

Report to the Cabinet

Report reference: C-097-2008/09

Date of meeting: 9 March 2009



**Epping Forest
District Council**

Portfolio: Planning and Economic Development

Subject: Injunction Costs - The Meadows, Waltham Road, Long Green,
Nazeing

Responsible Officer: Stephan Solon (01992 564103).

Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

To retrospectively authorise payment of Defendants costs of £7250 ordered by the High Court in respect of the Councils' claim for an interim injunction pursuant to section 187B of the Town and Country Planning Act 1990, to restrain an apprehended breach of planning control on the Site.

Executive Summary:

The Council sought an interim injunction in the High Court pursuant to section 187B of the Town and Country Planning Act 1990, to prevent an anticipated breach of planning control on the Site. The anticipated breach was the development and use of the Site as a gypsy/traveller caravan site. At a hearing held on 15 January 2009 in respect of an application to Discontinue the proceedings commenced on 17 October 2008 the Judge took the view that in seeking the injunction the Council had acted prematurely without proper investigation. Accordingly, the Court ordered the Council to pay the Defendants costs in the sum of £7250.

Reasons for Proposed Decision:

The Council is obliged to comply with the Courts' Order to pay the Defendants costs.

Other Options for Action:

None. Failure to comply with a Court Order would result in the Council being found to be in contempt of Court.

Report:

1. The Site is an overgrown field and woodland situated on the south side of Waltham Road. To the east are the rear gardens of houses on Allmains Close and The Heights. To the west is another field. The woodland part of the site is the southern third and trees that are subject to a tree preservation order are situated on the southeast boundary.

2. On Monday 13 October 2008, the Council received complaints about clearing land and burning of bonfires at the Site. Planning enforcement Officers inspected the site and found two men were clearing land on the eastern boundary of the Site where it abuts the

back garden boundaries of houses on Allmains Close. Later that day officers spoke with a Director of Hestan Developments Limited, the owner of the Site, to enquire what works were being carried out. Officers were told the land was being cleared to gain access to the southern part of the Site and that it was intended to clear that part of the site of undergrowth. On 15 October Officers wrote to Hestan Developments Limited advising that clearing the land of vegetation does not require planning permission but laying any type of hard surface and its use for any purpose other than agriculture would require planning permission. The owner was further advised that no works should be carried out to preserved trees on the south east boundary of the site.

3. On 15 and 16 October 2008 the Council received further complaints about clearing land and burning of bonfires at the Site. These were reinforced by concerns expressed by one of the ward Councillors, Cllr Bassett. Further inspection of the site revealed a considerably larger area of the Site had been cleared compared to that found at previous inspections. Officers were also aware the Site is situated rear of land on which the Council had previously successfully resisted the development of a gypsy/traveller caravan site, that the access track constructed to the Site passes through that land and that the site includes land put forward as a possible gypsy/traveller caravan site for inclusion in the Council's call for sites exercise. Consequently officers were very concerned the land may be developed as a gypsy/traveller caravan site without planning permission. Officers were especially concerned such unauthorised development would take place over the following weekend.

4. Therefore, on Friday 17 October 2008, following the grant of appropriate Authority, the Council sought and was granted an interim injunction pursuant to section 187B of the Town and Country Planning Act 1990, to prevent the development and use of the Site as a gypsy/traveller caravan site on the basis that the harm caused by the apprehended breach of planning control would be considerable and permanent if not prevented by a grant of an injunction. It was not possible to give notice to the Defendant, Hestan Developments Limited, that the Council were seeking the injunction.

5. Subsequently on 21 November 2008 a hearing was held to consider whether the injunction should be made permanent. The Defendant provided evidence late on 19 November to the effect that there was never any intention to breach planning control on the Site. At the hearing the Judge did not consider it appropriate to fully consider the Council's Claim at that time and adjourned the hearing. The effect of the interim injunction was extended until the date of the full hearing, subsequently arranged for 15 January 2009.

6. Following consideration of the evidence submitted by the Defendants, at the hearing held on 15 January 2009 the Council sought Discontinue its Claim. The Council argued that the normal rule that costs of the opposing party seeking Discontinue should not apply as it was acting as a Regulator in the proceedings. It also argued that the Council had reasonably considered there to be an apprehended breach of planning control and past experience in similar cases had indicated action needed to be taken. However, the Judge was not persuaded that in the circumstances the normal rule should not apply.

7. The Judge took the view that in seeking the injunction the Council had leapt to the conclusion that the Defendants would be involved in unlawful development and acted prematurely without proper investigation. Weight was given to the fact that the Defendant had indicated the works on the land were to be completed by the end of 17 October 2008 and they were, and that the Council had written to the Defendant on 15 October confirming that works of clearing vegetation did not require planning permission. The Judge also considered the Council should have sought to Discontinue at the hearing held on 21 November 2008 in the light of the evidence submitted by the Defendants.

8. Accordingly, the Court ordered the Council to pay the Defendants costs in the sum of

£7250.

Resource Implications:

A District Development Fund budget of £10,000 has been included in the revised estimates for Appeal Costs in 2008/09.

Legal and Governance Implications:

The Town & Country Planning Act 1990 as amended.

Safer, Cleaner and Greener Implications:

None.

Consultation Undertaken:

The Director of Corporate Support Services has given advice on options and procedures.

Background Papers:

Planning Enforcement Investigation file ENF/0614/08 and corresponding file of the Director of Corporate Support Services.

Impact Assessments:

Apart from impact upon budgets, an award of costs of this kind impacts upon the Council's reputation in terms of good decision-making and its resolve to take pre-emptive action in respect of apprehended breaches of planning control.