

## **Update on Planning Enforcement Issues**

Report by Head of Planning Applications Group to the Regulation Committee on 18th September 2008

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 20<sup>th</sup> May 2008 Regulation Committee.
2. Summary schedules of all current cases have been produced (see Appendices 1 to 3). The cases are organised by District and the local County Member(s) identified in each case. Members are already notified on any new County enforcement cases under the existing Enforcement Protocol arrangements. The summary tables cover unauthorised breaches of planning control and those occurring on permitted sites, whether minerals or waste related or those further connected with County Council developments.

### **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 overall aim is for selective cases to be drawn from the set of schedules for longer reports to be produced, in a more targeted way. That has already helped in managing officer time more efficiently and should continue to allow more time at Committee for discussion of enforcement trends and themes and our work with other agencies. Planning enforcement is of course one part of a wider public enforcement effort.
5. The report continues to give details of site monitoring and progress on chargeable site monitoring arrangements for minerals development.

### **Meeting Enforcement Objectives**

6. As a discretionary service, albeit a very important one, the resources available to the service have to be balanced against those directed to support statutory requirements and to meet corporate BVPI targets. Efforts have been concentrated chiefly on defending formal actions that have previously been taken and have progressed or are

## Update on Planning Enforcement Issues

likely to progress to planning inquiry. Resources have been focussed on 5 sites where formal enforcement action has been taken, 5 cases where investigations are underway and a further 7 cases have been satisfactorily progressed or resolved. Amongst monitoring visits on permitted sites there have been 13 chargeable visits. Significant time has been absorbed in servicing a recent public inquiry at Woodgers Wharf, Upchurch in Swale and in preparing for the next public inquiry concerning Four Gun Field nearby. This type and calibre of work requires a great deal of legal interchange with Counsel across a series of complex cases. That aspect involves very time-consuming and intensive work.

7. Each case has to be considered on its own merits and as a discretionary function. Action should only be taken as a last resort and only where it is expedient to do so. Resources are targeted in accordance with the Council's Enforcement Protocol to those sites where the activities being carried out have the potential to create the greatest and potentially the most irreversible environmental damage. These cases are investigated as a priority.
8. The imperative in strategic enforcement action is to ensure that the breach and any further damage to the environment are stopped at the first opportunity. That is the first and overriding objective. The County Council has a notable track record in this regard. The next aim is to attempt to achieve restoration. That may take considerably longer, for two main reasons. Firstly, there is the need at any given point to switch resources from protracted restoration cases to the urgent protection of land from new contraveners. That is precisely the position with the two cases in Swale, mentioned under paragraph 6 above.
9. The other reason is that we do not have immediate call on prosecution powers, despite repeatedly lobbying of Government. This is only available to us once earlier enforcement action has been exhausted and the breach still remains. Reluctant contraveners / landowners, with little funding, equipment or expertise have to be cajoled into restoring sites largely through 'out of court' means. Successes are achieved but the speed depends on the circumstances of the case, appeal turnaround times by the Planning Inspectorate and the workload and inclination of the Courts. Officers, especially in serious unauthorised cases have to sustain a high level of concentration and effort over extended periods of time. The length of time to achieve acceptable levels of final or even interim restoration and what those requirements might be will vary on a case by case basis.
10. The main objective in terms of restoration is to '*remedy the breach*'. In other words, to seek a return of the land to its original state. However, often there are highway limitations in seeking this remedy and more practically speaking we may only be able to '*alleviate the injury to amenity*'. In general, that involves correcting the breach as far, as is practicable without creating further environmental damage and harm to amenity. A balanced judgement is required on the individual set of circumstances of each case.

**Update on Planning Enforcement Issues****Achievements / Successes [including measurable progress on sites]****Roman Road, Dover (Member: Gordon Cowan & Bill Newman)**

11. This case referred to us by Dover District Council concerns the unauthorised depositing of imported waste materials on agricultural land (see summary schedule 1, no.7). The waste was in part surplus from a redevelopment of the landowner's local business. The remainder was from general sources.
12. I immediately required the imports to cease. Realising the level of control and severity of sanction available to the County Council, a negotiated solution was quickly agreed with the alleged contravener. An acceptable scheme of restoration, respecting adjoining contours and capable of being properly enforced has been submitted. Active restoration is proceeding on a firm negotiated basis without the need for protracted formal action.

**Woodgers Wharf, Upchurch (Local Member: Keith Ferrin)**

13. This site and waste management activity concerns the use of land connected to a marine wharf at Otterham Quay, Upchurch for the screening and crushing of largely inert materials. The planning history of the wharf is complex. Considerable efforts have been made to resolve this case and to ensure that all relevant parties, the local community and their representatives have been kept informed of progress. To that end, an Enforcement Notice was served to help arrest the alleged breaches on site and as a means to secure restoration.
14. The operator has left the scene and waste-related activities and associated traffic have ceased. That has been an achievement in its own right. The landowner however appealed the Enforcement Notice and a Public Inquiry was heard on 22 – 23 July 2008. I am pleased to announce that the Enforcement Notice was upheld. Some points, which were agreed between the parties at the Inquiry, have been included to ensure legal precision. The Inspector has also made an attempt to clarify the scope and meaning of the 'wharf-related' lawful use, as originally granted by Swale Borough Council.
15. No more overt waste related activities may be carried out and the stockpile of concrete beams on site will have to be removed as they stand, without being crushed. The stockpiles of soils may be retained on site to alleviate the amenity impact to local residents from the extra lorry movements taking materials off site. There is probably scope for some of the material to be used in restoring the site.
16. This represents a significant appeal win, against the odds, as the Borough Council had previously confirmed in writing to the appellant that he could in essence carry out elements of the development eventually enforced against. An exemption from site licensing issued by the Environment Agency was also a constraining and complicating factor. The appellant drew heavily on both these concessions at the Public Inquiry.
17. The appellant has been given 12 months to remove the excessive stockpile of concrete beams on site and to otherwise restore the site. The site may then only operate within the scope of the original lawful use on site as a marine-contracting yard.

## **Update on Planning Enforcement Issues**

18. I shall need to absorb the full content and nuances within the appeal decision and have a de-briefing session with Counsel. I shall therefore reserve giving a full report until the next Meeting. I should also be able to report on any progress made towards restoration, at the same time.

### **Lympne Primary School, Octavian Drive, Lympne (Local Member: Ms S. Carey)**

19. Lympne Primary School is located to the south of the village of Lympne, accessed via Octavian Drive. The whole of the school site is within the Kent Downs Area of Outstanding Natural Beauty and a Special Landscape Area.
20. Since this case was reported the matter has been significantly progressed and no longer constitutes any planning breach. In particular, Lympne School burnt down in September 2006 and the children have since been schooled in Folkestone on a temporary basis. Rebuilding of the school, incorporating improved design aspects such as better natural lighting, ventilation and fire spread attenuation, was progressed urgently but resulted in a hastily presented design incapable of precise delivery. Complaints from neighbouring residents alerted the Planning Authority to the fact that the replacement school buildings were being constructed on the basis of architect's drawings which did not fully accord with the planning approved drawings, resulting in a higher roofline than was originally envisaged. Although, only slightly higher the extra roof height resulted in a clumsy looking roofscape and an overbearing impact for the nearest residents.
21. Of the two alternative design solutions presented to the Planning Applications Committee in May 2008, the first was refused permission and the second was permitted, compelling the developers to lower part of the steel framing and adopt a compromise roofline, more in keeping with the original design. Although there was a delay in construction of the scheme as a result of this decision, the development has now been completed for occupation with the children returning after a two year hiatus to their original school site, albeit in new buildings, on 8 September. Under the circumstances, I see no need for any further action over this case as far as the Regulation Committee's interests are concerned.
22. In addition to the above cases, I would also refer Members to the measured successes at Pilgrims Way / Toll Lane, Charing case, being number 2 of Schedule 1 and Church Lane, Sellindge, number 3 of the same schedule.

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

23. Under this category, there are three new or resumed cases listed in the appended schedules i.e. Schedule 1, no 8 - Riverfield Farm, Staplehurst (see Exempt Item 12 of these papers) and 20 – Unit JIC and J7 Westwood Industrial Estate Margate; and Schedule 2, no 4 – Hegdale Quarry, Challock.

## **Update on Planning Enforcement Issues**

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

#### **Woodgers Wharf, Upchurch (Local Member: Keith Ferrin)**

24. This alleged waste management activity at Upchurch is reported under paragraphs 13 to 18 in the 'Achievements' section above.

#### **Deal Field Shaw, Charing**

25. This landfill site requiring restoration is the subject of an exempt report to these papers (Item 11); also see summaries under number 1 of Schedules / Appendices 1 and 2, respectively).

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

26. I would direct Members to Exempt Item 12, which reports on the Riverfield 'fish farm' case, at Staplehurst, Maidstone.

### **Monitoring**

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

27. Since 10<sup>th</sup> May 2008, and up until 20<sup>th</sup> August 2008 routine formal chargeable and non chargeable visits have continued, despite competing demands on Case Officer resource. There have been 14 visits to non-chargeable sites and 13 visits to chargeable sites. Informal monitoring (i.e. monitoring that takes place as a result of and during the course of other work such as pre-application advice and application processing) has continued as usual.

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

28. 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. It is intended that cases in this category should continue to be removed from the reporting lists (now the appended schedules 1 to 3, to this and subsequent reports) on the understanding that officers will keep them under review. Any recurrence will be reported back under the '*new cases, especially those requiring Member endorsement for action*' section at the front of subsequent reports to Committee according to the new revised format.
29. The running list of sites which fall within this category are currently being incorporated into an appropriate database, to be used as a monitoring checklist.

## **Update on Planning Enforcement Issues**

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### **Working protocols with the Environment Agency**

30. The Committee has previously endorsed the development of better working protocols between the County Council and the Environment Agency with regard to its enforcement work. Close dialogue has ensued on the basis of bi-monthly meetings to discuss cases and agree enforcement strategies.
31. In place of the 21st August liaison meeting, senior managers from the Environment Agency met with the Chairmen of this Committee and the Planning Applications Committee and representative officer. The discussion was wide-ranging and constructive. It was acknowledged from the outset that modern waste enforcement was becoming an increasing challenge for both parties, along with the relevant District Council. A 'triangle' of responsibility was apparent, comprising the efforts and actions of all three bodies.
32. The management of public expectation given the level of challenge faced and the constraints and boundaries to available powers was also noted and discussed. Members, particularly those with County and District constituencies have an important role to play in this regard and need to be informed of cases and kept properly up to date. The noting of Members in the schedules attached to this report is an example of how that is being done. Including Members in this way changes the 'triangle' in effect to a 'square' with the four corners representing the four key stakeholders involved in public enforcement matters. It is the flow of timely information and the case conferencing of site breaches which is the cornerstone of effective public intervention.

### **Conclusion**

33. Timely and decisive intervention since May 2008 has allowed further successes and measurable progress on a number of enforcement cases. The knowledge that the County Council will not hesitate from taking any necessary formal action and our appeal successes is a strong negotiating tool. It often helps to achieve results in its own right. As a guiding principle, resources are targeted to those activities that have the potential to create the greatest environmental damage in accordance with the adopted Enforcement Protocol. However, actions once taken invariably result in appeals and public inquiries. Those involve as at present, with one public inquiry after another, extensive work and a diversion of resources.

### **Recommendation**

34. I RECOMMEND that MEMBERS:

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 11 to 26 above and those contained within Schedules 1 to 3 of Appendices 1 to 3.

**Update on Planning Enforcement Issues**

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Case Officers: Robin Gregory / Alan Goodison

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Background Documents: see heading