly he granted an eviction injunction.

- 2.9 Members therefore need to address the new circular and ask whether the gypsies have a reasonable prospect of obtaining a temporary planning permission. If Members think that such a reasonable prospect exists, they should not seek to resume the injunction proceedings at the present time.
- 2.10 Officers set out below the matters relevant to this judgment, namely the present position with regard to the assessment of the need for gypsy sites in the district, the personal circumstances of the occupants, the present position with regard to the allocation of land for gypsies and the planning assessment of the development at Oxen Lane made by the Inspector/Secretary of State.

3. Needs Assessment

- 3.1 At the time of the Public Inquiry there was no quantitative assessment of the need for gypsy sites across Somerset, although the Secretary of State did comment on the Council's good record with regard to site provision. However, since then work has commenced on a county wide housing needs assessment prepared by the ARK Consultancy. This includes a continuing assessment of the needs of gypsy and traveller families. This detailed work is likely to be completed within the next twelve months.
- 3.2 However, as at January 2006, four unauthorised gypsy or traveller sites were identified with a total of 22 caravans (although not all were occupied). The current position in relation to these sites is as follows:-

Site 1 has since been granted permission.

Site 2 has, at the suggestion of the Planning Officer, submitted a further application as the main objection to the site is likely to be overcome in the light of recent changes on guidance.

Site 3 is not currently occupied but is subject to a resolution to take injunction proceedings to clear the site.

Site 4 is Oxen Lane. It was noted at that time that in addition to the four families who have remained since the Inquiry, there were four other families who have since moved off the site.

4. Personal circumstances of families on site

4.1 All those currently living on the site have been visited to assess their current needs. The position is as follows:-

4.1.1 The Holland Family (Plot 8)

This plot is occupied by John and Tracey Holland and their three daughters Krystle (17), Sophie Marie (15) and Tracey Jane (11). In terms of particular medical needs Sophie has heart problems and has been receiving treatment at Musgrove Park Hospital. She has been referred to the Royal Infirmary in Bristol. All the family are registered with the local surgery.

Tracey Jane has been attending North Curry Primary School and will be moving on to Monkton Heathfield at the beginning of the academic year. It is unusual for girls in the Holland family to attend secondary school and if the family moves and Tracey Jane is not able to stay at Monkton Heathfield, it is likely she will be withdrawn from secondary education.

They state that since settling at Oxen Lane they have not only been paying Council Tax but are also registered with the Inland Revenue. John Holland has family connections in the area and the family state they have nowhere to go if evicted from the site. They would wish to remain with the O'Neill family from Plot 7.

4.1.2 Smith and Price (Plot 16)

Jim Smith and Launa Price have two children, Jimmy Dean (8) and Adam Lee (12 weeks). Jim Smith suffers from asthma and all the family are registered with the local doctor's surgery. Jimmy Dean attends North Curry Primary School. The family state they have nowhere to go if evicted from the site.

4.1.3 The O'Neill family (Plot 7)

Mary O'Neill has five children - Kathleen (9), Christopher (7), Billy (4), Andrew (2) and Alice (10 months). Billy suffers from asthma and has been hospitalised on occasions. All the family are registered with the local doctor's surgery. Kathleen and Christopher attend North Curry Primary School. Billy is due to start at North Curry Primary at the beginning of the academic year. Andrew is due to start pre-school in January 2007.

The family state they have nowhere to go if evicted from the site and would like to move with the families on Plots 8 and 13.

4.1.4 The Packman family (Plot 1)

Steven and Charmaine have five children - Steven (11), Cheyanne (10), Joseph (9), Charmaine (8) and Paris (3). All the family are registered with the local doctor's surgery.

Stephen is in the middle of a course of dental treatment at Musgrove Park Hospital. Joseph is attending the ADHD clinic at Musgrove. Paris is awaiting an eye operation to correct a muscle disorder. Charmaine has continuing problems with her back and legs.

Steven, Cheyanne, Joseph and Charmaine all attend North Curry Primary School. Joseph is statemented.

The family state they have nowhere to go if evicted but would be prepared to move if a suitable alternative site could be found. They do not wish to move with others currently on the site.

4.2 It is not apparent that the circumstances of these 4 families have changed materially since the inquiry.

4.3 The Dunn/Dolan family

The Dunn/Dolan family consist of Mr Dunn and Mrs Dolan and four children, three girls and one boy. They formerly lived in Ireland and have moved around before settling in Oxen Lane. Two of the children attend North Curry Primary School and there are, in addition, two youths associated with the family group who occupy a caravan on an adjacent plot. Inquiries into the needs of this family are continuing and will be reported to the meeting.

4.4 The remaining plots are unoccupied although caravans are stationed on some.

5. Alternative Provision

5.1 The Gypsy and Traveller Working Group has been working to identify

suitable alternative sites for residential use within Taunton Deane. Government and quasi-Government Agencies have been approached, but the only organisation able to assist is Somerset County Council. Work is continuing to identify possible County Council land that might be suitable for small residential gypsy sites. In addition, where suitable areas of land can be identified the owners are being approached. Whilst the Council is not yet in a position to identify specific sites to which the Oxen Lane residents may move, progress is being made. Additionally, in the light of recent Government guidance the Council's policy in relation to the prohibition of gypsy sites within Areas of Outstanding Natural Beauty has been relaxed so that formerly unacceptable sites may now be acceptable. The Planning Officers have throughout the last six months been offering informal advice to the Oxen Lane residents as to the suitability of various proposed sites.

5.2 However, whilst the Council is working towards the provision of alternative sites, officers do not consider that the provision of an alternative site is a pre-condition to removing the current occupiers from the site. For the reasons set out below, the harm caused by the continuing unauthorised development is so severe that eviction should be considered even if this renders the families homeless. However, Members must form their own view on this.

6. Consultations

6.1 The following have been consulted as to the consequences of pursuing an injunction seeking removal of the families from the site and have commented as follows:-

- (i) The Gypsy Liaison Officer - Views awaited.
- (ii) The Police - Views awaited.
- (iii) The Traveller Education Unit - Views awaited.

7. Relevant findings of the Inspector/Secretary of State

7.1 The following points emerge from the Inspector's report/Secretary of State's decision letter:-

- As a consequence of the development the visual amenities of No 6 Oxen Lane had been reduced to a level far below that which ought reasonably to be expected;
- The development is a major encroachment in the countryside;
- The sub-standard junction at Oxen Lane/Greenway is a material highway objection to the development;
- The Secretary of State specifically considered and rejected the grant of temporary planning permission;

- It is implicit in the decision of the Secretary of State that he did not consider that the injury to amenity could be acceptably overcome by conditions – even if only a temporary planning permission were to be granted;
- The Council was unable to identify any alternative site so that if moved on immediately the residents would be likely to be on the road side with the consequent disruption to the education of the children and the healthcare associated with having a settled base;
- Although the Secretary of State recognised the good work done by the Council in assessing need and seeking land to allocate, there is no suggestion in the decision letter that the occupants should be allowed to remain at Oxen Lane until an alternative site is found for them by the Council;
- The period of one year allowed in the enforcement notice (as varied) 'gives an adequate period for the appellants to seek an alternative site or sites'. It is noteworthy that the Secretary of State places the onus on the appellants;
- It is implicit in the decision that the Secretary of State considered that it would be unacceptable for the occupation of the land at Oxen Lane to continue beyond September 2006.

7.2 Officers agree with these planning judgements. In particular, officers consider that eviction now is justified in planning terms, despite the present inability of the Council to offer an alternative site.

8. Article 8 and Proportionality

8.1 In making a decision as to whether or not to pursue injunction proceedings, Members need to consider the rights of the occupiers under Article 8 of the Convention on Human Rights and whether the taking of such action would be proportionate. Article 8 provides that:-

- (i) Everyone has the right to respect for his private life and family life, his home and his correspondence.
- (ii) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in the interests of national security, public safety or the economic well being of the country, for the prevention of crime and disorder, for the protection of health or morals, or for the protection of the rights and freedoms of others.

8.2 Article 8 is engaged despite the fact that the homes at Oxen Lane have been established unlawfully. In reaching a decision to re-instate the injunction proceedings therefore, Members must be satisfied that such action is necessary within the exemptions referred to in paragraph 2 above and is proportionate. The prospect of homelessness of the occupiers (and the consequent hardship) needs to be balanced against the harm arising from the continuance of the unauthorised development. In the balance Members need to weigh the factors identified by the

Secretary of State, namely the major encroachment into the countryside, the impact on the visual amenities of No 6 Oxen Lane and the continuing additional use of the sub-standard junction at Oxen Lane/Greenway.

- 8.3 As pointed out above, the number of occupants is now far less than at the time of the inquiry. It follows that eviction of the occupants will cause less hardship in total than the Secretary of State must have had in mind when upholding the enforcement notice.
- 8.4 If injunction proceedings are resumed, they are unlikely to come before the Courts until early in the New Year. If the families currently on the site become homeless, and made the appropriate application to the Council, the Council as a Housing Authority would be under a duty to assist them in the same way as any other person presenting as homeless. However, any accommodation provided pursuant to homelessness duties would inevitably be in bricks and mortar, which would almost certainly be culturally unacceptable to the gypsies.

9. Conclusion

- 9.1 The period for compliance with the Enforcement Notice at Oxen Lane has expired. Injunction proceedings issued in January 2005 requiring the occupiers to move and the land to be re-instated are held in abeyance. The Council has actively been looking for suitable alternative sites for the occupiers at Oxen Lane, as well as advising in respect of areas of land suggested by the occupiers.
- 9.2 There is no doubt that having a settled base has assisted the children on the site in terms of education and all in terms of healthcare. However, balanced against this must be the harm arising to the landscape and the amenity of neighbours arising from the continued presence of the unauthorised development and the fact that the Secretary of State judged that the harm from the unauthorised development should not be tolerated beyond the twelve month period. Clearly as only four of the original appellants remain on site, some twelve families have either re-located or not taken up occupation.

10. RECOMMENDATION

- 10.1 It is therefore **RECOMMENDED** that an application be made to re-instate proceedings HQ05X00297 in the High Court against Packman and others seeking an injunction to secure compliance with the Enforcement Notice.

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