

Report by Head of Planning Applications Group to the Regulation Committee on 17th May 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 25th January 2011 Regulation Committee.
2. Summary schedules of all current cases have been produced (see Appendices 1, 2 and 3). 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. Those cases resolved or able to be removed from our immediate workload are highlighted in bold.

Report Format

3. Cases have been summarised in the appended schedules and presented in this report 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

Co-ordinating Role

5. In a positive vein, I have been assisting in a number of difficult district enforcement cases by offering advice on strategy and on the wider controls and powers available. Members will notice within Schedule 1, Appendix 1 to this report, a series of referrals from district councils to this Authority. Examples include numbers 9, 10, 11, 12 and 14 from Sevenoaks District Council. Whilst concluding on current information that each of these cases amount to district enforcement matters, County officers have still adopted a supportive or co-ordinating role. The Milton Creek case at Sittingbourne in Swale Borough (see number 19 of Schedule 1) is a good example of that approach.

6. A co-ordinated approach allows for a pooling of expertise and powers with a sharing of workloads between regulators. There is also the salutary effect on landowners and operators, when faced with a united enforcement front. The energy and morale of officers and the momentum of effort through protracted cases, is also maintained. From a County Council perspective, it is a cost and case-effective outlet for available experience and expertise. A multi-agency approach also allows for a number of trained technical and court witnesses to be made available, should legal action be required.

Mixed-use contravention sites

7. Apart from the tactical advantages of more seamless enforcement, there are procedural and legal reasons for adopting this particular approach. The cases mentioned within paragraph 5 above are largely alleged mixed-use contraventions. These fall within district council jurisdiction, unless a primary (usually waste-related) County planning use is evident. Our Enforcement Protocol with Kent district councils makes that very point. I would also draw Members' attention to fairly recent case law which lends statutory support to this distinction. The High Court decision in *R (East Sussex County Council) v Secretary of State for Communities and Local Government and Robins (2010)* contains a number of guiding principles.
8. The deputy judge in the case, David Elvin QC, stated in essence that in two tiers areas, councils should consult and co-operate where a mixed-use appears complex and could include both county and district matters. Unless the breach involves a purely 'county matter', the district council should then initiate any necessary enforcement action. The County Council has to strictly adhere to this court advice in terms of jurisdiction but officers may still contribute in the public interest through other channels such as the advisory and co-ordinating roles outlined in paragraphs 5 and 6 above.

Member / Officer Initiative

9. I reported to the last Meeting on an initiative by Members and Officers in the context of the Localism Bill, seeking improved planning enforcement powers from the new Coalition Government. A reply has recently been received from The Rt Hon Greg Clark MP, Minister for Decentralisation, addressed to the Chairman of this Committee, Mike Harrison. In summary, the trials and tribulations of planning enforcement are acknowledged and the new 'ambitious' measures that we suggested were described as a '*welcome contribution to the enforcement debate*'. Unfortunately, he advises that there is unlikely to be legislative space for our ideas in the short to medium term. There would also be compensatory and Human Rights complications to work through.
10. Notwithstanding, these constraints, it should be considered an achievement to have secured the personal time and attention of the Minister in considering our proposals. In commenting on the content of our submission, he stated that '*What comes through strongly in your briefing document is the need for all enforcement agencies to work together*'. That significantly mirrors our approach under paragraphs 5 and 6 above and the High Court advice under paragraphs 7 and 8. The County Council is therefore very much in tune with current best practice and indeed has the distinction of personal Ministerial endorsement.

Emerging Minerals & Waste Development Framework (MWDF)

11. The emerging Minerals & Waste Development Framework sets the County context for the management of development within the planning system. There is a further need however, to give the local régime for development that falls outside of this realm. That principally, though not exclusively occurs within the waste field.
12. I have taken the opportunity to input into the emerging framework from an enforcement perspective. That includes policies and supporting argument which seeks the minimising of construction waste, the maximising of re-use potential and the safeguarding of restoration materials for the backfilling of mineral voids. In particular, a construction waste management plan has been proposed for selective types of development.
13. Such policies should go a long way in maintaining and protecting the integrity of the Framework Document itself and of Planning Law in general. However, there will be occasions when planning enforcement is required. Such actions are by their nature operational rather than policy matters. Nevertheless, their scope is largely discretionary to Local Planning Authorities (the High Court may however impose a duty to enforce in individual cases). This requires the actions of a local control and management régime and the consensus of a recognised policy base. To provide such a platform, I have offered the following draft policy for inclusion within the latest stage of the Framework Document:

Policy 1 The County Council will carry out its planning enforcement functions within the terms of its own Enforcement Protocol (and any subsequent variations) and specifically for waste-related matters, in light of the European Union Waste Framework Directive.

14. The Document will go out for public consultation later this year. If policy backing is secured our enforcement protocol could be used as a vehicle to develop our operational enforcement framework, over time. That would be a flexible and convenient way to do so, organised through the auspices of this Regulation Committee.

Case focus

15. Since the last Meeting resources have been focussed on 5 sites where formal enforcement action has been taken, 10 cases where investigations are underway and a further 5 cases have been satisfactorily progressed. Amongst formal monitoring visits on permitted sites there have been 10 chargeable and 6 non-chargeable visits.

Achievements / Successes [including measurable progress on sites]

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

16. The principal achievement since the last Meeting concerns this long standing case of

alleged waste-related activities on this former lawful brickfield site, at Upchurch. Summary particulars are given under Appendix 1, Schedule 1, No. 17. A full exempt report forms Item 11 of these papers.

17. 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 been dismissed. An application for leave to appeal in the Court of Appeal was in turn dismissed by a more senior High Court Judge. An application for a hearing in person with the same judge was subsequently withdrawn by mutual agreement with the Court Administrators.
18. No change or amendment was made to the County Council's Enforcement Notice, in the course of these appeals within the High Court, leaving the action completely intact.

New Cases, especially those requiring action / Member support

19. 15 new or recurring cases have arisen since the last Meeting. They include: Church Lane (Sellindge); A299 Underpass (Seasalter Lane); Longton Woods (off the A249, Detling); Kent & Surrey Golf Club (Edenbridge); Oak View Stud Farm (Horton Kirby); Marwood House (Crockenhill); Willow Farm (Crockenhill); Mussenden Lane (Horton Kirby); Moores Turf & Topsoil (Brenzett); APM Metals (Sittingbourne); Milton Creek (Sittingbourne); FEL Skip Hire (Addington); Blaise Farm (Kingshill); Workhouse Lane Pit (Ryarsh) and Tunstall School (Bredgar).
20. These alleged contraventions have been investigated and addressed as summarised within the attached schedules. It is notable that 7 of the sites are district mixed-use cases rather than County Matters. Notwithstanding that, each has to be thoroughly investigated and represent an appreciable work load within their own right.

Significant on-going cases

Deal Field Shaw, Charing (Member: Richard King)

21. The restoration of this acquired landfill site at Charing, near Ashford is summarised under Appendix 1, Schedule 1, and No.1. Local residents have been briefed accordingly.

Other cases / issues of interest and requests from Members

22. I would refer Members to the extended section on 'Meeting Enforcement Objectives' between paragraphs 5 to 14 of this report, concerning our attempts to extend the boundaries and effectiveness of the planning enforcement powers available to this Authority.

Monitoring

Monitoring of permitted sites and update on chargeable monitoring

23. 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 10 chargeable monitoring visits to mineral and waste sites and 6 non-chargeable visits to sites not falling within the chargeable monitoring regime.

Resolved or mainly resolved cases requiring monitoring

24. 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 recur.
25. 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. Examples where this has happened include Phoenix Yard, Dartford (see Schedule 2, Appendix 2 and No.3) and the A299 Underpass, Whitstable (Schedule 1, Appendix 1 and No.3).
26. There is a running list of sites which fall within this category, against which priorities are drawn and enforcement monitoring checks are made.

Conclusion

27. The cases reported reveal some underlying and related themes. The first is the recent increase in cases referred to this Authority by district councils, with an ancillary rather than primary waste element. For procedural and legal reasons such cases fall to district authorities to enforce. That does not preclude however, a supportive advisory and / or coordinating role by County Council officers. The Member and officer initiative in seeking more meaningful planning enforcement powers has attracted positive comment from the Minister for Decentralisation, Greg Clark MP. A draft enforcement policy has also been inserted into the emerging Minerals & Waste Framework Document. Among case achievements and successes is the long awaited confirmation in the High Court of our Enforcement Notice for Four Gun Field, Upchurch.

Recommendation

28. I RECOMMEND that MEMBERS:

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 5 to 26 above and those contained within Schedules 1 and 2 of

Update on Planning Enforcement Issues

Item 8

Appendices 1 and 2.

Case Officers: Robin Gregory

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Background Documents: see heading