

BRECKLAND COUNCIL

OVERVIEW & SCRUTINY COMMISSION – 4th September 2008

CABINET – 9th September 2008

Report of the Deputy Chief Executive (written by: Michael Horn, Head of Legal Services)

Watton Horse Fair

Licensing of Land used for the Stationing of Caravans, Thetford Road, Watton

1. Purpose of Report

- 1.1 In accordance with the Meeting of Full Council on 7th August 2008, to provide a comprehensive summary of the present legal position concerning the Watton Horse Fair.
- 1.2 To consider the evidence of a potential offence of stationing of caravans on land for human habitation in contravention of the provisions of the Caravan Sites and Control of Development Act 1960 on 3rd and 4th May 2008. To consider whether or not the Council should commence prosecution proceedings.

2. Recommendation(s)

It is recommended that:-

- 2.1 The present legal position concerning the Watton Horse Fair is noted; and
- 2.2 Officers should continue further to monitor the site to ensure that any future changes in the nature, extent and use of the site are acted upon, where relevant; and
- 2.3 No further action is taken in respect of the stationing of caravans on land at Thetford Road, Watton on 3rd and 4th May 2008

Note: In preparing this report, due regard has been had to equality of opportunity, human rights, prevention of crime and disorder, environmental and risk management considerations as appropriate. Relevant officers have been consulted in relation to any legal, financial or human resources implications and comments received are reflected in the report.

3. Information, Issues and Options

3.1 Background

- 3.1.1 A Horse Fair has been held on various sites in Watton since 1971 and on the present site in excess of 10 years. Many Gypsy and Traveller families travel to this event and have camped in the locality for a few days around the time of the Fair. However, at the present time – and with the present frequency and type of user of the site – the Council's Head of Development Control and Head of Legal Services unequivocally advise that no planning permission is presently required for the Horse Fair. It accordingly follows that as the Horse Fair is not presently in breach of planning control, enforcement action is not presently possible. Obviously, this could change in the future should the frequency and type of user of the site subsequently develop, and the Council should continue to monitor the site to keep itself informed of the present position in this regard.
- 3.1.2 A separate field has been used adjacent to the current site for the stationing of

caravans for those families travelling to the Fair. The use of this land is considered to be such use as would require a licence under the Caravan Sites and Control of Development Act 1960 (“the 1960 Act”).

- 3.1.3 Officers were tasked with gathering evidence as to actual usage of the land during the Fair held on 4th May 2008. It is confirmed by Officers that apart from issues relating to the 1960 Act, no other environmental health contraventions were witnessed by Officers at the Fair held on 4th May 2008 that presently require formal action by Breckland Council.

3.2 Issues

- 3.2.1 Section 1 of the 1960 Act states that no occupier of any land shall permit the use of such land as a caravan site unless they hold a site licence under the Act. Section 5 of the Act allows a local authority to attach conditions to any site licence. Certain exemptions from the requirement to hold a licence are contained in the Act, but none apply to this site. A licence cannot be issued unless a valid planning permission or a Certificate of Lawfulness of Existing Use or Development (a “CLEUD”) exists for the use of the land as a caravan site. As stated in paragraph 3.1.1 above, no such permission exists for the land at Thetford Road, Watton, as the use of the land does not presently require planning permission. [The site owner did submit an application to the Council for a CLEUD, but he subsequently withdrew this application.] Accordingly, it is not presently possible to grant a licence under the 1960 Act.

- 3.2.2 Evidence gathered by officers from the Private Sector Housing Team on the evening of the 3rd May 2008 and the morning of the 4th May 2008 substantiates the use of the land for the stationing of caravans for human habitation. Residents of those caravans had use of a number of Portaloo style mobile toilets and a supply of potable water adjacent to the field in use.

3.3 Options

- 3.3.1 Prosecution for the offence of use of land for the stationing of caravans for human habitation without a licence under Section 1 Caravan Sites and Control of Development Act 1960.

Prosecution proceedings are taken for the offence but, even if successful, this would not per se secure the cessation of the use of the land. There is no continuing offence under the legislation and, should such use recur (as seems likely), it would require further gathering of evidence and further prosecutions, potentially culminating in the application by the Council to Court for an injunction. But to what ends? In this regard, please see Paragraphs 3.4.2, 3.4.3 and 3.4.4 below.

- 3.3.2 No further action to be taken in respect of the use of the land for the stationing of caravans for human habitation.

The use is concurrent to the holding of the Horse Fair which as stated above is, and presently remains, a legal, non-licensable event occurring on two occasions per annum. The land is not used for the stationing of caravans at other times of the year. It is considered that such use will remain at historical levels. This will be monitored.

3.4 Reasons for Recommendation(s)

- 3.4.1 There is an insoluble conflict between two pieces of legislation preventing the granting of a licence under the 1960 Act. Whilst a potential way forward would be for the occupier of the land to apply for a Certificate of Lawful Use, thereby regularising the use of the land in planning terms, there is absolutely no requirement for him to make such an application.

- 3.4.2 Given the present extremely limited use of the land for the stationing of caravans, (4 nights per year), if a licence were able to be granted, any conditions attached to such a license would apply no greater requirements or constraints than those which

currently are adhered to voluntarily, i.e. provision of sanitary accommodation and a supply of potable water. A licence would offer no further control of any event occurring beyond the site boundaries than those which currently exist through applicable legislation. This all being the case, it is difficult to see what practically the actual issue of a licence would achieve over and above what is on site already - the current practices presently being satisfactory.

- 3.4.3 There is a considerable risk, given that the Fairs will continue, that a prosecution may lead to the withdrawal of the use of the land for the stationing of caravans, whilst between 30 and 50 caravans will still arrive in the vicinity at the time of the Fairs. These will then locate onto any available pieces of land with potential for trespass, road safety issues and anti-social behaviour. There is no doubt that considerable officer and constabulary time would be required in attempting to resolve those issues. It is the view of both the Norfolk Constabulary and officers of this Authority that the use of the field for the stationing of caravans is the most satisfactory solution in the circumstances to the very short term nature of the event and accordingly, it is not seen by officers to be in the public interest to prosecute.
- 3.4.4 Even if the Council was to commence prosecution proceedings against the owner of the site - as it is highly arguable by the Defendant that if he had continued with his application to the Council for a CLEUD, his application would ultimately have been granted - it is quite possible that these prosecution proceedings would result in an absolute discharge of the Defendant.

4. Risk and Financial Implications

4.1 Risk

- 4.1.1 The Principal Environmental Health Officer has completed the Risk Management questionnaire and he can confirm that risk has been given careful consideration, and that there are no significant risks identified with the information in this report.

4.2 Financial

- 4.2.1 None

5. Legal Implications

- 5.1 Please see the main body of the Report.
- 5.2 On balance – and taking all the issues identified in this Report into account - it is considered that it is not in the public interest to proceed with a prosecution in that it is likely to lead to a widespread relocation of caravans onto far less suitable land with attendant risks of criminality and anti-social behaviour.

6. Other Implications [*Insert statement or confirm 'none' as appropriate at each sub-paragraph*]

- a) Equalities: Has an Equalities Impact Assessment been conducted? No – implicit within process
- b) Section 17, Crime & Disorder Act 1998: Implicit within process.
- c) Section 40, Natural Environment & Rural Communities Act 2006: No
- d) Human Resources: No
- e) Human Rights: Implicit within process

f) Other: [e.g. Children's Act 2004] N/A

7. Alignment to Council Priorities

7.1 Building safer and stronger communities

8. Ward/Community Affected

8.1 Watton

Background Papers

Files held in Environmental Health Department and Legal Services Department

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Appendices attached to this report:

None