

10 Report by Head of Planning Applications Group to the Regulation Committee on 7th September 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 17th May 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 sufficiently progressed 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. I am continuing to receive a number of district enforcement cases, particularly from Sevenoaks District and Swale Borough Councils. Whilst returning or transferring those to the relevant District Authorities, I am still offering advice on enforcement strategy and on the wider controls and powers available. County Officers have adopted a supportive role and co-ordinated cases where appropriate. The Milton Creek case at Sittingbourne in Swale Borough (see number 12 of Schedule / Appendix 1) is a good example of that approach with a pooling of expertise and powers and a sharing of workloads between regulators. Landowners and operators, tend to yield and co-operate more quickly when

they are presented with a united enforcement front.

6. I reported to the last Meeting that the types of cases mentioned within paragraph 5 above are largely 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 and fairly recent case law in *R (East Sussex County Council) v Secretary of State for Communities and Local Government and Robins (2010)* require that 'Unless the breach involves a purely 'county matter', the district council should then initiate any necessary enforcement action'. The County Council is obliged to relinquish such cases to the relevant district council. Nevertheless, we still attempt to assist in an advisory capacity.

Consultation on draft National Planning Policy Framework (NPPF)

7. The County Council has recently been consulted on the Government's proposed streamlining of national planning guidance. The intention is to bring together all current Planning Policy Guidance (PPGs), Planning Policy Statement (PPSs) and related supplementary guidance into one all-embracing and simplified document. The aim is to reduce over a thousand combined pages down to around fifty.
8. The County Council will produce one co-ordinated response and contribute to various Peer Group responses, such as the Planning Officers Society (POS) and the National Association for Planning Enforcement Officers (NAPE).
9. Of relevance to this Committee, is the proposed removal of PPG 18 'Enforcing Planning Control'. This forms the common and agreed basis for planning enforcement. It informs what might be expected of the service and proscribes how local authorities should carry out the function in a balanced and proportionate way. It also promotes consistency and fairness.
10. Whilst the aim of streamlining national planning policy is acknowledged, it would nonetheless take away a detailed body of guidance, relied upon by staff engaged in enforcement action. That support is particularly important at Public Inquiry. Indeed, County Council Proofs of Evidence are always seated in such policy guidance, which is relied upon as a pre-agreed framework for our case. I am concerned that, added to limited mention of planning enforcement in the Localism Bill, a policy vacuum is starting to emerge in this challenging field of planning.
11. Two bullet points concerning planning enforcement have already been sent to the Planning Officers Society as part of a collegiate response to the Government's consultation. They are:
 - *Enforcement in relation to minerals and waste planning is an important issue and the NPPF should provide a high level policy framework for planning enforcement issues; and*
 - *The removal of a well-rehearsed and detailed body of planning policy and guidance would be acutely felt at Public Inquiries, particularly in the minerals and waste enforcement field. It is likely that the increased ambiguity that the loss of more*

detailed policy and guidance would cause would engender a more adversarial approach in that forum.

12. I would add that a loss of common policy ground among local planning authorities would very likely lead to inconsistency of approach in enforcement matters. That could potentially weaken the overall service.
13. Should the confirmed NPPF not include sufficient policy context for planning enforcement, the County Council would need to fall back on the emerging Minerals & Waste Development Framework (MWDF) and our agreed Enforcement Protocol. In anticipation of this, I reported to the last meeting on the following draft policy which is proposed for inclusion within the document:

“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. If eventually enshrined as County Council policy, this would give in a sense the opportunity for a local version of the current PPG18 (Enforcing Planning Control), expanded to include case law precedents and examples of good practice gleaned from peer group networks. Either way, the Regulation Committee would have a pivotal role in endorsing and fine-tuning such policy guidance. The support of Members to a set of operational principles would undoubtedly prove crucial in underpinning any enforcement action taken.

Consultation on proposed revisions to village green status.

15. A further consultation concerns Village Green Policy. This comes under the remit of this Committee and has general planning aspects. Under the Chairman’s guidance a response will be made to DEFRA through a combination of the Planning Applications Group and Public Rights of Way and Commons Registration.

Consultation by Natural England on new enforcement powers

16. A general consultation by Natural England (NE) is also current. It concerns a new enforcement regime to protect wildlife and the natural environment, including Sites of Special Scientific Interest (SSSI). This would also cover breaches of the Environmental Impact Assessment (Agriculture) Regulations.
17. Until recently, NE advise that the only options available to tackle most breaches of regulations were either to issue warning letters and cautions or to proceed to full criminal prosecution. That has changed in the wake of the decision by DEFRA to enable Natural England to impose “civil sanctions” against alleged illegal activities and order the restoration of environmental damage. A ‘half-way’ house would be to accept voluntary enforcement undertakings where legislation has been breached.
18. I intend to reply in a positive vein, since complementary and enhanced powers of this kind can only improve the level and scope of environmental protection that is currently

available. It would also help to share the public enforcement burden in the sensitive environments that qualify for these new sanctions.

EA training initiative

19. The Environment Agency has been re-structuring and re-deploying its more specialist personnel. It was therefore thought opportune by them to invite their planning counterparts to a workshop session on planning liaison and enforcement issues. I welcome this invitation since it will allow some consultation issues over planning applications to be aired and for the now improved enforcement relationship to be further cemented.

Case focus

20. Since the last Meeting resources have been focussed on 6 sites where formal enforcement action has been taken, 3 cases where investigations are underway and a further 2 cases have been satisfactorily progressed. Amongst formal monitoring visits on permitted sites there have been 13 chargeable and 19 non-chargeable visits.

Achievements / Successes [including measurable progress on sites]

Shaw Grange, Charing (Member: Richard King)

21. Members are very familiar with this site (see summary details under Appendix 1, Schedule 1, No. 1). It has been acquired by the County Council after a long enforcement battle with the previous owner and I can now report that it has essentially been restored. The former landfill section has been lined across its surface, then covered with soil, smoothly contoured and seeded with a wild flower mix. Tree-planting will take place in the coming growing season, from October onwards. Gaps in the site perimeter fence are currently being bridged. Leachate is also under active review. The aim is to create a landscape asset from a former contravention site, close to local residents. I shall keep Members informed of the progress in absorbing the site back into its sensitive AONB setting.

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

22. A further 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. 10.
23. The site remains quiet and inactive. The County Council's Enforcement Notice has been confirmed and the remaining items of compliance are now the subject of planning applications to Swale Borough Council (SBC). These seek to retain certain site infrastructure (the site office, turning area, wheel-spinner and so on). A consultation has been received and my reply is attached for Members endorsement. SBC is the determining authority and now the first port of call for any question as to what planning

use might be carried out under the B2 (General Industrial) Lawful Use on site. The Enforcement Notice is available to prevent the kind of unacceptable use described within its terms, which should now be in the past. All other planning and enforcement aspects now fall to SBC to manage and control.

24. I shall inform Members of the outcome of the current planning applications submitted to SBC. Otherwise, apart from attending case conferences at SBC Offices, under the chairmanship of their Chief Executive, I am looking to draw back from the case in favour of other sites. I shall however maintain meaningful contact with the Borough Council and local residents, until a more permanent planning solution is found at the site. I shall assist in that endeavour, in the public interest but SBC is now the all-purpose lead authority in the case (i.e. development management, forward planning, enforcement and environmental health).

New Cases, especially those requiring action / Member support

25. Three new cases have arisen since the last Meeting. They include: the former Chelsfield Ammunition Depot, Shacklands Road, Shoreham (see Appendix / Schedule 1, no. 7); Unit 15A, Ridham Dock Industrial Estate, Nr Sittingbourne (see Appendix / Schedule 1, no. 13) and finally, Easy Load, Dartford Heath (see Appendix / Schedule 2, no. 2).
26. These alleged contraventions have been (or are being) investigated and addressed as summarised within the attached schedules.

Significant on-going cases

27. I would refer Members to the 'Achievements' section from paragraphs 21 to 24. Two very notable and demanding cases – Shaw Grange and Four Gun Field - have been brought to a reduced and more manageable level in the context of the general enforcement workload reported elsewhere in these papers.

Other cases / issues of interest and requests from Members

28. I would refer Members to the extended section on 'Meeting Enforcement Objectives' between paragraphs 5 to 19 of this report, concerning our advisory and co-ordinating role in complex multi-agency cases. Also, the raft of consultations and the responses sent or contemplated in fields of interest to this Committee

Monitoring

Monitoring of permitted sites and update on chargeable monitoring

29. 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 13 chargeable monitoring visits to mineral and waste sites and 19 non-chargeable visits to sites not falling within the chargeable monitoring regime.

Resolved or mainly resolved cases requiring monitoring

30. 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.
31. 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. An example this time is Longton Woods, Detling (see Schedule 1, Appendix 1 and No.2).
32. There is a running list of sites which fall within this category, against which priorities are drawn and enforcement monitoring checks are made.

Conclusion

33. The cases reported conform to an emerging pattern. On the one hand, set-piece cases such as Shaw Grange and Four Gun Field are coming to a tentative close. On the other; difficult district enforcement matter cases are being increasingly referred to us. These are being assessed for a County locus and if missing returned (or transferred to the appropriate authority) in favour of a consultative and advisory role. That support, drawing on our expertise and experience in major and complex enforcement cases has proved decisive on a number of occasions. However, our involvement has to be circumspect in planning legal terms, given the case law quoted under paragraph 6 of this report and tempered by the demands of our own County Matter enforcement workload.

Recommendation

34. I RECOMMEND that MEMBERS:
 - (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 5 to 24 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