

Update on Planning Enforcement Issues

Report by Head of Planning Applications Group to the Regulation Committee on 25th January 2011.

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 9th September 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 / issues of interest and requests 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 sector enforcement in its widest sense, including planning control, needs to be carried out in a seamless and effective way. Close working relationships are required between this Authority, District Councils and the Environment Agency. Members and in particular the Chairman, have helped in forging new links and in improving joint working arrangements.
6. Nevertheless, I reported to the last Meeting on a particular problem with District Councils. A number have been failing to consult us in cases where there is a clear County Council interest. I cited the examples of planning applications made to district councils on County controlled sites including housing proposals on scrap yards and re-profiling schemes on former landfill sites.

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7. To ease the situation, I have been in dialogue with Planning Managers at various district councils to help improve the flow of information and to reach a better understanding of procedure. As part of that work, I have assisted in a number of difficult district enforcement cases by offering advice on strategy and on the controls and powers available. This transfer of experience and expertise has been well received and is one of the ways in my view towards better working relationships within the planning enforcement field. I have expanded upon this work in paragraphs 33 to 41 of this report.
8. A further initiative in the context of the Localism Bill has been attempts by Members and officers to seek improved planning enforcement powers from the new Coalition Government. Both Civil Servants within DCLG and Ministers themselves have been invited to consider our proposals. There is a separate report on this subject under Item 8 of these papers.
9. The 'Achievements / Successes' section below contains further enforcement successes. I should particularly like to commend the 'Unit 10', Detling Airfield case as a further example of a complete solution to a challenging situation at minimal cost.
10. Since the last Meeting resources have been focussed on 4 sites where formal enforcement action has been taken, 3 cases where investigations are underway and a further 4 cases have been satisfactorily progressed. Amongst formal monitoring visits on permitted sites there have been 27 chargeable and 4 non-chargeable visits.

Achievements / Successes [including measurable progress on sites]

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

11. I originally reported this case as an exempt item at the 26 January 2010 Regulation Committee meeting, following concerns by the landowner over alleged breaches by the lessee on his own land. It 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. 4).
12. 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. That timetable has now been honoured.
13. Full compliance was achieved in November 2010, with the site cleared of all unauthorised materials and restored. The site is now being regularly monitored to ensure that there is no recurrence of the previous alleged breaches. For Members information, the operators are in the process of leaving Kent and transferring their business to a new site in the Greater London area.
14. Direct and decisive intervention has been the route to success in this case. The alleged breaches were quickly halted and the site restored, without the need for extensive formal action. That has saved the cost and diversion from other enforcement cases of considerable County Council resources.

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15. I commend this case as a further example of '*demonstrated savings*'; where enforcement outcomes are achieved without the need for related public spending.

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

16. This case concerns the unauthorised importation of significant quantities of waste wood for shredding (see Appendix 1, Schedule 1, No. 2). The site resides within Red Lion Wharf, Northfleet. The area is owned by SEEDA and is the subject of regeneration proposals, formed within the 'Northfleet Embankment Masterplan'.
17. 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 failed to provide a direct solution but has served to attract a specialist wood processing company to the site.
18. A temporary 3 year planning permission has recently been granted for a wood shredding yard, supported by a Section 106 Planning Agreement. The existing waste stockpile will be absorbed, processed and removed as an integral part of the scheme. That in turn will assist in securing regeneration development for the area.
19. A planning solution has been found to the alleged breaches on site. It is an example of good practice and includes a tight control regime designed to safeguard the amenity of local people.

Four Gun Field, Otterham Quay Lane, Upchurch (Member: Keith Ferrin)

20. Members are familiar with this long standing case of alleged waste-related activities on a former lawful brickfield site. Summary particulars are given under Appendix 1, Schedule 1, No. 7. A full exempt report forms Item 12 of these papers.
21. Of particular note is that the site is currently quiet and that the owner / occupiers appeal in the High Court against the Planning Inspector's decision has itself been dismissed. The judge made no change or amendment to the County Council's Enforcement Notice which was central to the case for scrutiny at the hearing. An application for leave to appeal the judgement before the Appeal Courts has yet to be determined.

Computerised planning application system

22. The new IT system within the planning and enforcement service is now live. This new system is more capable than the previous system of meeting the expectations of a modern enforcement service.

New Cases, especially those requiring action / Member support

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23. Three new cases have arisen since the last Meeting, concerning Seaview Farm, Stockbury; Keith Cornell Waste Paper Ltd, Lympe and Borough Green Landfill Site, Wrotham Road, Wrotham. These alleged contraventions have been investigated and addressed.

Seaview Farm, Southstreet Road, Stockbury (Member: Ms J Whittle)

24. This case, concerns the importation, stockpiling and storage of mixed waste materials on agricultural land. It was reported to me by Stockbury Parish Council. From local enquiries I established that waste materials were in the process of being removed from adjacent land at Rumstead Lane, Stockbury, under the control of a local skip operator. This action was prompted by the Environment Agency (EA), requiring removal to a lawfully designated site.
25. This apparent secondary breach was made known to the EA, as they held the enforcement lead. They immediately corrected the breach and I have briefed Stockbury Parish Council and the local County Member Jenny Whittle on the action taken. There has been no recurrence (see Appendix 1, Schedule 1, No. 3).

Keith Cornell Waste Paper Ltd, Lympe Industrial Park, Lympe (Member: Ms S Carey)

26. This case was brought to my attention by Shepway District Council in October 2010 following complaints by local residents. The site is located at the south-western extremity of Lympe Industrial Park and shares a common perimeter fence and boundary with existing dwellings. It employs around 20 people, recycling mainly waste paper but also some plastics and bottles. The main bulk of the imported waste paper is stored against the perimeter fence in preparation for sorting and shredding inside the site building. Once processed the paper and plastic materials are baled and exported from the site. The bottles and glassware are transferred by metal container.
27. The main complaints concern excessive noise, overstacking and potential fire risk from large volumes of waste paper stored against the common perimeter fence. The site has been investigated by both Environmental Health from Shepway District Council (SDC) and the Environment Agency, who have exempted the site from waste permitting controls. The presence of these officers on site has given only temporary relief to local residents.
28. Shepway District Council originally granted planning permission for nursery units on the site but with no effective controls or conditions to address the concerns raised by the local community. No County Council planning permission exists. The operator claims that the 'blanket' planning permission from SDC, includes a B2 (Industrial) Use, which by extension allows for his operation without the need for further permission. I have disputed this, even given the unfortunate planning background. I have explained to the operator's planning agent that the County Council takes a determined stand on all such cases and it would be wise on balance to restrain the use, pending the outcome of a

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retrospective planning application to this Authority. To his credit, the operator has committed to both.

29. I have kept, the local County Member Susan Carey informed and through her, the local Ward Member. On this occasion, in view of the strained local circumstances and levels of Member activity I have also kept the Chairman Mike Harrison informed.
30. The operator has been further advised that failure to adopt this course of action will result in the service of an Enforcement Notice, for which I now seek Member endorsement on a contingency basis. A summary of the case is reported at Appendix 1, Schedule 1, No. 6 and should in my view also be recorded in its own terms as an informal action achieved since the last Regulation Committee Meeting.

Cemex Ltd, Borough Green Landfill Site, Wrotham Road, Wrotham

31. I have given a self-contained summary of this 'mud-on-the-road' incident Appendix 2, Schedule 2, No. 3. The situation was dealt with quickly and decisively and there has been no reported recurrence.

Significant on-going cases

Deal Field Shaw, Charing (Member: Richard King)

32. The restoration of this acquired landfill site at Charing, near Ashford is summarised under Appendix 1, Schedule 1, No.1. It is also the subject of a separate report under Item 9 of these papers. I have usually reported confidentially to Members on this matter but the case has advanced sufficiently to allow a report in the open papers, which will also serve as a briefing and update for neighbouring residents.

Other cases / issues of interest and requests from Members

33. Over several Committee Meetings, I have been reporting on a lack of consultation by District Councils towards this Authority in cases and actions which impinge on our interests. I have referred to this issue earlier under paragraphs 7 and 8 of this report. Although all of the cases are on balance district matters, I should like to give Members an idea of the type of discussions that have been taking place with our district colleagues and the input and influence that we have had towards solutions within their areas. This type of work is carried out in the background to our main County Council cases. It is understated but important work in steering solutions from our strategic experience and specialist expertise in bulk material handling and waste matters.
34. Our input is handled efficiently but the work is still time-consuming. Members will note that on a number of occasions, some district councils are passing cases to us in error or serious and preventable situations are occurring for want of consulting us on specified cases, as they are required to do. The situation is improving given extended efforts on our part and a meeting of minds with key planning managers in the districts.

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35. Dover District Council for instance, approached us recently for advice on four separate district enforcement cases. They each involved the ancillary use of waste materials within the alleged breaches. I gave extended enforcement advice at a meeting at their offices attended by their Head of Development Control, Planning Enforcement Team Manager and their Planning Enforcement consultant. The cases were retained by them and I believe that a new impetus has been found towards their resolution.

Sleepy Hollow Farm, Seasalter Lane, Whitstable

36. Canterbury City Council (CCC) were processing a planning application for the land raising of a former municipal tip, the subject of a County Council Enforcement Notice prohibiting any further importation of waste materials onto the site. We had not been consulted and on being advised of that and the full planning background, CCC confirmed that the application was apparently to be withdrawn.

Staplehurst Golf Course, Craddocks Lane, Staplehurst

37. The volumes of waste materials that were destined for this Golf Course site were so great that the County Council's officers drew the Borough Council's attention to DCLG advice concerning the possibility of a *county matter* development, advising the Borough Council to be satisfied that the volumes of material involved were reasonably necessary for the development and that the DCLG advice had been met. On being advised of this, Maidstone Borough Council confirmed our reading of the situation to the applicant and a withdrawal of the application was invited in favour of revised proposals which "...considerably reduce the extent of imported waste materials with supporting justification'.

Pelistry, Hill Green Road, Stockbury

38. This case was referred to me by Maidstone Borough Council as an unauthorised waste-led activity. It proved to be new operational development for the creation of a tennis court, which in planning terms falls to the Borough to control or enforce.

Marwood House, Crockenhill

39. This case was referred to me by Sevenoaks District Council as waste materials were being imported as part of a residential caravan park development. I investigated but the reported activity was incidental to the main district development. I withdrew from the case at that point but I brought the matter to the attention of the Environment Agency as the site is already permitted and monitored by them.

Willow Farm, Ospringe

40. In this case Swale Borough Council (SBC) sought advice from me on a proposed scheme received by them to import and deposit waste materials to infill a hollow on agricultural land. A subsequent site meeting established that development would also include further land-raising and the creation of earth bunds alongside the M2 motorway.

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The developer was dissuaded from pursuing the development at the time but should it be raised again I shall need to agree jurisdiction with SBC.

Matts Hill Farm, Hartlip

41. Swale Borough Council identified deposits of tarmac on the land during a site visit in relation to a retrospective application for an open storage use. The tarmac had allegedly been deposited several years ago by a Medway Council Highway contractor. Advice was sought in relation to its removal. I referred SBC to Medway Council, as they retained 'cradle-to-grave' responsibility for the waste through the contract chain (and clauses within each contracts), regardless of the fact that the unauthorised tipping took place in SBC's area. Failing that, I advised that the Environment Agency had powers of removal, given the potential for ground water contamination.

Monitoring

Monitoring of permitted sites and update on chargeable monitoring

42. In addition to our general visits to sites as a result of planning application work, we also undertake routine visits to formally monitor sites. Since the last Regulation Committee, we have made a further 27 chargeable monitoring visits to mineral and waste sites and 4 non-chargeable visits to sites not falling within the chargeable monitoring regime.

Resolved or mainly resolved cases requiring monitoring

43. 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.
44. Cases are periodically removed 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.
45. There is a running list of sites which fall within this category, against which priorities are drawn and enforcement monitoring checks are made.

Conclusion

46. The cases presented in this report are of significance in their own right but also illustrate some underlying themes. I have expanded upon the consultation issue with district councils to give Members an insight into the work which is routinely carried out, behind the County Council's own enforcement cases. Progress is being made in streamlining that work with the districts. Another key aspect is the targeted lobbying of Government

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by officers and Members, in the pursuit of more meaningful planning enforcement powers. Among the achievements and successes is a resolved case on Detling Airfield with further demonstrated savings and the prospect of the same at Red Lion Wharf, Northfleet. These are examples of creative and cost-effective solutions to very difficult planning enforcement problems.

Recommendation

47. I RECOMMEND that MEMBERS:

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 5 to 41 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