

Report by Head of Planning Applications Group to the Regulation Committee on 27<sup>th</sup> January 2022.

Summary: Update for Members on planning enforcement matters.

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

Unrestricted

### Introduction

1. This report gives an insight into events, operational matters and recent activities of the County Planning Enforcement service. The period covered is from the previous Regulation Committee of 23<sup>rd</sup> September 2021, to date.
2. I am pleased to report that we have managed to maintain the service, to as near normal levels as possible, under continuing and testing coronavirus conditions. We have tactically focussed on the worst cases. At the same time, site visits are subject to the same covid risk management approach, as in the first wave of viral infections.
3. We are currently required by the Government to work from home, wherever possible. though a hybrid mix of home and office is likely to be the longer-term option. We remain flexible though in our outlook, since planning enforcement requires the ability to quickly switch focus in an agile way. Whatever the working styles, our key objective is still to optimise the use of our time and plan and programme our work with operational efficiency (starting from home as necessary). In other words, the right level of response, in the right places, at the right time.
4. As an extension to the above, we continue to develop our working ties with other regulatory partners, particularly on the larger cases. Those tend in any event to display a wider range of alleged unauthorised activities, falling within and outside of the planning system. We are working more closely with the police in particular and since the last Meeting, we have sought out every opportunity, to increase our capabilities.

### 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, or indeed in relation to team actions with other regulatory bodies.

7. Secondly, there is a further 'closed' or exempt report (within Item 8 of these papers) containing restricted details of cases. These emphasise the work that has been achieved, in priority order, with the strategic level cases first (with a County Council interest / remit). These are 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 8) provides a more in-depth analysis of alleged unauthorised sites. Its confidential nature is to protect the content and strategy of any proposed planning enforcement action that may 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. It is important in case management terms but also concerning the personal safety and security of all the parties involved.
10. Hearing the details of cases in closed session allows for uninhibited discussion, in seeking Member endorsement, on our own or joint enforcement strategies with other regulatory authorities (who have their own need for confidentiality). In this context and especially with live cases, great care has to be taken in handling any related and sensitive information. Also, in striking the right balance against operational needs and the outcome being sought in the wider community interest.
11. Part of this balancing exercise is to provide a list, under paragraph 12 below, of the cases that will be discussed in the exempt report. 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. A balance of attention is always sought between live activities and forward momentum on the 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** (or those district cases of 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 **Land off Maypole Lane**, Hoath, Canterbury
- 13 All alleged unauthorised cases received are triaged, researched and investigated to establish whether there is a statutory remit for the County Council. That is a pre-requisite for any formal action. Among the cases are those that may ultimately be handled by other authorities and agencies, without the need for our strategic input.
- 14 In order to efficiently identify potential strategic cases a comprehensive briefing is needed from the referring authority or agency, namely, the '*who, what, why, when, where and how*' of cases. Without such basic information of this type, an appropriate contribution or matters of jurisdiction are consequently difficult to decide upon.
15. We continue to seek ways for this essential flow of information to be improved, at the crucial first stage in any case. That includes, the need for an exact site location plan (to find the site but also to identify planning land interests) planning history and any current or previous district council and Environment Agency involvement. Also, aerial and ground photography (where available) and any known potential security issues. We are making it known and we would seek Members' support for requiring effective briefings from public authorities and agencies, before allowing under-specified cases to formally enter our work stream.

16. The aim of this approach is to avoid unnecessary and duplicate research, at the expense of operational efficiency and established priorities. Examples of good practice are those involving multi-agency actions, where available information is pooled, to the benefit of all participating parties.
17. 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.
- 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 **Wrotham Quarry (Addington Sandpit)**, Addington, West Malling.
- 20 **The Old Tilmanstone Colliery**, Pike Road, Eythorne.
- 21 **Maidstone Grammar School**, Barton Road, Maidstone.

### **Meeting Enforcement Objectives**

*Overview*

18. Planning enforcement is a high public profile function. It helps to underpin the Development Management Service within the Planning Applications Group. It further helps to protect the environment and public amenity. In addition, planning enforcement seeks to ensure a level playing field among the planning activities managed at county level and elsewhere.
19. Planning Enforcement is endorsed and given weight through planning policy and guidance at national and local plan level. The adopted Kent Minerals and Waste

Local Plan has included from the outset, an enforcement policy (DM22), which is now in a proposed and revised form, as part of the current review of the Plan. The Plan is currently out to public consultation with the following wording:

**The County Council will carry out its planning enforcement functions within the terms of its own Enforcement Plan/Protocols (and any subsequent variations) and specifically for waste-related matters, in the light of the European Union Policies subsumed into law.**

20. The policy assists and reinforces the drive for compliance, adding weight to any legal action (with the advantage of prior public support), which in turn is primarily required within the waste management field. Complementary controls and options also exist under other legislation, particularly the Environment Agency's permitting processes. Whenever practical and appropriate, enforcement bodies in this area have a common interest in joining forces. Initiatives of this type have been an integral feature of county planning enforcement for a considerable period of time, spanning many Regulation Committee cycles.

*Seeking a solution*

21. When we first receive cases, we make a considered assessment of the public interest and on the expediency to act. Usually this leads to a negotiated and proportionate settlement. The alleged breach is pointed out to the involved parties and how it might be rectified within a set timeframe. Our expectations of the alleged contraveners are clearly set out. They are also informed that robust action will be taken should they default or resume their contravening activities, should the need arise. This approach has proved a successful and cost-efficient style of enforcement, based on long experience and skill.

*Workload focus*

22. Since the last Regulation Committee Meeting in September 2021, the planning enforcement team has continued with its primary focus on County Matter cases. This workload involves significant research and analysis to anticipate and follow any material changes on site. The approach and strategies worked upon are regularly reviewed, especially in congruence with allied partners in multi-agency teams and in a response to alleged organised crime. That includes measured success in the form of a scaling down of activities in the most pressured cases, which in turn needs to be recorded for evidential purposes, and measures taken to secure and reinforce the progress made.

*Synchronisation of powers*

23. An enforcement theme, previously introduced to Members, has been the way in which Environment Agency Permits may be issued to a waste management activity, in the absence of planning permission and often at unsuitable sites in

planning terms. These pre-empt the need for planning permission, which can often lead to intractable problems, even before district and county planning enforcement teams become aware of the activities.

24. Government legislation would be welcome and required, to ensure formal synchronisation again, of the Environment Agency and County Planning Authorities, representing the two major waste enforcement bodies. Representations to promote such changes through Government, are gaining ground, with networks of interested parties (peer groups and associations) coalescing around the issue.

## **Monitoring**

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

25. 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**

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. Notwithstanding a further wave of coronavirus infections, alleged waste-related planning contraventions, which are of particular concern, have continued throughout the epidemic. The response has been equally determined and consistent, even though the workplace and workstyles have changed, quite radically in parts. The Government have currently mandated us to work from home if at all possible. Notwithstanding this disruption, our focus on the more demanding cases and resilience, in the face of government restrictions remains intact. A credible threat and deterrent have been maintained, within available resources. Those in turn have been enhanced and expanded through collaborative working and support from other authorities and agencies. Indeed,

there is often an operational necessity, in joining forces on cases (for security, resourcing and evidential purposes) and especially where cases concern alleged organised crime, which is now more common.

**Recommendation**

28. I RECOMMEND that MEMBERS NOTE & ENDORSE:

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

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Background Documents: see heading.