

WAVERLEY BOROUGH COUNCIL

EXECUTIVE

3 SEPTEMBER 2019

Title:

**BUDGET MANAGEMENT – REQUEST FOR SUPPLEMENTARY ESTIMATE
REGARDING INJUNCTION AT POLLINGFOLD PLACE, RUDGWICK, HORSHAM**

**[Portfolio Holder: Cllr Mark Merryweather, Cllr Nick Palmer]
[Wards Affected: Alfold, Cranleigh Rural and Ellens Green]**

Note pursuant to Section 100B(5) of the Local Government Act 1972

This report contains exempt information by virtue of which the public is likely to be excluded during the item to which the report relates, as specified in the following paragraphs of the revised Part 1 of Schedule 12A to the Local Government Act 1972, namely;

- 5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Summary and purpose:

To request a supplementary estimate to continue to seek an injunction to require the known occupants to cease the unlawful occupation of the site and to clear the site of all structures and hardstanding.

How this report relates to the Council's Corporate Priorities:

This relates to the Corporate Priority of 'Place' as all costs will be incurred due to the planning Service seeking to uphold the highest quality of public and private realm.

Equality and Implications:

The site is occupied by a Gypsy family. Gypsies and Travellers are a separate ethnic group for the purposes of the Equality Act 2010 and are protected from discrimination by equality legislation.

Consideration must also be given to the Council's duty in exercising its functions to comply with the Equality Act 2010 and to the needs of any disabled person(s) on the site.

Resource/Value for Money Implications:

Members of the Executive approved supplementary estimates of £15,000 on 7 March 2017 and £25,000 on 4 December 2019, to fund the cost of pursuing an injunction as there was no budget provision for the expenditure. This funding has since been spent and the matter has not yet reached full trial due to numerous adjournments to allow the Defendants to file various statements and evidence.

Due to officer capacity constraints and the specialist knowledge required, the Council has engaged a planning consultant, alongside Counsel's advice and representation in the High Court. Officers are requesting a further supplementary estimate of £20,000 to cover the additional costs of proceeding to a full trial in late-2019.

Legal Implications:

There may be a financial risk if the application for an injunction is not successful. Should the Court find that it were not proportionate to make an injunction, it could dismiss the application and award costs against the Council. Any award of costs against the Defendants would only be enforceable if they were able to demonstrate funds to meet the costs.

The Court will decide whether it is proportionate to grant an injunction taking into account human rights considerations and the best interest of any children as a primary consideration. The Court will only make an injunction if it considers it would be ultimately appropriate to commit to prison should the injunction be breached/not complied with.

Punishment for breach of an injunction could be imprisonment for contempt of court rather than the physical removal of the travellers from the site. The Council has a duty under the Equality Act s.149 to have due regard to the need to eliminate discrimination, promote equality of opportunity and foster good relations with Gypsies. This duty to have due regard applies to any decision taken.

Introduction/Background

1. The budgets from which previous costs for this matter have been paid have been exhausted. Action in the overall Enforcement case for this site started in September 2005, with enforcement notices served in respect of the land at Pollingfold Place, Horsham Road, Ellens Green, Rudgwick.
2. Both Notices were appealed but the appeal was dismissed, the Notices corrected and varied and planning permission refused, by an Inspector in October 2006. A further appeal was lodged at the High Court against the Inspector's decision and, in December 2008, the Court dismissed the appeal and upheld the Notices in their amended forms.
3. Compliance with the Notices was due in June 2009 but to date compliance has not been achieved. In seeking to achieve compliance with the Notices, in 2010 the Council prosecuted the person recognised as having control of the land (Mr William Newland (senior)). Mr Newland was found guilty of carrying on activities that are required to cease by the Notices and ordered to pay a fine of £4,000, together with the Council's legal costs of £4,000.
4. Following this successful prosecution, in 2011 the Council proceeded with a second prosecution as no attempts had been made to comply with the requirements of the Notices. Mr Newland (senior) was sentenced to a two-year conditional discharge but no order for costs was made because the court determined that the defendant had no capacity to pay further costs in addition to those already awarded following the first prosecution.
5. In December 2010, the Council secured an injunction in the High Court against Mr Newland, preventing the bringing on of additional mobile homes and touring

caravans. In light of a threat of further occupation of the land, the Council obtained an amended injunction against Mr Newland in 2013.

6. Between October 2014 and March 2016, the number of mobile homes on the land increased to nine, together with four touring caravans. The Council sought advice from Counsel and that advice is summarised in (Exempt) Annexe 1.
7. As the overriding objective is the clearing the land, this was felt to be achievable by way of a new injunction. On 13 July 2017, the Eastern Area Planning Committee resolved to seek an injunction against all known occupants in order to cease the residential occupation of the site and the matter was heard in the High Court.
8. An interim injunction order was granted against all adult occupants residing on the land to prevent the bringing onto the land of further mobile homes and/or caravans but the deadline of 8 January was not complied with. Further Court hearings have taken place and the Defendants made a further planning application which was refused by the Council on 7 December 2018. This decision has been appealed and at the time of writing, a start date has not been confirmed by the Planning Inspectorate.

Considerations

9. Whilst the Planning Service budget includes sums for both consultants and legal expenses, it would not cover the legal costs of continuing to seek an injunction.

Recommendation

It is recommended that the Executive approves a supplementary estimate of £20,000 to meet the costs of continuing to seek an injunction. This figure may need to be revised depending on the works associated with the application, and any subsequent proceedings.

Background Papers

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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