

Report by Head of Planning Applications Group to the Regulation Committee on 1<sup>st</sup> July 2021.

Summary: Update for Members on planning enforcement matters.

Recommendation: To endorse the actions taken or contemplated on respective cases.

Unrestricted

### Introduction

1. This report is intended to give an insight into events, operational matters and the general experiences of the County Planning Enforcement service, in the context of the continuing pandemic. It covers the period from the previous Regulation Committee of 28<sup>th</sup> January 2021 to date.
2. I have reported to previous Committees that it has been challenging trying to meet the expectations of an 'as near full service as possible', from the public and Members, set against the backdrop of the pandemic and Government requirements on safe working practices. Changing rules and conditions under lockdown have added to these challenges. Notwithstanding this, the Planning Enforcement Team has adapted flexibly and with determination to the ever-changing circumstances.
3. Operationally, we continue to work with other regulatory bodies, such as the district councils, the Environment Agency and the police; often on highly demanding cases. All aspects of planning enforcement have continued during lockdown but in a modified form. The formal stages of actions have inevitably taken longer but resolution of cases through informal means (largely by negotiation) has helped to balance the workload. I would also emphasise that regardless of the difficulties, every effort has been made to maintain enforcement pressure on the alleged contraveners.
4. We are still primarily working from home, with limited trips to the office for administrative purposes and some evidence preparation. It is also to help counter any feelings of isolation and for morale and well-being purposes. Those factors are recognised as vital, being well-supported by the County Council (notably under lockdown) knowing that ultimately actions are driven and sustained over long periods by the tenacity and dedication of frontline staff. That resilience is viewed as an operational asset.

### Report Format

5. Our reporting to the Regulation Committee on Planning Enforcement matters falls into two main parts, which I shall explain for the benefit of new Members to the Committee and for the public in general.
6. Firstly, there is this 'open' report, summarising in general, our findings and observations relating to enforcement matters, for discussion. Also, the nature of the alleged unauthorised activities and types of responses, including as much as can be released on operational matters without prejudicing any action that the Council may wish to take.

7. Secondly, there is a further 'closed' or exempt report (within Item 11 of these papers) containing restricted details of cases. Those emphasise the work that has been achieved, in priority order, with the strategic level cases first (with a County Council interest / remit) followed by district referrals, including those where issues of jurisdiction remain and 'cross-over' work with partner bodies and finally compliance issues at permitted sites.
8. This format provides a more in-depth analysis of alleged unauthorised sites and the behaviour of alleged contraveners. Its confidential nature is to protect the content and strategy of any proposed planning enforcement action to be taken and any gathered evidence, which may subsequently be relied upon in court as part of any legal proceedings. That is to help secure decisive outcomes at sites in the public interest. It is also to protect the safety and security of staff, Members and those of the public involved in any case.
9. Data protection and security is paramount and a statutory duty of the County Council. Hearing the details of cases in closed session also allows for uninhibited discussion on our own or joint enforcement strategies with other regulatory authorities (who have their own need for confidentiality) and in the seeking of Members' endorsement.
10. Notwithstanding these restrictions and as a balance in terms of information disclosure to the public, a list of the cases covered in the companion report is given under paragraph 11. below. This covers those sites currently active or requiring investigation. Those previously reported and inactive, remain on our 'holding / monitoring' database to be brought back to the Committee, should further activity occur, or in the positive, restoration be achieved, or constructive after-uses made possible on former planning enforcement sites.
11. Our current and immediate operational workload, qualified by remit and with resource priority, is as follows:

**County Matter cases** (complete, potential or forming a significant element)

- 01 **Raspberry Hill Park Farm**, Raspberry Hill Lane, Iwade, Sittingbourne (and related multi-site investigations further afield).
- 02 **Spring Hill Farm**, Fordcombe, Sevenoaks.
- 03 **Water Lane, North of M20**, Thurnham, Maidstone.
- 04 **Hoads Wood Farm**, Bethersden, Ashford.
- 05 **Ringwold Alpine Nursery**, Dover Road, Dover.
- 06 **Double-Quick Farm**, Lenham, Maidstone.
- 07 **Woodside East**, Nickley Wood, Shadoxhurst, Ashford

**District referrals** (potential interest, unlikely County Matter, or partnership working)

08 **Fairfield Court Farm**, Brack Lane, Brookland, Romney Marsh.

09 **Chapel Lane**, Sissinghurst, Tunbridge Wells.

10 **Worth Centre**, Jubilee Road, Worth, Deal.

**NB** In addition to the above cases, 12. (01) to (10), measurable time has been spent on further or emerging cases, with examples including:

- Stickens Lane, East Malling.
- Stour Valley, Wickhambreaux.
- Haines Wood, Ramsgate.

All cases received are triaged, researched and investigated on an ongoing basis to establish whether there is a statutory remit for the County Council. Among the cases are those that may ultimately be handled by other authorities and agencies, without the need for our strategic input. Those joining the workload of the Planning Enforcement Team will be reported to the next Meeting, including any contribution to multi-agency interventions.

In order to efficiently filter cases a complete briefing is needed from the referring authority or agency. However, that is not always received. An appropriate contribution or matters of jurisdiction are similarly difficult to decide upon. We are currently exploring ways for this flow of information to be improved, at this first and crucial stage of any case.

**Permitted sites** (compliance issues)

11 **East Kent Recycling**, Oare Creek, Faversham Kent.

12 **Blaise Farm Quarry**, Anaerobic Digester Facility, Kings Hill, West Malling.

13 **Hermitage Quarry**, Hermitage Farm, Maidstone.

14 **Dungeness Borrow Pit**, Dungeness.

15 **Cobbs Wood Industrial Estate**, Ashford.

16 **Court Lodge Farm**, Horton Kirby.

17 **RS Skips**, Apex Business Park, Shorne.

- 18 **Flisher Energy, Fernfield Lane**, Hawkinge.
- 19 **Sall Haulage Ltd, Unit 2**, Katrina Wharf, Wharf Road, Gravesend.
- 20 **Cube Metals**, Unit A, Highfield Industrial Estate, Bradley Road, Folkestone
- 21 **Borough Green Sandpits**, Borough Green.
- 22 **Aggregates Recycling Facility**, Land to the south of Manor Way Business Park, Swanscombe.
- 23 **Wrotham Quarry (Addington Sandpit)**, Addington, West Malling.

### **Meeting Enforcement Objectives**

#### *Overview*

12. For the benefit of new Committee Members, planning enforcement is a high public profile function. It underpins the Development Management service within the Planning Applications Group. The work is most often waste management related and takes place within an involved legislative framework. It is often constrained by the complexity of cases, the involvement of alleged organised crime, jurisdictional issues and the need for more regulatory harmony with the Environment Agency in key areas.
13. There are a range of discrete planning enforcement powers to use but the objective may be better achieved in other ways, such as using negotiating techniques depending on the circumstances. Either way, a great deal of judgement and experience is needed in approaching the work. There is a high Member and public expectation for this authority to act in a decisive but proportionate way. Seamless working with allied enforcement agencies is another important requirement. This may also help to overcome some of the resourcing pressures experienced across the span of planning enforcement work at the County Council level.

#### *Workload focus*

14. For a number of years, the planning enforcement team has been reporting on the increase in workload as well as the changing nature of the work itself. A growing number of the unauthorised sites that we visit have an alleged waste criminal element, alongside independent and self-contained waste activities in a traditional planning sense. Waste related contraventions are being reported in almost every area of Kent. All facets of waste crimes are apparent, ranging from opportunist fly tipping at random sites, to organised networks of fully-serviced sites, increasingly the subject of these reports to the Regulation Committee. Waste crime of the type reported in these papers has been steadily increasing for a number of years but since the start of the first lockdown in March 2020, the rate has accelerated.
15. Whilst some of the increase is accountable for by the unusual circumstances of the

national Covid-19 restrictions, including a higher level of reporting, there is an undoubted trend in alleged unauthorised waste management activities, including material changes in the planning uses of sites, at the core of the planning enforcement remit of this Committee and the strategic patterns of multiple site networks that are emerging. The alleged contravening parties are also tending to be more determined and defiant. They may feel (within their perception) that they are freer of scrutiny and less likely to be enforced against under lockdown conditions but that is not the case. KCC planning enforcement has continued its service throughout the pandemic. Their activities have not gone unnoticed, especially by the team, elected officials and vigilant members of the public.

16. The prevalence of alleged waste crime, in the context of wider criminal activity means that some 'cross-over' is occurring with the Police, particularly within the work of multi-regulatory teams. Indeed, increasingly at the more severe end of the cases, a police presence is required just to gain access to the sites, let alone to gather evidence free of duress.

*Nature of the cases*

17. As mentioned earlier in this report, most aspects of waste planning contraventions and associated crime has increased. However, for the benefit again of new Members, a distinction needs to be made between two areas of work and legislation.
  - Fly-tipping cases are usually opportunistic, unorganised, occurring at spot-locations, with no company presence and rarely anyone on site. They are usually tackled through private land and environmental prosecutions. They are unlikely to constitute in their own right, a material change of use, requiring planning permission or related enforcement.
  - Those that require planning permission involve a material change under planning law, in the use of land to waste management activities, mixed use activities or land engineering works to facilitate such activities. They are planned, organised and though appearing as single sites are often operationally linked to other sites. They are not sporadic locations. Activity is usually on a commercial basis, with site infrastructure (prepared land, a constructed access, containers, plant & machinery and so on) and a presence both physically on site and virtually by website.
18. It is the second of the two areas of work that falls within planning jurisdiction and forms the main body of work before this Committee. Fly-tipping falls within the remit of the District and Brough Councils and as part of the Kent Resource Partnership. The work of this Committee inevitably involves a greater scale of activity than stereotypical fly tipping, with any action able to be appealed and made subject to a public inquiry under planning legislation, often involving significant resourcing, effort and complexity in a planning, procedural, land-use, lawful status and case law sense. The seeking of High Court injunctions is another avenue that may be followed, with a very high threshold of legal precision and evidence gathering required. Our small team has to span all of this work in an agile way, including optimising their time on cases, inter-linking with other regulatory bodies and using creative problem-solving techniques in a holistic way.

*More demand for formal actions*

19. The level of defiance, principally in the waste planning field, is needing to be met more often, at least during the pandemic, by more formal means. That currently ranges on the more serious and environmentally damaging of cases, from the need to serve more Planning Contravention Notices (seeking baseline evidence and explanation of reported activities) to High Court injunctions.
20. Whilst these may present options to act, the objective and the need to maintain a balanced and county-wide planning enforcement service, must be kept in mind. Actions are resource intensive and require specialist knowledge and handling. The extra workload from Planning Inquiries and court hearings needs to be factored in including the strict time-tabling imposed by the Planning Inspectorate and the courts (with no 'give' under any circumstances) and the need for complete precision throughout. There has to be optimal use of specialist staff and unequivocal employer support, especially at time-critical points within actions. Such support during lockdown has been good and flexible.
21. Actions are only one of a range of options. The skill and judgement are in selecting the right option at the right time, designed to have the impact required, in the most time and cost-effective way. Actions have to be proportionate for legal reasons but equally sufficient and approached with complete commitment.

*Government*

22. The Government commissioned a study into serious and organised waste crime, which reported in November 2018. The main recommendations were for closer authority working, tougher penalties and a general tightening of control regimes. Those measures, among others, were brought into being in 2019. Of particular interest here is the provision for Joint Units for Waste Crime (JUWCs). That has come into play in at least one of our live cases, involving a lead action by this Authority, within a team of regulatory bodies. An informal joint unit was organically formed but subsequently reinforced by the Environment Agency and Her Majesty's Revenue and Customs (HMRC) with their own formal and supplementary JUWC set of arrangements. That in turn should provide a wider range of powers to use in the case.
23. The Government may also assist in other ways, including correcting the situation where an Environment Agency Permit may be issued to a waste management activity in the absence of planning permission, and often regrettably at entirely unsuitable sites in planning terms. This updated synchronisation of powers is viewed as an urgent and very necessary regulatory change. The updating of planning enforcement powers themselves is another arguably long overdue area for attention. The last meaningful review and addition to our powers was over 25 years ago. This update in controls and any related funding, needs to mirror those already passed, fairly recently by the Government, to the Environment Agency. These matters are under consideration as part of the Council's current cross-party group on Environmental Waste Crime.

*Post-pandemic*

24. Planning enforcement, in pre-lockdown / February 2020 form is expected to resume gradually, in line with the Government's lifting of restrictions. It should be stressed however, that the team has operated throughout to the best of its ability and has had a

measurable impact in many cases. Remote working is likely to be a permanent feature and option, in a balance between office and home working, according to operational needs. That extends to health and safety issues, with adapted 'reporting back' procedures from 'at risk' sites.

## **Monitoring**

### **Monitoring of permitted sites and update on chargeable monitoring**

25. In addition to our general visits to sites, we also undertake routine visits on permitted sites, to formally monitor against the statutory monitoring charging scheme. This provides useful compliance checks against each operational activity and an early warning of any alleged and developing planning contraventions. Such chargeable visits remain suspended for the moment to attend to more immediate priorities and covid-safe requirements, although investigation of alleged breaches that are drawn to the Council's attention have continued to be investigated. Alleged planning contraventions at permitted sites are being challenged with additional support from an outside planning consultancy firm.

### **Resolved or mainly resolved cases requiring monitoring**

26. Alongside the above monitoring regime there is a need to maintain a watching brief on resolved or mainly resolved enforcement cases which have the potential to reoccur. Under normal circumstances, this accounts for a significant and long-established pattern of high frequency site monitoring. Cases are routinely reviewed to check for compliance and where necessary are reported back to the Committee. For the moment, this initiative has also been reduced to allow a diversion of resources to more immediate and pressing duties.

## **Conclusion**

27. The pandemic has undeniably set the operational context for the planning enforcement service since early last year. It would seem that successive lockdowns have similarly encouraged and galvanised a number of alleged contraveners. A positive aspect of the lockdown arrangements and remote working has been that most of the internal and external parties involved in this area of work have needed to and found new ways to work more closely together. Indeed, an informal joint unit for alleged waste crime has been formed in a natural way, at one of our live major cases, ahead of the formal version. New operational templates are also being developed to meet the challenges anticipated in earlier reports to this Committee over the past six years and validated by the government's own analysis of the waste crime situation in 2019 and associated measures. Planning enforcement now needs the injection of funding and more modern powers already enjoyed by the Environment Agency, as part of that review.

## **Recommendation**

28. I RECOMMEND that MEMBERS NOTE & ENDORSE:

- (i) the actions taken or contemplated in this report.

Case Officers: KCC Planning Enforcement

03000 413380 / 413384

Background Documents: see heading.