

# Update on Planning Enforcement Issues

Report by Head of Planning Applications Group to the Regulation Committee on 9<sup>th</sup> September 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 18<sup>th</sup> May 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.

## Report Format

3. 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
4. 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.

## Meeting Enforcement Objectives

5. Public and Member expectation is that public sector enforcement in its widest sense, including planning control, will be carried out in a seamless and effective way. For that reason closer working relationships are constantly being sought with our District and Environment Agency colleagues. An example is the 'Woodlands Park' case below (paragraph 11), whereby all three regulators have stood firm on a difficult alleged tip case, allowing a conclusive outcome. Members have previously supported and in many cases helped facilitate such joint working arrangements.
6. A free flow of information between the principal parties is of key importance. Districts are already required to consult the County Council in cases where we hold a planning and/ or enforcement interest. Examples would be planning applications made to district

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councils on County controlled sites including housing proposals on scrap yards, or re-profiling schemes on former landfill sites.

7. However, I have had a recent series of cases, where districts have failed to consult the County Council, without prompting. That is unfortunate since jurisdiction is sometimes unclear. We may also hold important information on sites and can offer relevant expertise and advice. I am currently pursuing this issue through my development control channels. I shall also underline the point when addressing the districts in stakeholder consultation meetings organised in relation to the County Council's emerging Minerals & Waste Development Framework (MWDF).
8. More informally, I am encouraging an early exchange of information between the County Council, the districts and Environment Agency on prospective tip cases. That should help ensure that any subsequent inputs of waste materials to district permitted golf courses, fish farms and general agricultural improvement schemes are fully justified in land engineering terms. In that way, restoration materials for County controlled mineral and waste sites would be better safeguarded in support of the MWDF.
9. In relation to the cases reported in the 'Achievements / Successes' section below I should like to commend the 'Seasalter Lane' and 'Detling Airfield' cases as examples of creative and cost-effective solutions to challenging situations. The two cases are summarised within Schedule 1 (No. 4 and 7) and expanded upon below (see paragraphs 12 – 15 and 16 – 19).
10. Since the last Meeting resources have been focussed on 5 sites where formal enforcement action has been taken, 4 cases where investigations are underway and a further 6 cases have been satisfactorily progressed. Amongst formal monitoring visits on permitted sites there have been 12 chargeable and 3 non-chargeable visits.

### **Achievements / Successes [including measurable progress on sites]**

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

11. Woodlands Park is a residential mobile home site, permitted by Ashford Borough Council (ABC). Acting on local resident complaints, ancillary storage of waste materials from renovation works were found on an adjacent agricultural field (see Schedule / Appendix 1, No.2). That fell to ABC and the Environment Agency (EA) to enforce but the County Council voluntarily lent its support. This united stand has led to the site being cleared and compliance reached. A separate EA prosecution in the Magistrates Court resulted in a conviction, with the operator being fined a total of £23,000 with £2,000 costs. I shall now withdraw from the case having ensured on behalf of local residents that planning control and complimentary EA control remains in place.

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### **A299 Underpass, Seasalter Lane, Yorkletts (Members: Mike Harrison & Mark Dance)**

12. This case concerns the storage and depositing of waste materials and assorted sundry items on spare land beneath the support pillars of the A299 flyover at Seasalter Lane, Yorkletts. That became a base for building-related purposes and a Canterbury City Council (CCC) matter. They did not pursue the breach (see Schedule 1, Appendix 1, No. 4). Nevertheless, as owner of part of the land and in control of the rest (required to construct and maintain the road); the County Council has had a corporate duty to address the breach and prevent a recurrence.
13. Happily, that has been achieved through a creative use of planning powers. We were not in a position to take action against ourselves. In this case instead, we were able to exert control over the access to the land and from that the strip of land under the flyover. The owner of the access and related land had been traced using a Planning Contravention Notice. The building contractor involved in the errant activity, admitted the breach and to his credit immediately returned the land to its original state. Direct corporate action would have taken longer and cost tens of thousands of pounds. That public expense was spared.
14. I would commend this example of creative-problem solving as a way to achieve in appropriate cases what I would term: '*demonstrated savings*'. The County Council was obliged under Planning Law to address the third party breaches on its own land. That exposed us to an identified series of costs. However, we were able to avert those through lateral-thinking, while still achieving the required outcome. This cost-saving approach may not always be possible but it does pay dividends should the opportunity arise.
15. KCC Highways and Property Services will need to decide on the final lie and level of the land and to secure the area and underpass from any future incursion. The site will also need seeding.

### **Unit 10, Detling Airfield, Detling (Member: Ms J Whittle)**

16. I reported this case as an exempt item at the 26 January 2010 Regulation Committee meeting. It was ironically the landowner who expressed concern over the alleged breaches on his own land. That involved significant volumes of mixed construction spoil being imported on to the site, stockpiled and then processed through crushing and screening plant, for subsequent sale and distribution (see Appendix 1, Schedule 1, No. 7).
17. The service of a Planning Contravention Notice and an initial site meeting brought about a cessation of the crushing and screening activities. The operators agreed to remove the deposited waste stockpiles and provided a timetable and plans to progress removal and restoration of the site.

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18. The stockpiles of waste materials have been significantly reduced and the operator is on schedule for rapid compliance, subject to favourable weather conditions. I shall update Members at the meeting on the latest state of play. I can confirm however that the operators are in the process of leaving Kent and transferring their business to a new site in the Greater London area.
19. This case is a further example of direct and decisive intervention. The alleged breaches have been halted and reversed, without the need for extended formal action. That has saved the cost and diversion from other enforcement cases of considerable County Council resources. I am confident that final site clearance will be achieved within a short time frame.

### **Computerised planning application system**

20. There is a continuous effort being made towards assimilating the new IT system within the planning and enforcement service. The system is still being tested but is now at least operating in tandem with the original. The transfer of data from the original system, including long-standing enforcement records has been largely carried out. Early signs are that the new system is more geared to the exacting requirements of a modern enforcement service.

### **New Cases, especially those requiring action / Member support**

21. A new case has arisen since the last Meeting at Thirwell Farm, Hernhill. The alleged contravention has been investigated and progress made. An outline is provided within Schedule 1 (No. 12) at Appendix 1, with an expanded version below.

#### **Thirwell Farm, Drove Lane, Hernhill (Member: Andrew Bowles)**

22. The site is located to the north of the A299 slip road at Hernhill. It is adjacent to a flood plain with its northern half designated as a 'Local Wildlife Site'. The site further adjoins an SSSI. A public right of way runs alongside and partly across the site.
23. Swale Borough Council recently confirmed to the owner / occupiers that their proposed 'land improvement' project was exempt from planning control. They accepted the works as agricultural permitted development, so long as waste materials were not imported to the site. However, in accordance with the European Landfill Directive, to which the T&CP Act 1990 (as amended) is now linked, any material discarded at source would in this context be deemed to be waste. In my experience, the need to bring bulk materials to a site of this type would almost always demand the importation of discarded waste materials from the outset.
24. Closer scrutiny was required, especially given the apparent absence of full land engineering specifications. In particular, a waste depositing motive should have been discounted before agricultural permitted development rights were confirmed. In my view, there is doubt over that element and I am confident that with the same information the

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County Council would have come to a very different view to that reached by the Borough Council. After all, waste materials were to be brought to a site by known waste carriers and introduced to the land under no apparent or verifiable scheme of land improvement. That would normally amount to a waste depositing activity unless a credible counter case was made for genuine agricultural improvement.

25. Indeed, there was no pre-stripping and retention of original soils. Rather, active damage to the surrounding trees. Land levels were also haphazard and included the depositing of construction and demolition spoil, blacktop, metal and plastics. The Environment Agency whom had exempted the works from Site Permitting Control, were so concerned that they temporarily halted all inputs to the site. The Borough Council were also urgently approached to re-think their original advice and bring the overall activity to an end.
26. Tipping has now ceased. The Borough Council retain responsibility for the site, including damage limitation in the context of a sensitive ecological setting. Given the circumstances, I shall maintain a watching brief. On a positive note however, I have just been consulted by the Borough Council on an unrelated 'agricultural improvement' case. I am pleased to inform Members that the advice given by them to the landowner was in tune with the stricter and more specified approach to such proposals adopted by the County Council.

### **Significant on-going cases**

#### **Deal Field Shaw, Charing (Member: Richard King)**

27. This landfill site requiring restoration is the subject of an exempt report to these papers (Item 14); also see summary under No. 1 of Schedule / Appendix 1.

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

28. I reported this case to the last Meeting when I said that I would keep Members informed. It concerns the unauthorised importation of significant quantities of waste wood for shredding (see Appendix 1, Schedule 1, No. 5). 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'.
29. 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 been submitted for a temporary wood shredding yard on site. The existing waste stockpile would be absorbed, processed and removed as an integral part of the scheme.
30. The application is currently being processed. 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 report on the outcome of the application to the next Meeting.

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

31. I again reported this case to the last Meeting. 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 (see Appendix 2, Schedule 2, No. 1). 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 help control the situation.
32. Having threatened the operator and landowner with prosecution from site breaching, talks turned to a potential planning solution for the site. Enforcement Action has been reserved pending submission of a credible and valid planning application, consolidating the site units into one, with a dedicated building enclosing the core of the use.
33. Members resolved at the last meeting for enforcement action to be further reserved to allow a final chance for a duly made application (with full building enclosure) to be received. Pre-application talks have taken place on this overarching proposal but a scheme has yet to be submitted. A more limited application though has been submitted, in apparent deference to Members resolution. This ostensibly returns the use to the original permitted area within Unit 6, in order to create a *'breathing space'* for the larger scheme to be prepared.
34. On closer inspection however, the application seems to imply the continued unauthorised use of the two adjoining Units. The application cannot be supported at officer level on such terms, not least because it would breach a confirmed Enforcement Notice covering Units 6 and 13, which is a criminal offence. A building would largely enclose the Unit, which at the scale proposed would seem to preclude a return to an independent use on Unit 6. For the record, the application is presently invalid.
35. I shall be calling in the applicant's planning consultant before the Meeting. I intend to impress upon him on behalf of his client, the following which appears in my view to capture the mood of the Committee. Waste management facilities are supported for the service that they provide but Planning Law must be fully observed. A proportionate approach is always taken to ensure that enforcement measures do not unduly impact on businesses, as with the waste firm here. Nevertheless, there is a limit to the patience and restraint that can be shown by the County Council.
36. Court action would be the normal reflex against both the operator and landowner. I am mindful though of the contrite demeanour of the operator during our last site inspection. The abortive smaller application with full covered enclosure, also acknowledges in a fashion the two elements of the last Committee resolution. In addition, the site has been almost cleared of waste in an apparent demonstration of respect for the Committee as well as signalling intent to comply.
37. Taking all of this into account, I recommend to Members that the appropriate measure to adopt is an enforced return of the waste transfer use to the original and permitted Unit 6. That includes reinstatement of the demolished building on site, independent access and adherence to all other site practices and conditions. There must be no operational link

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between this base Unit and the other two (i.e. Units 13 and 14). Prior details of the replacement building, access and any necessary operational changes would be required.

38. I commend this measured approach to the case. It re-asserts Planning Law and allows the waste-related business to continue but only on a legitimate basis. Attention can then be put to the overarching scheme mentioned earlier which has been advanced but has still to be pulled together. A positive planning input would then be possible without the background duress of an unauthorised expansion to the business and related breaches. There is a need to completely de-couple the upgrade proposals from the primary duty of the operator and land interests to comply with Planning Law. I would add that the Site Licence / Permit which also attaches to Unit 6 has allegedly been breached in a similar fashion. The Environment Agency however has been largely silent on its enforcement.
39. I shall report further at the Meeting on the outcome of my talks with the operator's planning consultant. Meanwhile, I seek Members' support for the above enforcement stance, with a return of the operation to Unit 6 by the date of the next Meeting. Also, to authorise me to convey these requirements to the Environment Agency on the Committee's behalf, requesting their active support and reinforcement of our position.
40. The above in turn is on the understanding that should the operator depart materially from such terms, breach of condition notices would be immediately served under the Unit 6 planning permission. A prosecution under the confirmed Enforcement Notice would also be sought. Any further level of breaching would be met with a High Court Injunction against the operator, any related business interests and the landowner. I would hope that given the very firm but fair approach of Members in this case that such higher sanctions would not be necessary.

### **Other cases of interest and those requested by Members**

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

41. This case concerns alleged unauthorised infilling of a former gravel pit (see Schedule 1, Appendix 1, No.11). A Planning Contravention Notice was served on the landowner to uncover the circumstances of the activity. 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.
42. To apparently assist his new business still further and without authority, the owner / occupier began to infill the disused gravel pit. This was to achieve a level grassed area for the safe training and grazing of horses. A sand-based manège was also created for more specialised horse-training.
43. This combination of development would appear to be for Swale Borough Council (SBC) to determine. The landowner was directed to them and I understand that pre-application discussions have taken place. There is apparent agreement in principle to the siting of the manège and suitable land reformation including the infilling of the gravel pit to create

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a commercial livery yard for the existing horse-based enterprise. However, an application has still to be received to this effect.

44. It is a requirement, under Members' support from the last Meeting that Enforcement Action will be reserved so long as no further unauthorised tipping takes place and that we are formally consulted by the Borough Council on any application.
45. The last point is important, since the County Council needs to satisfy itself that depositing has been set aside in favour of a genuine scheme of land improvement. I am confident of that since the adviser to the landowner was formerly a consultee of the County Council on the agricultural restoration parts of planning applications and after-care schemes. I do want to demonstrate however to the Borough Council the difference in calibre between scheme and the more 'free-lance' style of alleged land improvement that was accepted for the Thirwell Farm case above (see paragraphs 22 to 26).
46. I would seek Members' endorsement on a contingency basis for the service of an Enforcement Notice in the event of a recurrence of tipping. In the positive however, I shall make my team available to offer technical expertise to SBC for any stage in the proposed land restoration project. That is important since the land acts as a back drop to the Chestnut Street Conservation Area.

### **Church Lane, Sellindge (Member: Andrew Wickham)**

47. I last reported this case to the 10 September 2009 Regulation Committee Report. It concerned an alleged unauthorised composting activity in a rural location involving two streams of waste (sewage and wood chippings) being imported and their subsequent mixing and application to the land. The newly constructed access to the site, the internal track and turning area/ operating pad had been previously accepted by Ashford Borough Council (ABC) as permitted development.
48. Both the Environment Agency (EA) and the County Council intervened at the time to bring the composting activity to a halt. A retrospective planning application was later withdrawn. More recently, ABC have invited a retrospective planning application to test the strength of the case for retention of the residual access and internal concreting works. In the absence of a composting activity, jurisdiction has returned to ABC.
49. Whilst no fresh deposits or further tipping has taken place I have been advised by the EA that a prosecution of the landowner was initiated by them in 2008 for alleged unauthorised waste offences. There have been numerous adjournments but I understand that the case is now listed for a hearing in the Magistrates Court in October 2010. I shall update Members on the outcome of the hearing at the next Committee Meeting scheduled for January 2011.



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## **Monitoring**

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

50. 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 12 chargeable monitoring visits to mineral and waste sites and 3 non-chargeable visits to sites not falling within the chargeable monitoring regime.

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

51. 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.
52. 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 Church Lane, Sellindge case, reported in paragraphs 47 to 49 above, is a case in point.
53. There is a running list of sites which fall within this category, against which priorities are drawn and enforcement monitoring checks are made.

## **Conclusion**

54. The cases presented in this overarching enforcement report are of significance in their own right but also illustrate some underlying themes. A unity of purpose and action between the County Council, district councils and the Environment Agency is the surest route to a successful outcome in most cases. A free flow of information between all bodies reinforces even independent actions by any one of the principal parties. Formal and timely consultation is another way for public enforcement initiatives to be intensified. There are also examples quoted among our own cases, where creative and cost-effective solutions have been found which achieve the desired result with speed and economy.

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### **Recommendation**

55. I RECOMMEND that MEMBERS:

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 5 to 49 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