PDC 369
FOR DECISION
WARD(S): ST MICHAELS

PLANNING DEVELOPMENT CONTROL COMMITTEE

26 November 2003

CABINET

3 December 2003

UNAUTHORISED RESIDENTIAL USES AT VARIOUS LOCATIONS AROUND WINCHESTER (GARNIER ROAD; ITCHEN NAVIGATION; AND NEARBY)
REPORT OF THE DIRECTOR OF DEVELOPMENT SERVICES

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RECENT REFERENCES:

CAB 369 – 3 April 2002

EXECUTIVE SUMMARY:

This report deals with proposed enforcement action to secure removal of several tent-like structures and caravans, used for residential purposes in various locations around the fringes of Winchester and the planning issues that arise from the unauthorised uses. Possible courses of action for dealing with the situation are set out in paragraph 4 of this report and Committee is asked to approve appropriate action to secure removal of the unauthorised structures and caravans.

In April 2002 Cabinet considered the unauthorised occupation of City Council owned land at Garnier Road and asked to be kept informed of any future action regarding the site.

RECOMMENDATIONS:

TO PLANNING DEVELOPMENT CONTROL COMMITTEE

That the Committee authorises action in accordance with the options set out in 4.2 and 4.3 of this report to secure cessation of the unauthorised uses of land.

TO CABINET

That Cabinet authorise legal action to secure removal of the unauthorised ‘Dome’ structure and associated uses from land owned by the City Council at Garnier Road

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DETAIL:

1 Introduction

1.1 Planning Development Control Committee is asked to consider the planning issues that arise from several *ad hoc* residential uses that are taking place around the fringes of Winchester City, and to approve enforcement action to deal with the unauthorised uses of the land.

2.0 Background

2.1 For some time there have been sporadic complaints about unlawful siting of a caravan adjacent to a "Dome", a tent-like structure that has been erected adjacent to Garnier Road car park in Winchester. Two years ago the Council took action to evict people who were living in vehicles in the car park, which is owned by the City Council. At that time it came to light that the Dome was on land owned by the City Council and, although it had been in existence for several years had been moved nearer the car park and had been extended. It is used residentially and appears to be made from various recycled timbers and weather-proofed by wrapping plastic sheeting around the frame. A caravan has recently also been brought to the site. Another caravan has also been sited alongside the public footpath at the far end of the canal towpath and is believed to be in residential use.

2.2 The use of the land for siting a tent or similar, or a caravan for residential purposes, is development, within the meaning of the planning legislation and is therefore subject to normal planning controls. Concurrently with this investigation a further 6 sites have been identified where other more recent "dome-type" structures/caravans have appeared. The approximate location of each such structure is shown on an attached Plan (Appendix A). Because of the nature of this type of development, typically put up in secluded, often wooded areas, there may be other similar structures that have not yet been discovered.

2.3 These structures are erected on land in various ownerships. Although it has been established that the Dome at Garnier Road car park is on land owned by the City Council, land ownership has not been established in other cases and investigation into ownership is ongoing.

3.0 Issues

3.1 Residential uses in the areas where “domes” and/or caravans have appeared are not supported by Development Plan policies. In particular, the Structure Plan Policy C2 discourages new development outwith built up areas that is not essential to the rural economy, and affords special protection (Policy E19) to the historic setting of Winchester City. Adopted and emerging Local Plan policies endorse and reinforce the strategic view. Policy C2 (endorsed by Policy C1 of the emerging Plan) seeks to protect the countryside from all unnecessary development and Policy C14 (endorsed and reinforced by Policy C18 of the emerging Plan) set out strict criteria for residential development that can be shown to be necessary for agriculture and forestry. Within the policy framework, there are no circumstances that might allow these unauthorised developments to be treated exceptionally.

3.2 If nothing is done, the various unauthorised encampments will eventually accrue immunity from planning enforcement powers. Some may also through passage of time acquire rights of ownership in the future (“squatters rights”)

3.3 Evidence of increasing numbers of “domes” around the fringes of the City suggests that the trend of unauthorised encampments will continue. If steps are not taken now to deal with these encampments, tackling the issue will become more difficult, firstly because of increasing scale, and secondly through the inconsistency that will arise if some sites have gained immunity from enforcement action and/or rights of ownership.

3.4 As in all enforcement cases, particularly where residential use is involved, human rights issues have to be considered. Some of the people involved may become homeless and provision may have to be made for assessment of their housing needs. The European Convention on Human Rights sets out various rights including, in particular, Article 1 of the first Protocol (right to peaceful enjoyment of possessions) and Article 8 (right to respect for private and family life). The Council has to consider whether any proposed enforcement action, which intereferes with those rights, is a necessary and proportionate response to the harm being caused and whether it is in the public interest.

4.0 Options

4.1 Accept the situation and do nothing. If this option is chosen, the problem is likely to get worse and become more difficult to remedy later. There is also a risk factor that an ongoing situation would start to undermine planning policies which presently provide robust protection for the countryside against unnecessary development.

4.2 Continue work to identify owners of land being used, and where possible, encourage landowners, (including Local Authorities and the Secretary of State) to evict trespassers either through negotiation or Court action if necessary. If successful, and landowners can be traced, this could prove to be the most efficient way of dealing with the situation.

4.3 Use planning enforcement powers to tackle the issues. Enforcement notices, even if not immediately complied with have the advantage of ensuring that the unlawful use of the land for residential purposes does not become lawful though passage of time. If it became necessary to prosecute and seek injunctions against occupiers who were in breach of requirements of an enforcement notice, this could prove to be a time-consuming and expensive process.

5.0 Recommendation

5.1 That the Committee authorises action in accordance with the options set out in 4.2 and 4.3 above to secure cessation of the unauthorised uses of land.

5.2 That Cabinet authorises legal action to secure removal of the 'Dome' structure and associated uses from land owned by the City Council at Garnier Road.

OTHER CONSIDERATIONS:

6.0 CORPORATE STRATEGY (RELEVANCE TO):

6.1 Looking after the natural and built environment is a core objective

7.0 RESOURCE IMPLICATIONS:

7.1 To be met from within existing Budget allocations and Staff resources

BACKGROUND DOCUMENTS:

Enforcement Investigation Files (not available for Public Inspection by virtue of Paragraph 12(5) of the Access to Information Act 1995).

APPENDICES:

Appendix A OS Extract showing known locations for "dome" structures around Winchester