

Update on Planning Enforcement Issues

Report by Head of Planning Applications Group to the Regulation Committee on 18th May 2010

Summary: Update for Members on planning enforcement matters.

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

Local Member: Given by case in Appendices 1 to 3

Unrestricted

Introduction

1. This report provides an update on enforcement and monitoring work carried out by the Planning Applications Group since the 26th January 2010 Regulation Committee.
2. Summary schedules of all current cases have been produced (see Appendices 1 and 2). They cover unauthorised breaches of planning control and those occurring on permitted sites, primarily waste-related. The emphasis is on live and active cases along with those resolved between Meetings. This close targeting of effort is in accordance with the County Council's Enforcement Protocol.
3. Informal approaches are usually taken first with more serious and costly actions used only as a last resort. The priority is to urgently stop any environmental damage or unacceptable level of amenity impacts. Restoration is then pursued within the shortest practical timeframe.

Report Format

4. Cases have been taken from the appended schedules and expanded reports produced. These in turn are presented under the following categories:
 - Achievements / successes [including measurable progress on existing sites]
 - New cases, especially those requiring Member endorsement for action
 - Significant on-going cases
 - Other cases of interest and those requested by Members
5. Members may wish to have verbal updates at Committee on particular sites from the schedules, (ideally with prior notice) or reports returned to the next Meeting. The report continues to give details of general site monitoring and progress on chargeable monitoring for minerals development.

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Meeting Enforcement Objectives

6. Planning enforcement is a high profile County Council function. The powers used derive from planning statutes but the type and degree of action taken is discretionary. That is to allow a flexible and proportionate approach to cases. The resources allocated have to be balanced against those directed to other planning services, in turn referenced to corporate BVPI targets. There also needs to be a balance between responding at speed to live cases and attending to longer-term restoration objectives on existing sites.
7. Since the last Meeting resources have been focussed on 5 sites where formal enforcement action has been taken, 6 cases where investigations are underway and a further 5 cases have been satisfactorily progressed. Amongst formal monitoring visits on permitted sites there have been 9 chargeable and 9 non-chargeable visits.

Achievements / Successes [including measurable progress on sites]

Red Lion Wharf, Northfleet (Member: Leslie Christie / Harold Craske)

8. I have previously reported this case to Members. It concerns the unauthorised importation of significant quantities of waste wood for shredding. The site resides within Red Lion Wharf. The area is owned by SEEDA and is the subject of regeneration proposals formed within the 'Northfleet Embankment Masterplan'.
9. Members' have previously resolved to reserve enforcement action against the wood stockpile to allow for outlets to be found for its constructive re-use. That has not provided a solution but it has served to attract a specialist wood processing company to the site. A planning application has recently been submitted for a temporary wood shredding yard. That would run until the land was required for regeneration purposes. The existing waste stockpile would be absorbed, processed and removed as an integral part of the scheme.
10. The application has yet to be validated and would be processed on its own merits. Nevertheless, I thought it important to bring this development to Members attention as it offers a potential planning solution to the alleged planning contravention on site. This approach is also proportionate and in accordance with government guidance and good practice. I shall keep Members informed as to progress on the application.

Procurement and Implementation of computerised planning application system

11. Intense effort is being put towards producing the new IT system for the planning and enforcement service. Continuous progress has been made with the intention of phasing in the new operational system over the next 2 months. A working version of the system is currently being tested. The transfer of data from the original system, including enforcement records is already well advanced. The new system is more geared to the exacting requirements of a modern enforcement service.

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New Cases, especially those requiring action / Member support

12. New alleged waste-related cases, include:
- (a) Woodlands Park, Tenterden Road, Biddenden (Schedule / Appendix 1, No. 2)
 - (b) Brotherhood Wood Yard, A299 Thanet Way, Dargate, Swale (Schedule / Appendix 1, No. 10)
 - (c) Hooks Hole, Chestnut Street, Borden (Schedule / Appendix 1, No. 11)
13. The cases have been investigated and progress made. An outline of each is provided within the Schedule at Appendix 1, with an expanded version below.

Woodlands Park, Tenterden Road, Biddenden (Member: Mike Hill)

14. Woodlands Park is a residential mobile home site, permitted by Ashford Borough Council (ABC). ABC has reported complaints received from local residents of alleged depositing and storage of waste materials on an adjacent agricultural field (see Schedule / Appendix 1, No. 2). A similar complaint was reported to the Regulation Committee early last year. That was speedily resolved on an informal basis by removal of the waste materials to a registered landfill site.
15. This latest activity is ancillary waste depositing from remedial works on an adjacent site. That would normally fall to ABC to enforce. However, on this latest occasion, a multi-agency site visit involving KCC, ABC and the Environment Agency (EA) has been carried out and a meeting held with the site operator and his building contractor. A united stand has been taken by the regulators.
16. Small stockpiles of assorted waste materials and a derelict mobile home structure were found on site, arising from adjacent renovation works. It was agreed by the operator that the deposited waste materials would be removed by mid-June 2010. A further joint agency monitoring visit will take place on 15 June 2010 to ensure compliance.
17. A separate EA prosecution is under consideration. The derelict mobile home has already been removed and the operator has approached ABC concerning a proposed track to connect the field with the adjoining site. This would provide vehicular access during the winter months and if granted could in part be constructed from materials already on site.
18. I shall report the outcome of the next joint agency visit and details of any EA prosecution when the next Regulation Committee convenes on 9 September 2010. I would meanwhile seek endorsement from the Committee on a contingency basis for the service of an Enforcement Notice should that prove necessary.

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Brotherhood Wood Yard, A299 Thanet Way, Dargate (Member: Andrew Bowles)

19. The local County Member Andrew Bowles, together with Dunkirk Parish Council recently reported unusual heavy traffic flows connected with the above site. (see Schedule / Appendix 1, No. 10).
20. Swale Borough Council (SBC) granted planning permission on 12th October 2007 for 2 twin residential / touring caravans and the erection of stables at the above site. The County Council voluntarily gave some technical advice on the engineering works necessary to complete the development. Those included a hard surface, which from all indications was completed at the time.
21. Recent inputs to the site have included supplies of crushed concrete, hardcore and road planings. Those have been used to develop paddocks for the keeping and breeding of horses, which constitutes a district matter.
22. Inputs have been suspended and SBC have apparently invited a retrospective planning application. There is no current basis for County Council intervention but I shall maintain a watching brief.

Hooks Hole, Chestnut Street, Borden (Member: Keith Ferrin)

23. This case was reported by Borden Parish Council and Swale Borough Council (SBC). It concerns alleged infilling of a former gravel pit (see Schedule / Appendix 1, No. 11). The site was the subject of a planning application in 2008 to carry out a similar operation to create land for cattle grazing. No compelling case of need was apparent at the time and the application was withdrawn.
24. A Planning Contravention Notice was served on the landowner to uncover the circumstances of this current alleged breach. A site meeting then established that the use of the land changed in 2009 from the rearing of cattle to the creation of a horse-based enterprise. Indeed, SBC have granted planning permission for the conversion of cattle sheds to stables, which has helped to facilitate this new use.
25. To apparently assist his new business still further and without authority, the owner / occupier began to infill the disused gravel pit. The upper section of land has not been filled but has been laid with sand derived from within the farm unit. A sand based manège has been created for horse training, which is a district matter. Attempts have then been made to infill the adjoining depression with on-site materials and imported waste. The intention is apparently to achieve a level grassed area for the safe training and grazing of horses. That would require planning permission, which given the new horse-related context would appear to fall to SBC to determine.
26. I have given the landowner an opportunity to discuss a potential planning application with SBC. He has voluntarily ceased all further importations of waste materials pending the outcome of any submitted scheme of land engineering. I propose in the meanwhile to reserve enforcement action on that agreed basis. I would seek Members' endorsement however for the service of an Enforcement Notice and / or injunctive action in the event of a recurrence of tipping.

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27. I have separately made my team available to offer technical expertise to SBC on any such land restoration project, should that assist. I have required to be consulted overall on the scheme.

Significant on-going cases

Deal Field Shaw, Charing (Member: Richard King)

28. This landfill site requiring restoration is the subject of an exempt report to these papers (Item 9); also see summary under No. 1 of Schedule / Appendix 1.

Aylesford Metals Co. Ltd, Millhall, Aylesford (Member: Peter Homewood)

29. This case involves a site with a 1971 Planning Permission for use as a Scrap yard. A confirmed 1972 County Council Enforcement Notice also applies (see Schedule 2, No. 3). The site also benefits from an outline planning permission granted by Tonbridge & Malling Borough Council (TMBC) in 2005 to develop the yard for housing.
30. The main allegations concern working outside permitted hours, which involves the traffic movements of large goods vehicles exiting the site in the early morning and disturbing the rest of the local residents. There are further concerns of visual impact from the over-stacking of the stockpiles of scrap metals.
31. The operator is committed to remove his scrap metal operations to a new site in the locality and develop the present site for housing. A possible site has been identified, able subject to planning permission from Maidstone Borough Council to house storage bins and overnight parking of the site vehicles currently employed at the Millhall site. That offers the potential for alleviating current amenity impacts to local residents, particularly relating to early morning traffic movements.
32. Notwithstanding, the potential re-location, there remains a level of breaching. It is true that the operator is continuing in his efforts to reduce the stockpile heights to a more acceptable level. I shall be reinforcing that requirement at the next review meeting on site.
33. Should I encounter any level of resistance I would seek compliance through means of a High Court Injunction. I have fully briefed and retained a barrister for that purpose. Members' continuing support is sought on a contingency basis for this approach.

D & D Waste Recycling Ltd, Units 6,12 & 13 Detling Airfield, Detling (Member: Ms J.Whittle)

34. I reported this case to the last Meeting (see Appendix 2, Schedule 2, No. 1). A small original waste transfer station on the Detling Industrial Estate, Detling, permitted in 1995 has been expanded without planning permission across two adjoining industrial units.

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The County Council holds a confirmed Enforcement Notice on two of the resulting three-unit footprint for the activity. Conditions attached to the original planning permission are also available to use to help control the situation.

35. Having threatened enforcement action and prosecution from site breaching, talks have turned to a potential planning solution for the site. A planning application has been drafted, linking the three units into one, with a dedicated building enclosing the core of the use. The application is due to be submitted very shortly
36. Members resolved at the last meeting for enforcement action to be reserved pending the outcome of any planning application. That however was on the proviso of no escalation in the level of activity on site. Unfortunately, that has occurred. The operator was away on honeymoon and was kept from flying back by the volcanic ash incident. Contingency management was not in place and stockpiles of transfer waste grew excessively.
37. On his return I insisted on an immediate reduction in the levels of waste on site. That has taken place and I am content to regard this lapse in site control as an isolated incident. Nevertheless, a lower but persistent level of breaching remains and the planning application has still to be received. I therefore intend to set a deadline for its submission. In addition I also intend to require the proposed dedicated waste building to be completely enclosed. That is in line with planning requirements and the minimum return in my view for the level of breaching experienced and the patience and restraint shown by the County Council in its measured approach to the case.
38. I seek Members support for the above enforcement stance, including an amenity return from full enclosure of the proposed waste building.

Other cases of interest and those requested by Members

Tutsham Farm, Hunt Street, West Farleigh (Member: Mrs Paulina Stockell)

39. This site is situated on the southern bank of the River Medway, overlooking Teston Country Park. The case has previously been reported to this Committee and I am now bringing some recent developments to Members attention. The alleged breach concerns the importation and depositing of large volumes of mixed waste construction materials, arising from the landowner's groundworks business.
40. By tactical agreement, the Environment Agency (EA) assumed the enforcement lead as they had all necessary powers through their waste, pollution control and river protection remits. They also held the ability to trace the origin of the tipped material through waste transfer documentation and have powers to require the removal of waste on site.
41. The EA's research and case preparation has been painstaking and long but I am pleased to relay on their behalf that they have now successfully prosecuted the landowner, operator and his business. My officers assisted with a supporting statement. Each party were recently convicted in the Magistrates Court for waste-related offences. Fines and costs in excess of £71,000 were imposed / awarded.

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42. This case demonstrates several points. Firstly, planning powers whilst available in many waste cases are not necessarily the best and most effective powers to use in every situation. Each case has to be tactically assessed in enforcement terms on its own merits. The calculation here was that the EA had a wider base of controls to draw upon, which in combination would eventually prove a more potent force in court. That judgement has been vindicated, given the upper level of fines and costs.

Monks Lake (formerly Riverfield Fish Farm), Maidstone Road, Staplehurst (Member: Mrs Paulina Stockell)

43. Members have previously expressed concern over the apparent lack of planning control over this site, which was initially granted planning permission by Maidstone Borough Council (MBC) as a fish farm (with ancillary buildings and parking).

44. MBC held the enforcement lead and served an Enforcement Notice, resulting in a Public Inquiry. My officers offered advice and expertise at the outset and at key points in this action. The Public Inquiry was adjourned and MBC have now granted retrospective planning permission for the alleged over-developed site. I am seeking details of the permission for our records and to enable me to better inform Members on the outcome of the case.

Monitoring

Monitoring of permitted sites and update on chargeable monitoring

45. In addition to our general visits to sites as a result of planning application work, we also undertake routine visits specifically to formally monitor sites. Since the last Regulation Committee, we have made a further 9 chargeable monitoring visits to mineral and waste sites and 9 non-chargeable visits to sites not falling within the chargeable monitoring regime.

Resolved or mainly resolved cases requiring monitoring

46. Alongside the chargeable monitoring regime there is also a need to maintain a watching brief on resolved or mainly resolved enforcement cases which have the potential to reoccur.

47. Cases are periodically removed to make way for others when the situation on site has been stabilised; restoration or acceptable restoration has been achieved, a district or Environment Agency (EA) remit confirmed (or with action being a realistic possibility by them). Another occasion is where a planning application would address the various issues and there is the realistic prospect of one being submitted. Cases then go onto a 'reserve' data base, with an in-built monitoring commitment; ready to be returned to the Committee's agenda should further enforcement issues emerge or a positive planning solution becomes available. The Red Lion Wharf case, reported in paragraphs 8 to 10 above, is a case in point.

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48. The running list of sites which fall within this category has been incorporated into a spreadsheet database and priorities set for enforcement monitoring.

Conclusion

49. A flow of challenging cases has been presented since the last Meeting. In particular, there have been a run of alleged breaches, which though involving waste have emerged as District Matters. That is because the purpose behind such schemes is often some form of land engineering, using waste as a construction material. In each case, I have carried out initial restraining action. I have then assisted in tackling the breach by attending multi-agency meetings and by offering technical support and enforcement advice. I have finally disengaged on an ordered basis, ensuring first that a means exists for the breach to be addressed.

Recommendation

50. I RECOMMEND that MEMBERS:

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 8 to 44 above and those contained within Schedules 1 and 2 of Appendices 1 and 2.

Case Officers: Robin Gregory

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Background Documents: see heading