

Report by Head of Planning Applications Group to the Regulation Committee on 24th January 2023.

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 starts from the previous Regulation Committee of 21st September 2022, to date.
2. The planning enforcement service has continued to adapt to a difficult working context, both in financial climate and resourcing terms. Cases continue to be complex with a number stemming from an Environmental Permit in the absence of a planning permission and a small number of cases involving an alleged criminal aspect. Joint working with other regulatory bodies continues and this collaboration allows an integrated approach and strategic advantage in the more complex and multi-site cases.
3. Joint working takes place with other local planning authorities, the Environment Agency (EA) and the police. We have also forged closer operational links with His Majesty's Revenue and Customs (HMRC) which offers a new range of powers to add to our traditional planning enforcement armoury.

Report Format

4. Our reporting to the Regulation Committee on planning enforcement matters comprises of two main parts.
5. The first being 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 in relation to team actions with other regulatory bodies. Data security in this field of work is particularly important.
6. The second is the 'closed' or 'exempt' report (within Item 9 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 alleged compliance issues at permitted sites.

7. That format (Item 9) provides a more in-depth analysis of alleged unauthorised activities. 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 at Public Inquiry or in court as part of any legal proceedings.
8. Data protection and security is paramount. It is important in case management terms but also concerning the personal safety and security of all the parties involved. 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 and those operating in compliance with planning procedures.
9. Part of this balancing exercise is to provide a list, under paragraph 10 below, of the cases that will be covered 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. That particularly now includes, with Member's agreement, sites close to completion, allowing a revised balance of attention towards live activities. Forward momentum on the restoration of affected sites will still continue.
10. Our current and immediate operational workload, qualified by remit and with resource priority (with other cases on a 'holding' database) is as follows:

County Matter cases (complete, potential, forming a significant element or as a regulatory group contribution)

- 01 **Raspberry Hill Park Farm**, Raspberry Hill Lane, Iwade, Sittingbourne (and related multi-site investigations further afield).
- 02 **Warden Point and Surf Crescent**, Eastchurch, Isle of Sheppey
- 03 **Water Lane, North of M20**, Thurnham, Maidstone.
- 04 **Woodside East**, Nickley Wood, Shadoxhurst, Ashford
- 05 **Land off Maypole Lane**, Hoath, Canterbury

06 **Manor Farm, Willow Lane**, Paddock Wood

District or EA referrals (or those district or EA cases of potential interest)

07 **Knowle Farm**, Malling Road, Teston, Maidstone

11. All alleged unauthorised cases received are triaged, researched and investigated to establish whether there is a statutory remit for the County Council, unless it is clearly not for KCC planning enforcement. That is a pre-requisite for any formal action. Among the cases are those that may ultimately be handled by other authorities and agencies or where we contribute within multi-agency settings.

12. A further workload area relates to alleged compliance issues at permitted sites. These mainly relate to alleged breaches of planning conditions.

Permitted sites (compliance issues)

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

02 **The Old Tilmanstone Colliery**, Pike Road, Eythorne.

03 **Cube Metals**, Unit A, Highfield Industrial Estate, Bradley Road, Folkestone.

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

05 **Mayfield Grammar School**, Pelham Road, Gravesend

06 **Trosley Country Park**, Waterlow Road, Vigo, Vigo Village, Gravesend.

07 **Teston Bridge Country Park**, Teston Lane, Maidstone

08 **East Kent Recycling**, Oare Creek, Faversham

09 **Borough Green Sandpits**, Platt, Borough Green

10 **Wrotham Quarry (Addington Sandpit)**, Addington, West Malling

11 **H&H Celcon**, Ightham

Meeting Enforcement Objectives

Resourcing & skills base

13. Resourcing, maintaining and developing capacity and expertise within the

Planning Enforcement Service remains a key challenge and is reflected across the country. The recent findings of a national representative survey of 103 Local Authorities, by the Royal Town Planning Institute (RTPI) entitled: 'Planning Enforcement Resourcing', makes for sombre reading. It confirms that the problems experienced in Kent relating to recruitment, retention and development of new officers are generic within the country.

14. A key challenge in planning enforcement is that there is no 'one size fits all' type of solution to the many and varied enforcement scenarios. The complexity of cases now often requires cross-agency working and a multi-disciplinary approach with a pooling of powers and resources. KCC Planning Enforcement has sought to be at the vanguard of these new enforcement trends, embracing allied powers to supplement and enhance our core controls. We are also mindful of the need to seek improvements in current planning enforcement practice by highlighting procedural concerns to the attention of Government, supported by our peer groups.

EA Permitting issue

15. Members may recall from previous Committees their concern of waste cases coming forward with the benefit of an Environment Agency Waste Management Permit in advance of any planning application and therefore a decision on the suitability of the site and surrounding location in land use planning terms. Planning enforcement action is then required to address the absence of this fundamental requirement. This disconnect between the planning and environmental permitting processes is potentially detrimental to all parties, including any local communities affected by the alleged unauthorised activities and creates an uneven playing field for those operating in accordance with the planning process. It is also an inefficient use of public resources.
16. This preventable situation accounts for a growing part of our planning enforcement workload. Following the resolution at the September 2022 Regulation Committee, Derek Murphy as Cabinet Member responsible for planning and enforcement matters wrote to various interested parties to raise this Committee's strong concern with Government (Defra, DLUHC and Planning), the Environment Agency, the Local Government Association, County Council Network and Kent MPs drawing attention to the omission of the planning authority in the environmental permitting process undertaken by the Environment Agency and the consequence this has for planning enforcement. A number of simple solutions were suggested which are being considered further by the above parties.

Other considerations

17. An integral function of planning enforcement is to respond to new cases, in a meaningful way, as soon as feasibly possible. That applies from establishing a

foothold in cases (and developing enforcement strategies) to dealing with activities outside of the planning system, to monitoring / compliance work at permitted sites.

Monitoring

Monitoring of permitted sites and update on chargeable monitoring

18. In addition to 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 currently being addressed with additional support from agency staff.

Resolved or mainly resolved cases requiring monitoring

19. 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

20. Planning enforcement work is challenging with a national shortage of enforcement staff. Notwithstanding this, good progress has been made on a number of cases and we continue to pool resources and work closely with other regulators to achieve mutual community benefits. In addition, we have made good progress in raising awareness of the disconnect between planning and environmental permitting which is at the heart of a number of waste cases. I am hopeful of a solution to this procedural concern.

Recommendation

21. I RECOMMEND that MEMBERS NOTE & ENDORSE:

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

Background Documents: see heading.