

## DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
DEVELOPMENT SERVICES DIRECTORATE	PLANNING COMMITTEE	7 FEBRUARY 2018	7
<b>ENFORCEMENT: LAND OFF FAIRFIELD ROAD, HARDHORN, POULTON-LE-FYLDE</b>			

### PUBLIC ITEM

This item is for consideration in the public part of the meeting.

#### SUMMARY

The report invites the committee to assess whether enforcement action is expedient with regard to a breach of condition at land off Fairfield Road, Hardhorn. The report includes details of the work required by the condition placed on the appeal decision, a further update on the work done so far in order to comply with the condition, and officers' assessment of the merits of enforcement. The report takes account of the personal circumstances of the site residents.

The report concludes, after consideration of all of the factors relating to the site, and its residents, the work done so far, along with legal advice that formal enforcement action would not be expedient at this time and that it would be more appropriate for officers to continue to work with the residents of the site to ensure full compliance with the remaining work required to be undertaken by the condition.

#### RECOMMENDATION

1. Endorse officers' recommendation to not take formal enforcement action at this point in time and instruct officers to continue to engage robustly with site residents to secure compliance with the aims of the planning conditions.

#### SUMMARY OF PREVIOUS DECISIONS

Planning Committee 26 July 2017 endorsed officer's recommendation to not take formal action at that point and instructed officers to continue to engage robustly with site residents to secure compliance with the aims of the planning conditions and requested that officers report back to members after Christmas with an update.

#### CORPORATE PRIORITIES

Spending your money in the most efficient way to achieve excellent services ( <b>Value for Money</b> )	✓
Delivering the services that customers expect of an excellent council ( <b>Clean and Green</b> )	✓
Working with all partners ( <b>Vibrant Economy</b> )	✓
To make sure Fylde continues to be one of the most desirable places to live ( <b>A Great Place to Live</b> )	✓
Promoting Fylde as a great destination to visit ( <b>A Great Place to Visit</b> )	✓

## REPORT

### PRELIMINARY

1. This report uses the following terminology:

*“appeal decision”* means the decision letter of the Planning Inspectorate dated 03 August 2016.

*“LPA”* means the council as local planning authority

*“planning permission”* means planning permission for the change of use of the site to that of a caravan site for occupation by gypsy-travellers with associated operational development, including hardstanding, utility blocks and septic tanks granted by the appeal decision

*“scheme”* means the site development and restoration scheme required by condition 9A of the planning permission

*“site”* means the westernmost parcel of the land off Fairfield Road, Hardhorn, shown edged red in the plan below, and *“abandoned land”* means the easternmost parcel of the land shown edged blue in the plan below.



### THE PLANNING PERMISSION

2. The planning permission was subject to a number of conditions, including those set out below:

*“9) 9A: Within the timescales specified below (at 9A (viii) and 9B), a Site Development and Restoration Scheme shall be submitted for the approval of the Local Planning Authority, and shall be fully implemented. The Scheme shall include details of the following:*

*i) the proposed septic tanks, as shown indicatively on Plan 2, and any other necessary foul drainage infrastructure;*

*ii) any necessary surface water drainage infrastructure;*

*iii) any necessary external lighting;*

*iv) any necessary fencing;*

*v) the restoration of the [abandoned land] to include the removal from that area of all existing caravans, structures, vehicles, hardcore or other hard surfacing, fences, lighting, mounding, stored materials, equipment, and any waste or refuse; and the restoration of this area to grazing land;*

*vi) a scheme of tree and hedge planting, within both the [site and the abandoned land], which shall include but not be limited to the proposals contained on ‘Plan 4: Landscaping’, as submitted with the application;*

*vii) a maintenance plan for the new and existing landscaping, including provision for replacement planting if necessary;*

viii) and a full timetable for the implementation of these works.

*9B: The use of the [site] as a caravan site shall cease, and all caravans, structures, surfacing, and other items brought onto the land for the purposes of such use shall be removed, and the site returned to a condition suitable for grazing, within 28 days of the date of any failure to meet any of the following time limits:*

*i) within 3 months of the date of this decision, the Site Development and Restoration Scheme shall have been submitted to the local planning authority for approval;*

*ii) in the event that the local planning authority refuse to approve the Site Development and Restoration Scheme, or fail to give a decision on it within the prescribed period, then within 11 months of the date of this appeal decision an appeal shall have been made to the Secretary of State, and shall have been accepted as validly made;*

*iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted Site Development and Restoration Scheme shall have been approved by the Secretary of State;*

*iv) following the approval of the Site Development and Restoration Scheme, either by the local planning authority or by the Secretary of state, the approved scheme shall have been carried out and completed in accordance with the agreed timetable.”*

### **THE APPROVED SCHEME**

3. A scheme was submitted to the LPA on 30 September 2016, as required by the condition. Following discussions with the applicant's agent (intended to secure additional tree planting to the east of the plots where views into the site are most prominent), a modified scheme was approved under delegated powers on 23 January 2017. This discharged condition 9A.
4. The approved scheme, as required, set out a full timetable for the implementation of works comprised in it. This stated that the works to reinstate the abandoned land would be completed within 3-6 months of the scheme being approved depending on the weather conditions, and that the tree planting would be done within the first planting season following approval of the scheme. As this was approved on the 23 January the applicants needed to complete the reinstatement of the land by the 23 July 2017 and the tree and hedge planting by the 31 March 2017. Failure to comply with the agreed timetable would see condition 9B of the planning permission come into force which states that the use of the land as a caravan site shall cease, and all caravans, structures, surfacing, and other items brought onto the land for the purposes of such use shall be removed, and the site returned to a condition suitable for grazing, within 28 days of the date of any failure to meet the agreed timetable.

### **THE WORK DONE SO FAR**

5. As outlined in the 26 July report last year the residents of the site did not comply with the deadline that required all the works to be carried out by 23 July 2017. The work completed at that date included the infilling of gaps to the hedgerow to the southern boundary, the planting of trees to the eastern boundary and the provision of some topsoil to the land to the east of the permitted pitches. At that point in time the site residents had not planted all the trees and hedgerow required by the landscaping scheme and the abandoned land had not been restored to grass paddock.
6. Following members resolution for officers to robustly engage with site residents to ensure compliance with the aims of the conditions officers have continued to visit the site in order to explain the work that needs to be done to comply with the scheme, to offer advice on appropriate species for the landscaping, to offer advice on the appropriate locations for planting, and to monitor the works being carried out. Several meetings have taken place including one at the Town Hall with four of the residents of the site and the Chief Executive to stress the importance of carrying out the work.
7. As a consequence of this the residents have planted trees outside the boundary of the site on the adjacent abandoned land as required by the approved landscaping scheme. A hedgerow has also been planted alongside part of the length of the eastern boundary. This leaves the abandoned land being restored to paddock as the only element of the condition that has not been complied with.

## ENFORCEMENT POLICY

8. Because of the circumstances set out above, there is an ongoing breach of condition 9B, requiring the use of the site as a caravan site to cease, and the land be restored to grazing, within 28 days of a failure to meet the timetable contained in the approved scheme. This means that enforcement of the condition is an option that is to be considered.
9. Statutory advice on enforcement is given in National Planning Policy Guidance, which states that local planning authorities should act in a proportionate way. They have the discretion to take enforcement action when they regard it as expedient to do so having regard to the development plan any other material considerations. In considering any enforcement action the LPA should have regard to NPPF paragraph 207;

*“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.”*

10. The NPPG also states that addressing breaches of planning control without formal action can often be the quickest and most cost effective way of achieving a satisfactory and lasting remedy. Formal enforcement action may also not be appropriate, with any action being proportionate and taken when expedient to do so. The NPPG states that where the balance of public interest lies will vary from case to case. Local planning authorities should usually avoid taking formal enforcement action where:

- there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
- development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;
- in their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.”

## CONSIDERATION

11. Committee needs to consider the most appropriate course of action to deal with the breach of planning control. The broad choice lies between formal enforcement action, and continued engagement. Formal enforcement action is always discretionary, and the local planning authority cannot issue an enforcement notice unless it considers that it is expedient to do so.
12. The appeal decision establishes that the site is suitable for a caravan site for occupation by gypsy-travellers despite the opposite view taken by the council in refusing planning permission. It is considered that the council should be concerned with how best to ensure that the site is developed in accordance with the planning permission and complies with the aims of the planning conditions that apply to it, rather than seeking the removal of the site. Furthermore the area to be restored to paddock is now mostly clear of any debris, with soil and vegetation remaining so leaving the only work required to be the planting of grass on the site. Unlike the tree and hedgerow planting which needs to be carried out during the tree planting season between October to March, grass seed is more effectively applied during spring and early summer when the soil has warmed up.
13. It is therefore officers’ opinion and recommendation to members that engagement with site residents should continue at this stage, rather than commencing formal enforcement action requiring the site to be vacated. This has proven to be successful in securing the planting of the trees, would be in line with the approach advocated in the statutory guidance, and would be consistent with the council’s normal approach to planning breaches.
14. If this approach is taken, officers would continue to work with the occupants of the site in order to meet the requirements of the conditions. The occupiers of the site have completed the majority of the work, and the work to continue to reinstate the land can carry on. Officers will continue to visit the site to ensure that progress on this continues to be made.
15. Given the starting point is that the site was granted planning permission following a public inquiry at which the relevant issues were fully explored, the material harm created by a delay in the planting of the abandoned land to a paddock area is very limited. It is not considered that this will have an undue adverse impact on the amenity of neighbouring residents or the amenities of the area given that it is low level and it is not considered that it

would be expedient to commence formal enforcement. That said, making the decision to not take formal action at this moment in time does not prevent the LPA from doing so in the future and indeed as the works are considered necessary this would be an option if inadequate progress is made in the forthcoming months.

16. It is acknowledged that a decision to not pursue formal enforcement action at this stage will disappoint some residents in the vicinity of the site. However, as stated above, the objective of the council must be that the site be used for the permitted use in compliance with the conditions, rather than ending the present use of the site.

**CONCLUSION**

17. It is officers’ view that formal enforcement action is not appropriate at this time and instead officers should work with the site residents to ensure compliance with the conditions. Members are recommended to authorise officers to continue with this approach.

IMPLICATIONS	
Finance	If formal enforcement action were to be taken this may ultimately result in Fylde Council having to clear the site and meet the cost of doing so. Such costs could exceed the 2017/18 revenue budget provision for this purpose of £15,000.
Legal	Considered in the body of the report.
Community Safety	The removal of the site residents could result in an increase in anti-social behaviour and potential roadside existence of the site residents.
Human Rights and Equalities	<p>The council is not allowed to act in a way that is incompatible with a right set out in the European Convention on Human Rights.</p> <p>Article 8 of the convention states that <i>“Everyone has the right to respect for his private and family life, his home and his correspondence”</i>, and continues: <i>“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 a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”</i>.</p> <p>Article 1 of the first protocol to the convention states that every person is <i>“entitled to the peaceful enjoyment of his possessions”</i> and that <i>“No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law”</i>. But the rights of the state to <i>“enforce such laws as it deems necessary to control the use of property in accordance with the general interest”</i> are expressly preserved.</p> <p>Article 14 states that the enjoyment of rights under the convention is to be secured <i>“without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”</i>.</p> <p>Article 3.1 of the United Nations Convention on the Rights of the Child provides: <i>“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”</i>. As a matter of law, this means that in all decisions concerning children, their best interests must be of primary importance. That principle applies to planning decisions.</p> <p>Taking enforcement action with a view to removing the site would interfere with the right to respect for the homes of site residents in the most direct and serious way. Article 8 is therefore engaged in the council’s decision. Such would also interfere with site residents’ peaceful enjoyment of their pitches and caravans. Article 1 of the first protocol is therefore also engaged.</p> <p>Where site residents are children, consideration of their convention rights must be in the context of article 3 of the United Nations Convention, which requires a child's best interests to be a primary consideration. However, the inherent primacy</p>

	<p>of those interests does not mean that they can never be outweighed by the cumulative effect of other considerations.</p> <p>Direct discrimination occurs if a person is treated less favourably than another person would be because of a protected characteristic. Indirect discrimination occurs where a provision, criterion or practice that is applied to all puts persons who share a protected characteristic at a particular disadvantage when compared with persons who do not share it and the provision, criterion or practice cannot be shown to be a proportionate means of achieving a legitimate aim.</p> <p>“Protected characteristics” include race.</p> <p>The site residents describe themselves as Irish Travellers. They should be regarded as being a racial group and sharing the protected characteristic of belonging to that group.</p> <p>In considering the report, the committee will need to consider whether options considered would place persons who are Irish Travellers at a particular disadvantage compared with persons who are not Irish Travellers. If such a particular disadvantage would arise, the committee will need to consider whether choosing the option would be a proportionate means of achieving a legitimate aim. If the option would not be a proportionate means of achieving a legitimate aim, it would not be lawful to choose that option.</p> <p>In exercising its functions, including its functions as a local planning authority, the council must have due regard to the need to:</p> <ul style="list-style-type: none"> <li>• Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;</li> <li>• Advance equality of opportunity between people who share a protected characteristic and those who do not; and</li> <li>• Foster good relations between people who share a protected characteristic and those who do not.</li> </ul> <p>Having due regard for enhancing equality involves removing or minimising disadvantages suffered by people due to their protected characteristics and taking steps to meet the needs of people from protected groups where these are different from the needs of other people. Fostering good relations means tackling prejudice and promoting understanding between people from different groups. Complying with the duty may involve treating some people more favourably than others.</p> <p>If the Council fails to have “due regard” to the matters identified above, it would fail to comply with its statutory duty.</p>
Sustainability and Environmental Impact	None arising from this report
Health & Safety and Risk Management	None arising from this report

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BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Site history and decisions	Various	<a href="http://www.fylde.gov.uk">www.fylde.gov.uk</a>