

## **OFFICER DECISION UNDER URGENCY POWERS**

### **REPORT TO DIRECTOR OF ENVIRONMENT**

The purpose of this report is to ask the Director of Environment to make a decision under the urgency powers set out in paragraph 3.6 of Part 3 of the Council's Constitution to withdraw an enforcement notice.

#### **Reason why an urgent decision is required**

The enforcement notice relates to land at 136 Perne Road Cambridge ('the land').

Under the Council's Constitution, the Planning Committee must authorise the issue of an enforcement notice (save for a limited exception under which the power is delegated to officers). The Planning Committee authorised the issue of this enforcement notice on 11 September 2014. The notice was issued on 2 October 2014.

The owner of the land appealed against the notice and the inquiry is set to proceed on Tuesday 21 July 2015. However, the Planning Inspectorate ('PINS') has recently informed the Council that there may be a fundamental flaw in the notice, which cannot be corrected without causing prejudice to the appellant. In order to avoid a potential application for costs against the Council, the notice needs to be withdrawn before the date of the inquiry. The next meeting of the Planning Committee is not until 5 August 2015.

#### **Background**

An enforcement notice relating to the land was issued on 2 October 2014. The notice alleged a material change of use of a mobile home situated on the land to use as a separate residential unit. The time limit for taking action is stated in the notice as being four years.

The land consists of a house and garden. Council officers accept that a mobile home has probably been situated in the garden for many years. Council officers also accept that it is lawful for a mobile home to be sited on the land, provided that its use remains one which is ancillary to the use of the main house. It is not lawful to use the mobile home for a separate residential use, because that amounts to a material change of use.

Mr Paul Sanderson, the owner of the land, appealed against the notice. The Planning Inspectorate decided that the appeal should take the form of a one day planning inquiry and was set for Tuesday 21 July 2015.

On the 8 July, the Council received the attached letter from PINS.

Under section 171B(2) of the Town and Country Planning Act 1990, no enforcement action can be taken for a material change of use of land after 10 years. However, in the case of a material change of use of a building to a single dwelling house, no enforcement action may be taken after four years.

Here, in essence, the Inspector appointed to deal with the case is concerned that the four year rule does not apply because the mobile home is not a 'building' and so cannot be a 'dwelling house'. Rather, he considers that the ten year rule applies, because the breach is a material change of use of the land. If this is the case, and the notice were to be amended at the Inquiry, this could cause prejudice to Mr Sanderson, who would then have to show that the use has become immune from enforcement action by having been used in this manner for ten years rather than just four.

We know very little about Mr Sanderson's case and what he would have argued at the inquiry, as he has not submitted a statement of case or a proof of evidence. Based on his enforcement appeal form, it appears that he wanted to argue that a mobile home had existed on the site since about the year 2000 and had been used since then as a separate dwelling. Whether a mobile home is a building is a matter of fact and degree and it is arguable that the mobile home here is a building. In addition, given Mr Sanderson's anticipated argument, it is arguable as to whether a change made to the notice by the Inspector would have caused any prejudice or unfairness to Mr Sanderson. However, advice from the Council's Legal Section is that it is not worth the risk of proceeding in light of the Inspector's views. To do so could result in an application for an award of costs by Mr Sanderson against the Council. The better alternative is to withdraw the enforcement notice before the date of the inquiry.

Planning Enforcement Officers will then need to re-investigate to establish whether the breach is continuing. If officers consider that a new enforcement notice should be served, then this will be the subject of a future report to the Planning Committee asking for authority to do this.

### Consultations

I have consulted the Chair and Spokespersons of Planning Committee by email.

Councillors Dryden, Hipkin and Smart support the action.

### Decision to be made

The decision is to be taken under Urgency powers and will be reported back to Planning Committee on 5 August 2015.