

Report by Head of Planning Applications Group to the Regulation Committee on 23<sup>rd</sup> September 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 recent activities of the County Planning Enforcement service. The reporting period covers matters from the previous Regulation Committee of 1st July 2021 to date. The Committee was held in person then, following the partial lifting of the imposed covid - lockdown.
2. I have reported previously on the challenges to the planning enforcement team, in trying to meet the expectations of the community, whilst simultaneously complying with the Government's pandemic requirements on safe working practices, and to run as near as normal a service, as possible. I am pleased to report that we have successfully managed maintain the service, in turn allowing us to keep in check and where possible help reverse, at least the worst of the alleged unauthorised waste operations in Kent.
3. The aim is to resume a full service as soon as conditions allow. That includes making use of new hybrid working arrangements. A mix of home and office working will apply, to ensure flexibility. The latter will give access to meeting rooms, for case-conferencing and for preparing public inquiry and court evidence.
4. We are further increasing our working ties with other regulatory authorities and agencies, to help ensure a holistic approach to the work, as often the sites are involved in a wider range of alleged unauthorised and criminal activities, beyond our main waste-related brief. This invariably brings with it the need for more formal action, though we still try for negotiated settlements in the early stages.

### Report Format

5. Our reporting to the Regulation Committee on planning enforcement matters comprises of two main parts.
6. Firstly, there is this 'open' report, summarising in general, our findings and observations relating to enforcement matters, for discussion. In addition, it includes the nature of the alleged unauthorised activities and types of responses, incorporating 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 6 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 (Item 6) 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.
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 12. below. This covers those sites currently active or requiring investigation. Those previously reported and inactive, remain on a 'holding / monitoring' database to be brought back to the Committee, should further activity occur, or as an update on site restoration and after-uses.
11. The aim is to achieve a continuous flow of cases in and out, with attention given, at the centre of this 'conveyor belt', to the most recent, pressing and harmful (in amenity and environmental terms). Those are the cases demanding our most immediate attention, independently, or in company with other regulatory bodies. At the same time however, a balance of attention needs to be found between live activities and forward momentum on restoration of affected sites.
12. 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 **Double-Quick Farm**, Lenham, Maidstone.
- 06 **Woodside East**, Nickley Wood, Shadoxhurst, Ashford

**District referrals** (potential interest)

- 07 **Ringwould Alpine Nursery**, Dover Road, Ringwould
  - 08 **Fairfield Court Farm**, Brack Lane, Brookland, Romney Marsh.
  - 09 **Chapel Lane**, Sissinghurst, Tunbridge Wells.
  - 10 **Worth Centre**, Jubilee Road, Worth, Deal.
- 13 All alleged unauthorised cases received are triaged, researched and investigated on an ongoing basis to establish whether there is a statutory remit for the County Council. Determining whether there is a statutory remit is important as successful formal action by the County Council is dependent upon holding this remit. 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.
- 14 In order to efficiently identify potential strategic cases a comprehensive 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 continue to seek ways for this flow of information to be improved, at this first and crucial stage of any case.
15. A further workload area relates to compliance issues at permitted sites, mainly alleged breaches of planning conditions.

**Permitted sites** (compliance issues)

- 11 **East Kent Recycling**, Oare Creek, Faversham Kent.
- 12 **Cobbs Wood Industrial Estate**, Ashford.
- 13 **Court Lodge Farm**, Horton Kirby.
- 14 **RS Skips**, Apex Business Park, Shorne.
- 15 **Flisher Energy, Fernfield Lane**, Hawkinge.
- 16 **Sall Haulage Ltd, Unit 2**, Katrina Wharf, Wharf Road, Gravesend.
- 17 **Cube Metals**, Unit A, Highfield Industrial Estate, Bradley Road, Folkestone

- 18 **Borough Green Sandpits**, Borough Green.
- 19 **Aggregates Recycling Facility**, Land to the south of Manor Way Business Park, Swanscombe.
- 20 **Wrotham Quarry (Addington Sandpit)**, Addington, West Malling.

### **Meeting Enforcement Objectives**

#### *Overview*

16. Planning enforcement is a high public profile function. It is a key part of the Development Management service within the Planning Applications Group. It is endorsed and given weight through planning policy and guidance at national and local plan level. The adopted Kent Minerals and Waste Local Plan enforcement policy (DM22) is proposed to be revised to reflect Brexit as part of the Council's local plan review. There is however, discretion as to how such action may be carried out. This in turn depends upon a number of factors including whether it is expedient to act, if it is in the public interest to do so, or whether the breach is already lawful through the passage of time.
17. The work is primarily waste management related and takes place within a well-developed legislative framework, including allied controls and options through other enforcement bodies, particularly the Environment Agency's permitting processes. It is often constrained by the complexity of cases, the involvement of alleged organised crime in its widest sense, jurisdictional issues with district councils and in particular the need for more congruency with the Environment Agency in waste enforcement matters.
18. Our first response is usually to seek a negotiated settlement; pointing out the alleged breach and to discuss how it might be rectified within a set timeframe, plan and written scheme. No ambiguity must be left and enforcement markers given for each required stage. Precise and detailed research on the site, its planning history and a full understanding of the planning land units and uses involved (along with any relevant planning law) are crucial to know in all cases, before action can be contemplated. That in turn needs to be proportionate but focussed so as those involved are aware of what they are required to do and the consequences of not doing so.

#### *Workload focus*

19. An increasingly demanding workload divides into two main strands. Firstly, single site self-contained waste activities, in a traditional planning sense, and secondly networks of sites, operating from a hub and with alleged organised criminal elements.
20. Notwithstanding the operational differences, both types of arrangements require in-depth planning analysis and tight co-ordination with other enforcement bodies. The interconnected version includes difficulties in accessing the sites, with them having their own and often sophisticated security defences and the related issue of securing the

level of evidence required. The assistance of the police and more recourse to legal actions are increasingly needed in combatting this order of challenge to public amenity and the environment. Police drone surveys and escorted site visits are a necessity. Joint working with other bodies too, helps to overcome some of the resourcing pressures and reduces the opportunity for alleged contraveners to play the regulators off against each other.

#### *Synchronisation of powers*

21. As referred to at the last Meeting, the Local Government Association and planning peer groups are becoming increasingly concerned at the way in which Environment Agency Permits may be issued to a waste management activity in the absence of planning permission, often at unsuitable sites in planning terms. Government legislation would be required to ensure formal synchronisation of the Environment Agency and planning authorities, who represent the two major waste enforcement bodies. Representations to promote such changes through Government are gaining ground, with networks of interested parties coalescing around the issue.

## **Monitoring**

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

22. In addition to our general visits to sites, we also undertake monitoring visits on permitted sites. They provide useful compliance checks against each operational activity and an early warning of any alleged and developing planning contraventions. Those within the statutory monitoring charging scheme are currently restricted in favour of other work priorities, 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**

23. 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**

24. Notwithstanding covid-lockdown arrangements, alleged waste-related planning contraventions have continued unabated. Indeed, this national emergency seems to have been viewed at the more serious end of our caseload as an opportunity to expand rather than contract activities. In response, we have maintained a credible threat and deterrent, whilst adjusting to remote working as a prominent feature, in a balance between office and home working, according to operational needs. Operational links with other enforcement bodies has also helped to broaden the scope and impact of the

interventions that we have made.

**Recommendation**

25. 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.