

Update on Planning Enforcement Issues

Report by Head of Planning Applications Group to the Regulation Committee on 22nd May 2007

Summary: Update for Members on planning enforcement matters.

Recommendation: To endorse the actions taken or contemplated on respective cases.

Local Member: n/a

Unrestricted

Introduction

1. This report provides an update on enforcement and monitoring work carried out by the Planning Applications Group since the January 2007 Regulation Committee. The report is divided into 3 main sections – those cases
 - where formal enforcement action has been taken;
 - which are currently under-investigation; and
 - that have been resolved since the last meeting

The report also gives details of site monitoring and progress on the introduction of the chargeable site monitoring arrangements for minerals development and an update on developing working protocols with the Environment Agency.

2. Since the last meeting of the Regulation Committee work has been affected by staffing changes and has concentrated chiefly on defending formal actions that have previously been taken and have progressed to planning inquiry. Resources have been focussed on 5 sites where formal enforcement action has been taken, 27 cases where investigations are underway and a further 2 cases has been satisfactorily resolved. In addition, 20 monitoring visits on permitted sites have been undertaken, including 17 chargeable visits. The majority of the time has been spent on a joint public inquiry with Swale Borough Council (the culmination of 2 years of work) preparation for a second public inquiry, Freedom of Information requests, the drafting of 2 further enforcement notices and the need for lengthy meetings with retained Counsel on the more complex cases.
3. Members will be aware that enforcement action is a discretionary function and each case has to be considered on its own merits. 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.

Update on Enforcement Activities**Cases Where Formal Action has been Taken****Deal Field Shaw, Charing**

4. This former landfill site is the subject of an exempt report to these papers (Item 7)

Woodgers Wharf, Upchurch

5. This site and waste management activity is the subject of an exempt report to these papers (Item 8). The case concerns the use of a marine wharf at Otterham Quay, Upchurch for the screening and crushing of largely inert materials. The planning history

Update on Planning Enforcement Issues

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 are kept informed of progress.

Larkey Wood, Chartham

6. This case concerns the unlawful deposit of construction spoil and related waste processing activities on a protected Special Landscape Area section of the scarp slope at Chartham, near Canterbury. A confirmed Enforcement Notice requires restoration to a standard, which reflects its protected status. An uncontested injunction required restoration by the 30th September 2005. Canterbury City Council have also served 2 enforcement notices (ENs) against residential and related buildings on site, together with a Section 215 (site clearance) Notice to support the County's own injunction requiring removal of 'non-agricultural' items from the site. The ENs were upheld on appeal. The s215 Notice was also confirmed in court.
7. Progress has been made in reinstating the land to agriculture but further works are required. On last inspection practically all surface items had been removed off-site. That is a pre-requisite for reducing site levels to original contours and effecting final restoration. In the context of the case, the work achieved is notable but does not represent full compliance with the Injunctive Order. Nevertheless, forward momentum has been established and rapport with the former contravenor has improved dramatically. An agricultural use of the site is returning with a range of livestock and straw bailing activities.
8. The current Injunctive Order has secured a rationalisation of the site ready for staged removal of deposited waste and re-contouring. Compliance has not been achieved within the strict terms and timescales laid down in the Order. However, severe sanctions remain and I am confident that the means to achieve eventual restoration is in place. I am further confident that given these controls, further waste-related contraventions should not occur.
9. Attempts have been made during the 'closed' season over the winter to remediate two parts of the Enforcement Notice area. The 'upper field' has been re-graded to original profiles and will be planted with maize this year. The 'lower' field comprises an unauthorised chalk track. The chalk has been pulled back and stockpiled ready for re-use. The main site area now requires focussed attention and a programme of site inspections and help from my officers concerning authorised outlets for the surplus material is in train.
10. Patient litigation in this case has started to pay real dividends. Site clearance of surface items is all but complete, an agricultural use is returning and a screener is ready to be employed (under strict control) to help accelerate restoration. Progress on site has been made but full compliance is still awaited. On balance however, I believe that a will to complete the work is now evident since the deposited waste materials are inhibiting the full agricultural use of the land. That gives a self-generating motive for the land to be returned its original state and profile. I shall keep Members informed on this definite momentum towards restoration.

Update on Planning Enforcement Issues**Brasted Sandpits, Sevenoaks**

11. This is an ongoing complex case. Resolution has been hampered by separate and potentially contrary requirements arising from breaches of the waste management licence and enforcement action taken by the Environment Agency. The case concerns a former sand extraction site within an Area of Outstanding Natural Beauty (AONB), the Metropolitan Green Belt and a Special Landscape Area (SLA). The site operated for many years as a joint mineral extraction and inert waste landfill site. Permission for extraction expired at the end of 2002. Waste material for the landfill was derived in part from a temporary Waste Transfer Operation, the planning permission for which expired in December 2004.
12. In summary, the principal ongoing breaches of planning control at the site relate to:
 - phasing of the infilling not in accordance with the permitted scheme;
 - tipping of waste material above permitted heights;
 - restoration not in accordance with the permitted scheme; and
 - failure to erect tree protection fencing.
13. By way of background, the operator company and directors of Brasted Sand Pit were successfully prosecuted in March 2004 for non-compliance with a Breach of Condition Notice and an Enforcement Notice. These Notices related to the above breaches plus other matters including an oversized waste transfer function and unauthorised plant, buildings and machinery. Following the outcome in court, the operator agreed to comply with certain timescales contained within a draft injunction for infilling and restoration of the site.
14. The timescales have not been met, despite some attempt to re-profile the tipped waste to achieve approved levels. Given the extent of the works required to complete the site the County Solicitor has placed the landowner and former operator on notice that they are exposed to further legal action from the County Council. Nevertheless an issue arose in autumn 2004 which had serious implications for restoration at the site and impacted upon the operator's ability to restore the site.
15. Members may recall that the Environment Agency (EA) had uncovered an alleged and serious breach of the Waste Management Licence. Quantities of controlled waste not permitted under the terms of the waste management licence had been found within operational phase 6 of the landfill (there are 7 areas / phases of the site requiring restoration). The Agency served a Compliance Notice requiring the operator to address the situation. This could have potentially involved removing large quantities of waste material off site. Further investigations by the EA confirmed similar unpermitted waste deposited in phases 3,4 and 5. Verification of the waste content of those phases was also required by the EA.
16. Notwithstanding these complications the County Council had been pressing for the restoration of phases 1,2 and 7, which are unaffected by the EA's actions. Some progress was being made on these defined areas but unfortunately progress has now stalled.
17. The position of the EA is pivotal to a successful restoration outcome. It is material to the form and timing of the County Council's proposed actions. The Agency informs me that it has had its own difficulties with the site. That in turn stems from a lack of groundwater

Update on Planning Enforcement Issues

monitoring data by the Company. As a result the EA has, to date, been unable to make an informed decision on whether further remedial actions are required. Recently, however, a groundwater modelling and complex risk assessment report has been submitted by the licence holder and has been evaluated by the Agency. In evaluating the report, the Agency has to be mindful that any remedial works are dependent on the licence holder's available funds and proportionate to the potential impact on the area and sensitive local residents.

18. As a result, despite the indication of some deterioration in groundwater quality, the Environment Agency does not consider at this stage that the potential environmental impact is sufficient to warrant the removal of any of the placed waste. The Environment Agency will therefore be requiring ongoing groundwater monitoring to be undertaken either by the operator or another party. The Environment Agency does not consider restoration of phases 3-6 should be delayed any further. However, the Agency has stated that any significant deterioration of future monitoring results may require some form of investigation into the future remediation of the site in phases 3-6.
19. In light of the recent groundwater modelling and risk assessment and the EA's relaxation of its precautionary stance, the County Council can now pursue final restoration. Details of how best to achieve this are currently under review but are expected to make use of materials already on site.
20. The EA has carried out its own prosecutions on this site. The Company was successfully prosecuted in 2006. A further prosecution culminated in a Trial by jury at Maidstone Crown Court between 26th February to 1st March 2007. My Technical Adviser gave background evidence to assist the case. The case unfortunately fell however on an evidential technicality and the EA is now considering its position.

Raspberry Hill, Park Farm, Iwade

21. This case concerns the importation, deposit and burning of waste material on a site in the open countryside and impinging on nearby orchards. There is also an unauthorised mobile home and an operating base which was being used for the circulation and parking of large goods vehicles, as part of an apparent commercial distribution use. A range of District planning and enforcement matters have remained, alongside the alleged waste related breaches. I have therefore been jointly handling the case with Swale Borough Council.
22. The Borough Council served two Enforcement Notices to cover the residential and business elements, which have both been appealed. A public inquiry was scheduled for 7 March 2006. I had submitted a supporting statement and offered to attend the hearing to further assist the Borough. The Notices however, were overtaken by events. The area of the commercial breaches became extended beyond the original enforcement boundaries, through the depositing of further largely inert waste. This prompted a need for the County Council to serve an all embracing Enforcement Notice (extending over the full footprint of the series of contraventions and including all of the breaches). It requires a return of the site to agriculture and has been drafted to be read alongside the Borough Notices.
23. The County Council's Enforcement Notice was also appealed, prompting the arranged hearing to be cancelled by the Planning Inspectorate in favour of a new co-joined public inquiry. That was heard on 1st to 3rd May 2007. All 3 appeals were heard together with

Update on Planning Enforcement Issues

Swale Borough Council and this Authority presenting a joint case under shared Counsel. That has ensured the most cost-effective and robust defence of the various Enforcement Notices. A decision is awaited.

24. Whilst awaiting the outcome of the impending Inquiry, the land will need to be protected from any resumption of the breach experienced when the waste depositing and apparent commercial distribution and related uses were at their peak. Both original contraventions have been suspended, the latter following a police action concerning a range of vehicles on site. Nevertheless, as a contingency, I would request Members continuing support for the seeking of a County or High Court Injunction, should it become necessary, in order to underpin the County Council's own Enforcement Notice. In that event, I should look to the Borough Council and the EA to take an active evidential part in any proceedings.

Live Cases – Enforcement Response Under Consideration**Ripley's Scrapyard, Tennyson Road, Ashford**

25. I have previously advised that a building to meet the requirements of the End of Life Vehicle Regulations had been erected on the site without the necessary planning permission. In accordance with the Enforcement Protocol the operator was invited to submit a retrospective planning application. A valid submission has now been made offering a route to compliance. The application also seeks to rationalise the site use with a new composite building. There is also the opportunity to update the existing permissions and to make them clearer and in that way more readily enforceable. Pending the outcome of the planning application, I propose to take no further action at this stage.

Naccolt Brickworks, Wye

26. This case concerns a site that had the benefit of a temporary planning permission until the end of 2006 for a local neighbourhood-recycling centre. I have reported a number of breaches of planning control at the site along with a number of breaches of other legislation to previous committees. I should stress however that in the context of the Planning Enforcement Protocol these on-site managerial problems represent a low priority in relation to other more serious cases, including large scale and potentially irreversible landscape damage. Furthermore I am not receiving complaints from local residents concerning the operation.

27. An application has been received to continue the use. There are some remaining validation issues which have yet to be resolved by the operator and his Planning Aid consultant. The current breaches will further need to be addressed within the context of the application. I would therefore seek Members continued agreement to reserve the County Council's enforcement position until the outcome of the current application.

Stanford Bridge Farm, Pluckley

28. Alleged waste management activities at this site continue to be brought to my attention by nearby local residents. There is an Ashford Borough Council planning permission for use of a yard for agricultural contracting purposes. There are concerns that this has developed into general contracting, which the Borough Council are investigating as a District Matter. The Environment Agency has also been investigating the alleged movement of waste materials on and off the site. A stockpile of inert waste has also been crushed and retained on site, awaiting the outcome of a district application for an

Update on Planning Enforcement Issues

internal track.

29. A meeting has been held between the Borough Council, the EA and the County Council, in the presence of representatives from nearby residents. This reviewed the range and intensity of activities at the site. A watching brief has been maintained by all parties in order to unravel the planning and Waste Management Licence status of each element occurring on site. Objections from nearby local residents concerning increased site activity and alleged waste management are continuing on a regular basis.
30. I have written to the landowner / operator on the County Council's behalf who maintains that the activities fall within the scope of his planning permission and that the inert waste was generated from developments within the site. To back this up, the site has also been inspected on an unannounced basis. No 'County Matter' breach was found. I have also been assured by the landowner / operator that although he holds a planning permission at Ridham, near Sittingbourne for an inert recycling and composting permission, related activities are not and would not take place at his Pluckley location.
31. In my opinion and on the available evidence the case remains a district matter. However, in view of local allegations and in particular the sensitivity of the access route, I shall continue for the time being in my supportive role with the Borough and EA enforcement teams.

Barton Court Grammar and Chaucer Technology Schools, Canterbury

32. A retrospective planning application (CA/06/1187) was received in November 2006 for the erection of a metal palisade fence at the above site to replace a weldmesh fence. The development affects St Augustine's and New Dover Road Conservation Area. A negotiated settlement followed a Members Site Visit and includes a realignment of part of the fence line and substitution for railings along the majority of its length. The outstanding detail on these matters is about to be approved. I shall keep Members informed on progress towards compliance on this case.

150a Lower Hythe Street, Dartford

33. This case came to our attention via routine compliance monitoring at a permitted site. It concerns the unauthorised extension of a permitted small scale waste transfer site into an adjoining area (with lawful use for vehicle dismantling) and use of that land for storage of large quantities of both inert and degradable controlled waste.
34. Following a site visit in May 2006, the operator was required to remove the waste forthwith from the area in question and to cease using the area for waste storage and transfer. We reviewed compliance again in September 2006 and found that the situation at the site had not improved. The operator and landowner were informed that enforcement action would follow.
35. Meanwhile, it became apparent that the Environment Agency also had a number of compliance issues in relation to the site and we have worked closely with them. A joint meeting was held with the EA and the landowner in November 2006 to highlight the serious concerns of both Authorities regarding the lack of compliance. A site meeting was also held with the landowner and operator in December. The situation was very much improved and formal planning enforcement action was not considered expedient at that stage.

Update on Planning Enforcement Issues

36. To update the position, a planning application for a new enclosed waste transfer facility was submitted but remained invalid and has now been returned. In the meanwhile the EA have maintained their own compliance checks and served appropriate notices to keep the level of waste in check. I shall now need to review the level of contravention at the site with the EA and whether any complementary planning action is required. I would seek Member support for any proportionate action at the discretion of officers. Any action required would most probably involve in the first instance the service of breach of condition notices.

F M Conway Site, Rochester Way, Dartford

37. Members may recall that this site had been developed for waste uses without the benefit of planning permission as the operator considered that the site benefited from permission(s) granted by Dartford Borough Council. The County Council did not share this view and a lengthy planning process has been pursued culminating in the granting of two planning permissions. The screening and crushing development currently on site is not however the approved scheme, which requires new, bespoke plant and mitigation measures. Given the circumstances of this case, the Committee previously resolved that the site be allowed to operate within the terms of an agreed working protocol pending the implementation of the recent permission for aggregate screening and crushing.

38. The works have been monitored against the protocol on an ad hoc basis. I have also investigated some complaints from local residents. The first related to a crane left on the site. This was found to be related to maintenance work and therefore not a breach of the protocol. The second complaint related to over stacking of stockpile heights. Upon investigation this was found to be in excess of the levels set out in the protocol and the operator took urgent steps to address the matter. I will continue to monitor the site and consider the need for enforcement action should there be an unacceptable intensification of activity on site contrary to the working protocol.

Land near junction of Thames Rd/Burnham Rd/Clive Dunn Way, Dartford Marshes

39. This case concerns the unauthorised change of use of an area of marshland bounded on one side by a sea defence bund, to a mixed use including the tipping and storage of inert waste materials, including gravel for hardstandings; the parking and storage of large goods vehicles and various items of plant and machinery, apparently including at one stage a soil screener.

40. The case has attracted Borough Council and Environment Agency action. The Borough has already served a Temporary Stop Notice and an Enforcement Notice for the district range of alleged contraventions on site. It appears that waste depositing has also taken place taking advantage of the sea wall as a fixed containing bund. The District Enforcement Notice has been appealed and I understand that the case is to be heard by public inquiry. I have a verbal commitment from the landowner / operator that should the appeal be dismissed he would remove the stockpile of waste on site. Notwithstanding this commitment, I should appreciate Members' continued support for the service of an Enforcement Notice and for any required injunctive action, to prevent any further waste depositing, or related processing on the site. This would serve to consolidate the actions of the other two controlling bodies, with the expectation of joint witness evidence.

41. For Members information the EA Crime Team has maintained a presence at the site having formerly impounded several lorries engaged in alleged unauthorised activities on

Update on Planning Enforcement Issues

the land. I am unaware of any further tipping. I am therefore content at the moment to rely on the current enforcement of the Borough Council and the EA, to reserve time for other pressing cases within these papers.

Highview, Longfield Road, Meopham

42. I previously reported to Members the refusal of two applications for a Certificate of Lawful Use (CLEUD) in connection with the use for storage of vehicles, vehicle parts, breaking / dismantling of vehicles, sale of vehicles and vehicle parts. The landowner / operator has appealed against the latest refusal. An Inspector nominated by the Secretary of State will now determine the Appeal following a Public Inquiry to be held at Culverstone Community Hall on the 21st to 22nd August 2007.
43. The case is legally complex and in the meanwhile a barrister is advising on planning enforcement options. The site has also attracted the attention of the Environment Agency who has recently prosecuted the landowner / operator for waste related offences, which resulted in a guilty plea and fines amounting to £15,000 with £3,777 in costs. The action taken by the Environment Agency has resulted in a major clearance of the site. The EA have also consulted this Authority on the landowner / operator's application for a Waste Management Licence. I have entered an objection to the issuing of any such Licence in the absence of any planning basis for the use. I shall keep Members informed on this case.

Riverfield Fish Farm, Staplehurst

44. The Environment Agency has drawn the County Council's attention to the construction of an extension to the Riverfield Fish Farm, Staplehurst. The development has been granted planning permission by Maidstone Borough Council who have primary enforcement responsibility. The EA for their part have issued an exemption from site licensing to allow waste materials onto the land for construction purposes. However, the quantities of waste materials arriving on site suggested to them that the scope of the original exemption was being exceeded. It was at this stage that a meeting was convened between Maidstone Borough Council, the EA and officers from my Group. The terms and conditions of the original planning permission were carefully scrutinised. On the face of the EA's site inspections it was apparent that there were breaches of the base permission.
45. Subsequent to the meeting, the Borough has I understand taken separate legal advice on the potential district breaches. The EA under its own legal advice has apparently determined that on current evidence the works remain within the exemption criteria. The County Council has no immediate remit. For this Authority to have any locus, it would have to be conclusively demonstrated that there were a separate waste depositing use on site, unconnected with the need to construct the fish farm. If the site is allegedly being '*over-developed*' with material the permitted contours and levels should be enforced under the Borough permission bringing a halt to any surplus materials which may be entering the site.
46. Given the scale of the development and sensitivity of the site, I shall continue in dialogue with the Borough Council and the EA and assist where I can in terms of planning, enforcement and technical advice. I shall also keep Members informed of any developments concerning the site.

Update on Planning Enforcement Issues**Longton Wood, off A249 Detling Hill**

47. I have previously informed members of the unauthorised importation and deposit of construction spoil on this site. The landowner / operator has been challenged and has ceased the activity. He is now required to remove the surplus material and to return the land to its original state. A Planning Contravention Notice has been drafted ready for service. This would be a precursor to the service of an Enforcement Notice (supported by a Temporary / Full Stop Notice as required) to assure reinstatement and protection for the land.
48. The site has been visited in the company of the Environment Agency who are currently considering a prosecution against the landowner for waste related offences.

Tutsham Farm, West Farleigh

49. I have previously advised this Committee of the unauthorised deposit of builder's waste (soil, stones, metal, plastic and kitchen appliances) on the southern bank of the River Medway. Investigation with the Environment Agency (EA) established that the land had been raised by several metres and that the EA were considering actions under the Environmental Protection Act 1990, especially given potential pollution to the River Medway. This was to include possible clearance of the site.
50. I earlier advised that the Environment Agency were taking the lead on this case but I had served a Planning Contravention Notice (requiring by statute, the submission of relevant information from the alleged contravenor) as a potential precursor to the service of an Enforcement Notice. The EA have continued their investigations of the landowner and the alleged waste related activities. Under this level of scrutiny, no further tipping has taken place, allowing attention to turn to the restoration of the affected field and the protection of surrounding land from similar damage. The EA have their own and immediate waste removal powers which they may wish to use, particularly given the close proximity of the River Medway. A confirmed Enforcement Notice would achieve the same result but would invariably involve a public inquiry.
51. On the basis that no further damage has occurred to the land, that the EA have carried out detailed investigations around the circumstances of the tipping and that they hold the powers to correct the land, that they maintain the enforcement lead on this particular case. That would reserve time for dealing with other enforcement priorities. The option to serve an Enforcement Notice or Temporary Stop Notice to effect restoration (or halt any further breaches) should still be exercised if the EA is unable to achieve removal of the tipped material. On the more general protection of the wider landholding and notwithstanding the unchanged circumstances on site, Member's support is still sought for the further contingency of a court injunction should that prove necessary.

Shepherds Farm, Lenham

52. A number of issues relating to non-compliance with the permitted scheme of working, plant details, slope stability and side slope profiles and the potential need for restoration materials to be imported to the site have previously been reported to the Regulation Committee. Whilst no complaints have been received, some of these matters are complex and potentially serious. Discussions with Brett Aggregates on how the various issues can be best resolved are ongoing; however, it is anticipated that submissions required to resolve them will be made later this year. The site recently had its first formal monitoring visit under the new chargeable monitoring régime.

Update on Planning Enforcement Issues**Poll Hill Gypsy Site, Halstead, Sevenoaks**

53. This case relates to the unauthorised deposit of a significant amount of spoil on land immediately north of the Poll Hill Gypsy site. Whilst no complaints are being received the site is a sensitive protected location within the Metropolitan Green Belt, an Area of Outstanding Natural Beauty (AONB), Special Landscape Area (SLA) and Ancient Woodland. The tipped land is within the ownership of the Highways Agency.
54. Investigation established that the site had a history of fly-tipping and burning which had resulted in the Fire Brigade being called out on regular occasions. In addition, smoke would travel across the neighbouring M25 creating a hazard for motorists. As a result, the Council's Gypsy Unit sought informal advice from the Environment Agency to over-tip the fly-tipped material and to create a barrier to prevent further tipping. No planning permission exists for the works, nor was advice sought from the Planning Applications Group before the works took place.
55. This Committee has been previously advised that the scale of works carried out appeared to be far in excess of that required to address the problem and that the works had been poorly engineered and are over-steep in places which may create future stability problems.
56. Members may recall that I advised that in order to prepare a resolution strategy for this case, further geo-technical information was required. Site investigation work identified the need for further work with regard to risk to groundwater, human health and landfill gas. This view was supported by the Environment Agency, whose role will be pivotal in resolving this case. A second investigative study highlighted the need for an additional bore hole to be sunk and further monitoring data. An additional bore hole has been drilled and sample testing has taken place. Analysis of this data is currently being undertaken with the intention of the findings being submitted to the planning authority. Once this information is available, a resolution strategy can be developed with the Environment Agency. I will keep Members informed on this case.

A20 Scrapyard, Rear of Airport Café, Main Road, Sellindge

57. I have previously refused to issue a Certificate of Lawful Development – Existing Development (CLUED) for the use of land for the purpose of storage and breaking of disused motor vehicles. Permission was refused on the basis that there was insufficient evidence to demonstrate that the use had been carried out on the site at the same scale and intensity for the minimum period of 10 years. A further submission has been intimated but has not yet been received. Meanwhile, I am reviewing the County Council's enforcement options with regard to the site.

Four Gun Field, Upchurch

58. This case concerns a waste related use on a former brickfield site, next to housing, on the Swale Borough/Medway Council border. The site benefits from a lawful use certificate for industrial uses. The Borough Council has an interest in terms of the industrial element and in enforcing a Noise Abatement Order, which pertains to the site. The County Council has a potential interest in relation to the waste elements. I am in close and on-going contact with the Borough Planning and Environmental Health Departments concerning the implications of any potential development that might take place under claimed cover of the Lawful Use Certificate. That includes a readiness to enforce under each authorities respective remit, should unauthorised and pre-emptive development occur on site.

Update on Planning Enforcement Issues

59. There have been sporadic but temporary and minor uses of the site over the past 3-4 years. For instance the importation of some waste materials to the site. The Borough Council served a Section 215 Notice on the land to effect removal on amenity grounds. Unfortunately however, the basis for serving the Notice was successfully challenged at a hearing in Sittingbourne Magistrates Court on 12 May 2006.
60. Recently, some 50 or so loads of apparent waste materials was brought to the site. I referred the matter to the EA for investigation. They researched the position and are continuing to evaluate their enforcement options.
61. Meanwhile, the County Council's planning position has been vigorously asserted through the assistance of Counsel. The imported materials on site have not been processed and there would not appear to be an immediate County remit. In any event the material stockpiles and related plant, machinery and site accommodation have now largely been removed, though in part they have been substituted by further imports of inert materials.
62. The land interests have separately made a proposal for housing on the land to the Examination in Public held last year into the Borough Local Plan Development Framework. An outcome is awaited.
63. Given recent activities on site and as an ongoing contingency I would seek Member's continued support for the service of an Enforcement Notice, together with any required injunctive or joint action with the Borough Council under the advice of the County Solicitor and our retained barrister.

Lime Kiln Wood, Wormshill, Sittingbourne

64. I have previously been alerted to tipping of largely inert construction waste in an area of woodland at this location. The Environment Agency had been taking the lead but the breach continued unabated. I therefore served a Planning Contravention Notice but found the landowner to be untraceable. In the interim, I arranged for the involvement of the Police given alleged vehicular irregularities. I also arranged for monitoring by the County Council's Environmental Crime Team, in an attempt to trace the responsible parties. This again proved inconclusive.
65. Eventually, I made contact with the apparent landowner and brought a halt to the tipping. I also arranged through Swale Borough Council for the service of a Tree Preservation Order on the undamaged parts of this Downland copse. Any damage to the protected trees carries a potential fine of up to £20,000 on conviction and is an effective tool to protect the site without the need for a lengthy planning appeal against an enforcement notice.
66. Tipping ceased but the alleged contravenors then began using the new and raised surface area for the stabling of horses and related development. The Borough Council served two Temporary Stop Notices to arrest the breaches. This prompted a planning application for "Change of use of the land for the keeping of horses and the erection of a stable block on a concrete base." This was refused and has since been appealed. Meanwhile, 2 District Enforcement Notices to reverse the various breaches have been confirmed. To reinforce these actions and to secure eventual restoration to woodland the service of a County Enforcement Notice will probably be necessary.

Update on Planning Enforcement Issues

67. The outstanding district planning appeal is to be heard by means of a public inquiry, with the date to be advised. Meanwhile, the Group's Planning Contravention Officer will help inspect the site with the other agencies and authorities to ensure that all available powers are being used to tackle any breaches and in particular damage to the remaining trees. If that is the case, joint evidence can be taken for possible prosecution under the Tree Preservation Order.

Oast Park Farm Golf Club, Snodland

68. I am reporting this matter in response to periodic local complaints concerning a golf course development at Snodland. The scheme which has progressed in two phases was originally granted planning permission by Tonbridge & Malling Borough Council in 1990. For that reason, the Borough Council is regarded as the lead enforcement authority.

69. The complainants have been alleging that the site has been overtipped, some non-construction materials have entered the site, public footpaths are being obstructed, flooding and land drainage characteristics have been changed to the detriment of adjoining land interests, sand extraction has taken place with attendant noise and dust impacts and overall there is an haphazard approach to the scheme and poor site control.

70. I have reviewed these issues at a joint meeting with the Borough Council and the Environment Agency. The Borough Council had already conducted an initial site survey, which in their opinion revealed that the materials on site were mainly within the apparent permitted site levels. There were reservations on compliance however on some localised raised areas, which were the subject of a further survey.

71. The Environment Agency de-registered an exemption from the Waste Management Licensing Regulations in July 2006 following investigations into a number of alleged waste management breaches and is currently pursuing a prosecution case against the operator and landowner. The gates to the landfill site have therefore been closed since July 2006 and remain closed while the various waste related infringements and planning issues are tackled.

72. I am satisfied that the County Council has no central enforcement remit at this time. Nevertheless, I intend to contribute to the multi-agency effort here. The Borough Council has no apparent evidence of material leaving the site in terms of a mineral extraction breach. I shall continue to monitor this aspect with the Borough Council.

73. The only current and direct enforcement power available in this case to the County Council is to challenge any obstruction to the public rights of way network (PROW). I am aware that this is being monitored by the PROW group with a view to action if required.

74. In view of the absence of a direct County Council remit, the district lead, EA enforcement and otherwise unchanged circumstances on site, I propose to take this case from the papers but report further if there are any material developments in relation to the site.

Addington Sandpit, Addington

75. A number of issues relating to non-compliance with the permitted working and restoration of the site have previously been reported to the Regulation Committee. The issues primarily relate to the need to address slope stability of the restored landform and the associated need to temporarily store silt and overburden materials in the base of part of the site which have delayed restoration on parts of the site. It is anticipated that

Update on Planning Enforcement Issues

Hanson will make the necessary submission(s) to address these issues within the next couple of months. These technical breaches are not attracting complaints and the matter is not a high category to resolve in terms of the Enforcement Protocol. The site recently had its first formal monitoring visit under the new chargeable monitoring régime.

Eaglesden Farm, Mill Street, Iden Green, Benenden

76. This case concerns the importation of builders waste & hardcore at a site located within the AONB. An inspection established that large volumes of waste materials had been tipped in a small valley not visible from the highway. The landowner was challenged and told to cease further operations pending a decision on restoration. No further disposal occurred. However, there has been a recent complaint of further tipping. This has been directed to the EA who have been taking action against the landowner and operator for the deposit of waste.
77. The alleged contravenor has already shaped the land to marry in with adjoining contours. However, a decision is required with the EA and with reference to the capacity of local roads on the level of removal of waste that may be required and practically achievable. I am working on that aspect at the moment, which will inform the restoration section of the Enforcement Notice. There is some sensitivity because the site is within a water gathering area.
78. Given the alleged further tipping, I shall now give priority to the serving of an Enforcement Notice as a means to achieve restoration and permanent protection of the land and to support the stance of the EA.

Chapel Lane, Lower Halstow

79. On 20 April 2007 it was established that a large area of marshland to the north of Chapel Lane, Lower Halstow has been subjected to waste disposal through the importation and tipping of construction materials, including road planings. A joint investigation is being conducted with the Environment Agency.
80. A Land Registry search has identified the landowners. They have been notified in writing by this Authority of this alleged breach of planning control and required to cease the importing of any further waste materials immediately. To establish further information the landowners were also served with a Planning Contravention Notice (PCN) on the 27 April 2007, requiring them to notify this Authority of the full circumstances surrounding this alleged breach. The Notice allows 21 days for a reply following which a formal visit to the site, in the presence of the landowners, will be arranged. There is provision within that time frame for a formal meeting between this authority and the alleged contravenor. Should the PCN not be properly replied to, the Authority would have the option of prosecuting the site operator.

Church Marshes, Sittingbourne

81. This case concerns Swale Borough Council's Country Park development on the former Church Marshes Landfill site. The project itself is of course well supported by the County Council as a new community facility. In its construction however, I have received reports and witnessed a mobile stone crushing machine being used. It has been established that concrete beams rejected by a local manufacturer, Supreme Concrete have been crushed and recycled on the site to lay footpaths.
82. Clearly, the re-use and recycling of reject beams is welcome in principle, the activity

Update on Planning Enforcement Issues

however requires planning permission. I am seeking confirmation from the Borough Council but my understanding is that the planning permission granted by them for the Country Park does not include stone crushing activities on-site. Should that be the case, permission would be required from the County Council as a discrete waste management activity. This becomes particularly important, given that the County Council has already had to take planning enforcement action against the unauthorised storage and crushing of concrete beams from the same source at Deacons site on the Eurolink Estate, Sittingbourne and Woodgers Wharf, Upchurch. Members will appreciate that a consistent and even-handed approach is one of the cornerstones of the County Council's Enforcement Protocol.

83. Enquiries continue on the planning status of the stone-crushing activity. Should it be confirmed as unauthorised I should require it to cease, pending the outcome of any planning application for the (temporary) use.

Preston Depot, Canterbury Road, Faversham

84. This is a site which had a permission for the 'Temporary use of land for recycling aggregates from waste material' but which has recently expired. The permission requires the site to be cleared of related stockpiles and plant and machinery at expiry. The applicant's contractor Ringway Highway Services Ltd (KCC Transport Operations) had been working outside of the red line area, and works on site appeared to be more intensive than as approved. The applicant (KCC Transport Operations) is aware of the apparent breach and is in the process of preparing to submit an application for permanent permission. The operator of the site has been reminded that it is their responsibility to comply with the requirements of the planning permission, and any other legislation that is relevant to the activities undertaken at the site and advised that the appropriate planning permission needs to be in place for any continuation of waste processing activities at the site.

Waste Water Treatment Works, Reading Street, Tenterden

85. Permission has been granted (AS/04/2009) for an upgrading to Reading Street, Waste Water Treatment Works. A condition required the submission of a landscaping scheme, which is now overdue. I have required this to be urgently addressed by Southern Water Services, who recognise the breach and has commissioned Kent Landscape Services to produce the programme.

Waste Water Treatment related kiosk, Spitalfield Lane, off Lydd Road, New Romney

86. As part of the New Romney and Greatness-On-Sea Waste Water Treatment Scheme, a control kiosk has been installed, near to housing. However, acting on complaints it has been established that the facility has been installed slightly in the wrong place and slightly larger than permitted. The difference is marginal but has to be fully addressed. Southern Water Services again accept the breaches and are proposing a landscape scheme as the best practical solution. That is currently being assessed. I shall keep Members informed on the case.

Update on Planning Enforcement Issues

Resolved Cases:

87. Complaints relating to breaches of planning control at the following sites have been investigated and are now resolved.

Chapman's Scrapyard, Tenterden

88. Complaints have previously been received of an alleged increase in traffic generated from lorries using this permitted scrap-yard site, along with accounts of excessive noise; odour and waste burning. Given the nature of these complaints I gathered together a multi-agency team, including Ashford Borough Council and the Environment Agency, to investigate the issues. Combining available powers between the various agencies should help deal with any recurrence of the alleged noise, burning and odour amenity impacts.

89. The site was granted planning permission in 1991 as a Scrap-yard & Waste Transfer Station, subject to conditions. These were monitored during a site inspection on 27 June 2006. I am satisfied that the site is operating within the original permitted area. However, there was evidence of some over-stacking of scrap metal. The operator was made aware of this and has agreed to comply with the relevant condition. There was no evidence of burning or odour and the noise from handling scrap metal on that occasion was what might be expected from this type of operation.

90. I am satisfied that the breaches uncovered on site are capable of being handled within the realm of normal permitted site monitoring. With this in mind I have negotiated a review of work practices with the operator's planning consultant. I intend to remove the case from these papers. Should there be a material change in circumstances at the site I shall of course report again to Members.

St Edmund's School, Old Charlton Road, Dover

91. Members may recall that construction work on a business resource centre for the school was not carried out in accordance with planning permission reference DO/05/729. Investigation established that due to a setting out error, the works were some 3m closer to residential properties than permitted. The matter was addressed via a retrospective planning application and officers are monitoring the site to ensure compliance with the permitted scheme. I advised the previous meeting that several neighbours remain aggrieved at the breach of planning control and were pursuing the matter via formal complaints procedures. I can confirm that 5 residents have lodged complaints with the Local Government Ombudsman. These are still under investigation and his findings are still awaited.

Down Barton Road, St Nicholas at Wade, Margate

92. On 24 April 2007 it was reported by Thanet District Council that waste materials were being imported and tipped on to agricultural land north of Down Barton Road, St Nicholas at Wade. The land had been screened by large earthbunds and a large pit had been dug for the burning of imported waste materials.

93. I arranged for the site to be visited on 26 April 2007 and it was established that a small area of land, about 150m x 40m, had been screened by scraping the existing surface to form unengineered linear earthbunds. The intention being to screen the alleged unauthorised activities taking place within. The area included 4 large containers,

Update on Planning Enforcement Issues

vehicles, plant and stored building merchant supplies. There were also two small loads of tipped hardcore and subsoil. There was no evidence of any waste processing or major waste-disposal taking place. A large hole had been excavated for burning activities & contained metal radiators, which appear to have been discarded following building works in the local vicinity. The District Council were advised to bring the burning to the attention of their own Environmental Health Officer and the Environment Agency. They hold the necessary enforcement powers for this type of activity.

94. It was apparent that the primary use of the site appeared to relate to a business use comprising groundworks and a builder's merchant and as such any enforcement would in my view fall to the District, as would the large earthbunds which were clearly an engineering activity integral to the site.
95. Thanet District Council has been advised of these findings and has agreed to take any further enforcement action to help remedy the breaches.

Pearsons Sand pit, Addington Lane, Trottiscliffe

96. This site is a former sand quarry, which has since been fully worked out. It is located in the Metropolitan Green Belt, Area of Outstanding Natural Beauty and Special Landscape Area, subject to which development plan policies seek to protect the interests of such areas in the long term. Under the terms of previous planning permissions, provision was made for the importation of waste materials upon completion of extraction in order to secure restoration back to original levels with the final reinstatement of the site to agriculture.
97. I have informed Members at previous meetings on progress towards securing final restoration of this site. Remaining plant has now been relocated off-site, the weighbridge has been dismantled and part of the internal site access road has been removed as agreed. The operator has also had aspirations to use adjoining restored land to erect a stable block for horses. This would need permission from Tonbridge & Malling Borough Council and amendments to the County Council permission for retention of the access and an existing storage building.
98. Permission for downgrading of the access and related development has been refused on the grounds of inappropriate development in the Green Belt and an Area of Outstanding Natural Beauty. In addition, the applicant had failed to demonstrate the special circumstances necessary to override the presumption against permitting such a proposal at this location. Since that time, the applicant has intimated that a further application may be submitted in due course, attempting to address the grounds of refusal. As yet, this has not been submitted. I shall continue to keep Members informed on progress.

Durrants Farm, Maidstone Road, Paddock Wood

99. I have been alerted to a case of unauthorised waste transfer, processing and stockpiling. The site has already attracted the attention of Tunbridge Wells Borough Council and the EA, given the waste handling element and further district related activities including haulage, storage and workshop uses.
100. The EA are bringing prosecutions for the alleged waste related breaches. Alongside this I have negotiated an end to waste processing and the operating yard has been tidied. With the improvement of the weather the existing stockpile of waste materials is being

Update on Planning Enforcement Issues

removed from the site. I inspected the site on 10 May 2007 and confirm that the land has now been reinstated. Having resolved the matter I now intend to remove the case from these papers.

Meadows School, London Road, Southborough

101. The January Planning Applications Committee granted retrospective permission (TW/06/3473) for the widening of an existing access road and the addition of a pedestrian pathway. The access serves a Children's center and the Meadows School. The site lies within the Southborough Conservation Area and affects Southborough Common. Final specifications for the road are expected shortly. I intend on that basis to now remove the case from these papers.

Monitoring of permitted sites and update on chargeable monitoring

102. As previously reported visits to mineral and landfill sites have taken priority over visits to other types of permitted sites since January 2007. As a result only 3 non-chargeable visits to permitted sites have been carried in order to follow up previously identified issues.

103. However, we have carried out a further 17 chargeable monitoring visits to mineral and landfills sites and thus have continued to implement the chargeable monitoring regime. These visits were to sites that we had identified as higher priority (in our initial categories 4 and 5) either because the operator had not responded to our original contact regarding chargeable monitoring or because they had responded but had differing views to us and a site visit was needed to determine. Each visit has been carried out by the Case Officer for the site as well as the Site Compliance Officer. A number of formal submissions have arisen as a result of monitoring carried out. Progress has been impacted on by lack of Case Officer resource available given other core work.

104. We now need to continue visits to sites to complete this first phase of visits. We also need to monitor within the next phase of visits which is expected to be those sites operated by companies that did not respond to our initial correspondence and those that did respond but whose views differed to ours, and which are in category's 3 or 2.

105. Generally, we do not intend to re-visit sites which have already had the first chargeable visit until we have progressed further with implementation of chargeable monitoring at all sites in the active site categories. This is unless particular circumstances indicate that it is appropriate to do so - for example, if the site is not compliant; where new permissions are issued or if there are complaints relating to the site.

106. It should again be noted that there is insufficient resource to carry out the work, and that whilst this situation continues we are unable to carry out the level of monitoring expected by the Government in their good practice guidance.

Resolved or mainly resolved cases requiring monitoring

107. Alongside the chargeable monitoring régime there is also a need to maintain a watching brief on resolved or mainly resolved enforcement cases which have the potential to reoccur. The cases are being removed from the reporting lists on the understanding that officers will keep them under review. Any reoccurrence will be reported back.

108. The current and running list of sites which fall within this category include: Hoath Wood,

Update on Planning Enforcement Issues

Lavenders Road, West Malling; Russell Surfacing, Detling Aerodrome Estate, Maidstone; Wissenden Lane, Pluckley; Coopers Waste Management (Speedy Gone Garbage), Detling Aerodrome Industrial Estate, Detling; Whiteladies Gas Control Compound, Offham Landfill Site, Offham; Detling Quarry, Detling; Kemberland Wood, Fox Hill, Sturry and Foley Site, Plantation Lodge, School Lane, Iwade, Rear of Dunes Road, Greatstone, New Romney.

109.I intend to transfer the list of sites onto an appropriate database, on an annual basis.

Update on Members Concern regarding Court Procedures

110.Members may recall that the previous chairman of this Committee wrote to the Chief Executive of the Court Service in Kent to draw attention to the Committee's concern over the substantial delays that are occurring within the Kent Court System in dealing with breaches of planning control. These breaches result in continued and unacceptable impacts on local residents and damage to the environment and reassurance was to be sought that such cases will, in future, be dealt with on an expedited basis. In its reply, the Courts Service advised that the Committee's concerns would be raised with the Bench Chairman.

111.I have written to the Magistrates Court to ask for an update on this matter and I have received a helpful reply. The matters were considered by the Area Judicial Forum on 17th April, 2007 comprising of the Liaison Crown Court Judge Carey, the Bench Chairmen and the Justices' Clerks.

112.They commented that the Committee are willing to investigate specific examples of unusual delays in court proceedings to see what lessons, if any, there are for Her Majesty's Court Service (HMCS) and the judiciary in terms of case management. They comment that: "pre-trial reviews (PTRs) often serve a valuable purpose in narrowing issues and limiting live witnesses to only those needed for trial. It would be of concern if the PTR system lengthened rather than shortened the trial process. Again the Committee wanted specific examples so that it could look at how the PTR system worked (or did not work) in the cases referred to in general terms.

113.On our suggestion of grouping environmental cases together in the Magistrates Courts to allow for their more efficient handling, it was pointed out that: "the main business of the current system is police initiated crime prosecuted by the Crown Prosecution Service. As a result most courts are assigned to this business. The number of non-CPS courts is limited. While efforts can be made to group certain kinds of cases together there are limitations given the limited number of courts and the need to list other non-CPS prosecutions. It would only be possible to have a 'specialist' court with the agreement of the Committee and of the Judicial Issues Group (which oversees Listing Policy). This would depend on the number and length of cases. For example agreement was reached to pilot a specialist domestic violence court in Maidstone because research showed there were sufficient cases and a sufficient need to justify such a court. Research on the numbers of environmental cases and the benefits of a 'specialist' environmental court would have to be done and put to the Judicial Issues Group."

114.The Committee read with concern our report of excessive waiting times in court for busy front-line officers in court. Again it asked for specific examples. It rehearsed the current ways and procedures to help reduce waiting times.

Update on Planning Enforcement Issues

115. Commenting on awareness training for magistrates it was made known that: “there are considerable pressures at the present time in relation to magistrates’ training e.g. the need for magistrates to be trained in the nationwide CJSSS initiative for Simple, Speedy, Summary Justice”. Nevertheless, our paper is to be referred to the Magistrates’ Area Training Committee (who oversees the training of magistrates) so that they can respond as to what training provision can be made.

116. Overall, the response was helpful and it is clear that the relevant committee of the HMCS has taken our concerns seriously. They are prepared to investigate any particular short-comings in more detail and have responded in a fairly positive vein to our suggestions for improving the court service in relation to environmental matters. I shall take up their offer of researching particular cases and keep Members informed of the other potential improvement initiatives.

Working protocols with the Environment Agency

117. 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 with the Environment Agency has ensued including a workshop attended by officers from both regulatory functions to consider a range of issues. This included providing a common understanding of each others respective roles and the basis for enhanced and closer working practices. The intention is to improve communication and develop improved systems of liaison and where appropriate facilitate joint working. Both parties are keen to develop better working protocols to ensure that each organisations actions work wherever possible to complement each others activities.

118. Further meetings have been held to more formally develop the protocols. In brief, we have agreed to meet on a bi-monthly basis to discuss cases and agree enforcement strategies. A closer understanding has also been achieved over our respective priorities and on ways to offer mutual support at Inquiry and in court. These emerging protocols, including assistance from the EA in drafting these papers, is developing.

Review of Planning Enforcement

119. In late 2006, the Department for Communities and Local Government issued a ‘Summary of Recommendations, in relation to the Government’s Review of planning Enforcement. There are 25 recommendations. I had intended to report to this Meeting on the proposed changes and their implications for the planning enforcement service. Unfortunately however given a series of public inquiries, staffing changes within my Group and a re-setting of workload priorities there has been insufficient time to prepare a considered report for Members. I therefore intend to report to the next Regulation Committee on this paper.

Summary

120. Since January, progress has been made on a number of complex enforcement cases including appearance at public inquiry and joint action with Swale Borough Council and the Environment Agency. Where possible we continue to resolve cases without the need for formal action. We have had a number of successes halting unauthorised waste disposal activities by negotiation, although Enforcement Notices are still required in some cases to restore sites and afford long term protection. As a guiding principle, resources are targeted to those activities that have the potential to create the greatest

Update on Planning Enforcement Issues

environmental damage in accordance with the adopted Enforcement Protocol.

Recommendation

121.I RECOMMEND that MEMBERS

- (i) ENDORSE the actions taken or contemplated on the respective cases and monitoring work set out in paragraphs 4 - 109 above and note the work towards establishing working protocols with the Kent Courts and the Environment Agency as outlined under paragraphs 110 – 116 and 117 – 118 respectively.

Case Officer: R. Gregory 01622 221067; S. Thompson 01622 696052
Background Documents: see heading