

Update on Planning Enforcement Issues

Report by Acting Head of Planning Applications Group to the Regulation Committee on 23rd January 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 September 2006 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, resources have been focussed on 7 sites where formal enforcement action has been taken, 22 cases where investigations are underway and a further 10 cases which have been satisfactorily resolved. In addition, monitoring visits on permitted sites have been undertaken on 9 sites.
3. 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 environmental damage. These cases are investigated as a priority. Enforcement work is considerably complex requiring sound legal solutions that are capable of full scrutiny. In delivering the enforcement service, there is often an expectation to deliver results that fall outside the control of the planning authority, particularly with regard to timescales. Once formal action has been instigated the timescales and commitments involved are set by other parties i.e. the Planning Inspectorate or the Court Administrators.

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 (Item7)

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 of the wharf is complex. Considerable efforts have been made to resolve this case and

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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 markedly improved. 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. Protracted litigation in this case has started to pay dividends. Site clearance of surface items is close to completion, an agricultural use is returning and a screener is soon 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.

Russell Surfacing, Detling Aerodrome Estate, Maidstone

10. This case concerns the remaining restoration requirements under a confirmed Enforcement Notice. An unauthorised waste recycling activity has successfully ceased and all surface items have been removed and the land graded. Grass seeding was required by an extension date of 30 November 2006. I have sought confirmation from the landowner that this is in hand and I shall be checking the success of any seeding over the current growing season.

Brasted Sandpits, Sevenoaks

11. This 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

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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.
15. 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 potentially involve 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. Such reassurances are still outstanding.
16. Notwithstanding these complications the County Council is still 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 my own 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 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. However, a groundwater modelling and complex risk assessment report has now been submitted by the licence holder and is currently being evaluated by the Agency. This should now enable options for remedial work to be considered. The Agency has to be mindful that such works are dependent on the licence holder's available funds and proportionate to the potential impact on the area and sensitive local residents. The County Council will be consulted on this latest submission and can assess at that point the enforcement position on site levels and final restoration across the whole site.

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18. The EA has carried out its own prosecutions. The Company was successfully prosecuted in 2006, and a further prosecution has been pending, which will culminate in a Trial by jury to be held at Maidstone Crown Court between 26th February to 1st March 2007. My Technical Adviser has made himself available to give background evidence if required.
19. In summary, restoration has stalled at the site. However, there is now the prospect of renewed momentum in the light of the recent groundwater modelling and risk assessment report. This may then allow the EA to relax its precautionary position.

Raspberry Hill, Park Farm, Iwade

20. 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 until recently 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.
21. The Borough Council has 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 to agriculture and has been drafted to be read alongside the Borough Notices.
22. The County Council's Enforcement Notice has also been appealed, prompting the arranged hearing to be cancelled by the Planning Inspectorate in favour of a new co-joined public inquiry. All 3 appeals will be heard together in their full planning context. Provisional dates in April 2007, suggested by the participants have yet to be confirmed. I have agreed joint Counsel with Swale Borough Council and both Authorities will present a consolidated case. That should ensure the most cost-effective and robust defence of the various Enforcement Notices.
23. Whilst awaiting a date for the combined appeals to be heard and their subsequent outcomes, 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.

Hoath Wood, Lavenders Road, West Malling

24. This case relates to multiple contraventions including: the deposit of imported mixed waste materials (general skip loads), uncontrolled land raising, stone-crushing; waste transfer; waste burning; vehicle breaking, scrap metal handling & salvage; stationing of

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caravans; portable site accommodation buildings; skips; containers; plant & equipment; parking of large and private light goods vehicles and their associated haulage uses and the storage of waste, vehicle parts and scrapped vehicles. The site is the subject of a confirmed Enforcement Notice following a public inquiry.

25. A number of sequential compliance dates were set within the Notice. A multi-agency site inspection conducted in July 2005 to check the level of compliance revealed that further restoration had been carried out and that all the portable accommodation buildings had been removed, along with other miscellaneous items. There was no further evidence of waste disposal and processing.
26. Members accepted my earlier advice that the outstanding works in terms of levelling, final reinstatement and re-planting could reasonably be achieved by negotiation. At the same time I am mindful of other site priorities and the marginal benefit to the landscape that further work would bring. The site is coppice woodland and there is the prospect of natural regeneration producing acceptable reinstatement over time. I should like to try this approach and report back to Members in due course. That would be on the understanding however that should there should there be any further breaches, the Enforcement Notice would be upheld, seeking if necessary a High Court Injunction. I would seek Members endorsement for this approach.

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

27. 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 submission has recently been received which as yet is not valid but offers a route to compliance with planning control. The application also seeks to rationalise the site use and potentially offers the opportunity to update the base permission with clearer and more enforceable conditions.

Naccolt Brickworks, Wye

28. This case concerns a site that has 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.
29. An application has been received to continue the use. There are some validation issues which will need to be resolved by the operator and his Planning Aid consultant. The current breaches will also need to be addressed within the context of the application. I would therefore seek Members agreement to reserve the County Council's enforcement position until the outcome of the current application.

Update on Planning Enforcement Issues**Chapman's Scrapyard, Tenterden**

30. 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.
31. 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.
32. There is a current review of work practices underway to see if site improvements can be made. The intention is then to seek permission for any negotiated site revisions. I am awaiting the submission.

Standford Bridge Farm, Pluckley

33. Alleged waste management activities have been brought to my attention at this site. 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 removed from site, requiring planning permission from this Authority.
34. 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 will be maintained by all parties in order to unravel the planning and Waste Management Licence status of each element occurring on site. I have written to the landowner / operator 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.
35. I am satisfied for the time being, pending further investigations, that no County Matter breach is occurring. 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 taking place at his Pluckley location. Nonetheless, I shall be maintaining a watching brief with the other regulatory bodies.

Wissenden Lane, Pluckley

36. I have been alerted to the importation of construction waste at this farm location, owned by the same person who owns Stanford Bridge Farm above. Again the Borough Council and Environment Agency have been called to investigate the matter. On inspection, I was presented with a fairly crude base of material leading to a stockpile of manure. In order to test the planning status of the development, the Borough Council

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agreed to commission a report from an agricultural surveyor on whether the development was reasonably necessary for agriculture and could therefore be regarded as permitted development. The report confirmed its connection with agriculture and the Borough Council has decided to take no further action. Notwithstanding this assessment the EA is deciding independently whether any of the imported materials should be removed from the site for environmental protection reasons. I propose to leave the matter to the EA unless further material enters the site when the situation would need to be reviewed.

Barton Court Grammar and Chaucer Technology Schools, Canterbury

37. The Planning Applications Group are currently considering an application (CA/06/1187) for the retrospective erection of a metal palisade fence at the above site to replace the previous weldmesh fence. The fence was erected in advance of the necessary planning permission following incorrect advice that the works were permitted development. The site lies affects St Augustine's and New Dover Road Conservation Area. The application was reported to the December Planning Applications Committee where it was deferred to enable further discussions with interested parties to take place on how to avoid damage to visual amenity. These discussions are underway. I will keep Members informed on this case.

150a Lower Hythe Street, Dartford

38. 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.
39. 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.
40. 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 Environment Agency 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 required at that stage. The operator gave his assurance that the area of land without permission would not be used for the storage of waste. Further monitoring, at this site will be required in order to ensure that this remains the case.
41. To update the position, a planning application for a new enclosed waste transfer facility has recently been submitted.

F M Conway Site, Rochester Way, Dartford

42. This case has been reported to previous Committee meetings since 2004 and relates to the development of an unauthorised waste management facility on the site. A considerable number of complaints were received from the neighbouring residential development concerning noise, dust, odour, lighting impacts and that the development did not have planning permission.

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43. Since these complaints, this authority has considered three retrospective planning applications, which enabled the planning merits of the development to be tested. The first related to the drainage treatment plant, aggregate washing plant and industrial and storage units (DA/04/770). Permission was granted in November 2005 subject to conditions and a legal agreement. The second application (DA/04/787) related to the use of part of the site for screening, crushing and processing of aggregates, construction and demolition waste and ancillary storage. The Planning Application's Committee refused planning permission for this development on the grounds that the application had failed to satisfactorily demonstrate that the proposal represented BPEO (Best Practicable Environmental Option) with regard to the proximity and self sufficiency principles, that it would have an unacceptable impact upon local amenity with regards to dust and in light of this it had failed to demonstrate an overriding need for the development. This decision was appealed and is currently the subject of a suspended appeal with the Planning Inspectorate, pending the outcome of the third application submitted to the County Council.
44. This third application (DA/06/417) for screening, crushing and processing of aggregate on site was prepared to specifically address the Council's grounds of refusal for the second application. Members should note that the development currently on the ground differs significantly from the detail proposed in this third application. At the December 2006 Planning Applications Committee, Members resolved to grant planning permission subject to no direction to the contrary from the Secretary of State as the development is a departure to development plan policy on green belt grounds. The Government Office for the South East has recently informed the County Council that the application would not be 'called in' for a decision by the Secretary of State. The County Council is therefore in a position to grant planning permission in accordance with the Planning Application Committee's resolution.
45. Notwithstanding the above applications, the landowner considers that the site does not require planning permission as in its view the crushing development is an industrial process that can operate pursuant to a permission granted by Dartford BC on the site. To support this view the landowner has submitted Certificate of Lawful Use Development (CLUED) application. This is also the subject of an appeal and has been co-joined with the appeal against refusal of planning permission referred to above.
46. At the June 2005 meeting, this Committee considered the circumstances of the case and whether to pursue enforcement action. In particular it took into account the outstanding Certificate of Lawful Use Development (CLUED) and the agreed working protocol which is in place and which safeguards amenity impacts. The Committee resolved to defer the taking of formal enforcement action until the uncertainty concerning the lawful use was resolved (i.e. once the CLUED appeal is determined) and that in the event that the CLUED appeal was dismissed (refused) or there was an unacceptable intensification of activity on site, contrary to the working protocol, then the need for enforcement action was supported. The informal working protocol sets limitations concerning the way the development is carried out including restrictions on stockpile heights, dust suppression measures and the adoption of good practice on the production of aggregates from inert waste. In light of the above, Members agreed to 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.
47. By way of an update, I have monitored the site on an ad hoc basis and its impact on the

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adjacent housing area and found the working protocol to be in place. In light of the circumstances of this case and the recent resolution taken by the Planning Applications Committee to grant planning permission for a crushing operation on the site, I would reiterate my earlier advice to this Committee and propose that pending the implementation of the third planning application (DA/06/417) that officers 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

48. 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.
49. 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.
50. 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 the land.

Highview, Longfield Road, Meopham

51. I have recently refused an application under delegated powers for a Certificate of Lawful Use (CLUED) in connection with the storage of vehicles, vehicle parts, breaking /dismantling of vehicles, sale of vehicles and vehicle parts at the above site. An earlier and similar application was again refused. The case is legally complex and a barrister is advising on enforcement options. The landowner / operator has exercised his option to appeal against the latest refusal and has the further option of resubmitting on a more limited basis. I shall keep Members informed on this case.

Longton Wood, off A249 Detling Hill

52. The unauthorised importation and deposit of construction spoil has been found at this site. The landowner / operator has been required to cease the activity, 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.
53. The Environment Agency has been active in helping to arrest the breach.

Update on Planning Enforcement Issues**Tutsham Farm, West Farleigh**

54. 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 RiverMedway. 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.
55. 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.
56. 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, Member's support is again sought for the further contingency of a court injunction should that prove necessary.

Shepherds Farm, Lenham

57. A number of issues relating to non-compliance with the permitted scheme of working and plant details were reported to the previous Regulation Committee. The site is now owned by Brett Aggregates, who are reviewing site operations. Discussions with Brett Aggregates have revealed further issues relating to working at the site. Specifically, these relate to slope stability and side slope profiles. Brett Aggregates has been asked to make any necessary submissions to regularise matters as soon as possible. In the meantime, I am not receiving any complaints. Nevertheless, the breaches internal to the site are both serious and complex. Resolving them will require significant works and the potential need for further restoration materials to be imported to the site. Planning permission would be needed in that instance and a review of the licensing régime. This remains the position.

Poll Hill Gypsy Site, Halstead, Sevenoaks

58. This case has been reported to earlier meetings of this Committee and relates to the unauthorised deposit of a significant amount of spoil on land immediately north of the Poll Hill Gypsy site. The works were carried out throughout the summer of 2003 and have created a large mound some 5m + above the adjacent A224 Poll Hill Road. 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.

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59. 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.
60. 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. Officers from the Gypsy Unit have been advised that the retention of any material here will require planning permission and that the scheme is not likely to be acceptable in its current form. Given the County Council's involvement, formal enforcement action under planning legislation is not a possibility. The Environment Agency can however prosecute breaches of Waste Licensing and Environmental Protection legislation.
61. Members may recall that I advised that in order to prepare a resolution strategy for this case, further geo-technical information was required. An initial site investigation study was undertaken in 2005. This report 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. This work is currently being undertaken. Following receipt of this information a resolution strategy will be developed with the Environment Agency. I will keep Members informed on this case. However, the Environment Agency has stated that there is a presumption against prosecution provided the best environmental option and outcome can be agreed.

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

62. 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

63. 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.

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64. There have been sporadic but temporary and minor uses of the site over the past 3 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.
65. Recently, some 50 or so loads of apparent waste materials has been brought to the site. I have referred the matter to the EA for investigation. They have researched the position and are evaluating their enforcement options.
66. Meanwhile, the County Council's planning position is being vigorously asserted through the assistance of Counsel. The materials on site have not been processed so there would not appear to be an immediate County remit. 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.
67. 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

68. 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.
69. 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.
70. 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 2 District Enforcement Notices to reverse the various breaches are now confirmed. To reinforce these actions and to secure eventual restoration to woodland the service of an Enforcement Notice will be necessary.
71. Meanwhile, the Group's Planning Contravention Officer will help inspect the site with 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.

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Oast Park Farm Golf Club, Snodland

72. 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.
73. 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.
74. 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.
75. 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.
76. 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.
77. 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.

Addington Sandpit, Addington

78. A number of issues relating to non-compliance with the permitted working and restoration of the site were reported to previous Committees. The issues primarily relate to the need to address the 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. Hanson is preparing the necessary submission(s) to address the issues and an application is awaited. These technical breaches are not attracting complaints and the matter is not a high category to resolve in terms of the Enforcement Protocol. The situation remains as last reported.

Eaglesden Farm, Mill Street, Iden Green, Benenden

79. 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

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directed to the EA who have been taking action against the landowner and operator for the deposit of waste.

80. 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.
81. Given the alleged further tipping, I have raised the priority for serving an Enforcement Notice as a means to achieve restoration and permanent protection of the land and to support the stance of the EA.

Meadows School, London Road, Southborough

82. The January Planning Applications Committee is to consider a retrospective application (TW/06/3473) for the widening of existing access road and addition of 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. The officer report whilst not objecting to the principle of the development recommends refusal principally on conservation grounds that the use of black asphalt is inappropriate in this location. I will update Members on this case following consideration of the application by the Planning Applications Committee.

Durrants Farm, Maidstone Road, Paddock Wood

83. 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.
84. 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. The former area used for sorting loaded skips through transfer to large container is also now cleared. I intend to return to the site in the Spring to check on final land restoration.

Resolved Cases:

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

Coopers Waste Management (Speedy Gone Garbage), Detling Aerodrome Industrial Estate, Detling

86. I reported to the last meeting that following previous litigation, the contravening use had ceased and the operator was in the process of vacating the site. He has now left and the landowner has ensured through an arrangement with the adjoining lessee for the site to be effectively cleared. All of the unauthorised vehicles, plant & machinery and waste stockpiles have been removed. I am now satisfied that in practical terms final compliance with the Enforcement Notice, with regard to that industrial unit has been achieved. I shall therefore remove it from the list but continue to monitor the situation. The Notice as a charge on the land gives protection against any further waste related

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infringements on the site.

Lydd Skips, Lydd Commercial Park

87. I have previously advised Members of a series of waste transfer planning breaches at this site and the unacceptable delay in having the case heard through Shepway Magistrates Court. The breaches were halted under a confirmed Enforcement Notice, which also required the site to be free of all tipped and stockpiled waste and surface items. In the absence of full compliance with the Enforcement Notice, court action was pursued against the landowner and operator. An initial hearing was held on 31st January 2005.
88. During the 18 months it took for the case to be heard the unauthorised use had ceased, the site had allegedly changed hands and had been restored to a minimum acceptable level. The defendant admitted the initial breaches but mounted the defence that he had done all he reasonably could to comply with the Enforcement Notice. He was acquitted on that basis. No costs were awarded. Setting aside the case in hand, of greater concern to me is the failure of the Magistrates Court to hear the case within the time frame of the breach. This delay in my view had a bearing on the outcome of the case and Members have supported a formal complaint to the Courts over the administrative failings allegedly displayed here. A complaint is being pursued in company with the County Solicitor.

St Edmund's School, Old Charlton Road, Dover

89. 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. Since the last meeting I can confirm that 5 residents have lodged complaints with the Local Government Ombudsman and he is currently investigating the matter.

Rear of Dunes Road, Greatstone, New Romney

90. This concerns breaches in relation to the main drainage works being undertaken by Southern Water Services in New Romney. A temporary site compound was permitted to help service the scheme. By necessity, this has been located close to the rear of a number of residential properties. The compound was not laid out or run in accordance with the planning permission. Threatened with Breach of Condition Notices and a letter on behalf of the Committee expressing dismay about the alleged contraventions, the problems were eventually addressed following permission for improved site and access arrangements, including higher protective fencing.

Harvey Grammar School, Folkestone

91. A retrospective application (SH/06/1332) for the erection of security fencing to boundary of school sports field was permitted in November 2006.

Minster Primary School, Sheppey

92. I verbally advised the May meeting that retrospective planning permission had been granted subject to condition for the installation of CCTV cameras and extensive re-

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modelling of the playing field at the 16th May Planning Applications Committee. Since the last meeting, I have issued the planning permissions and discharged landscaping details for the playing field. I have also met the contractor on site to confirm that the alignment of the new 1.8m boundary fence is being sited in accordance with the approved details. I will continue to monitor the site to ensure compliance with the planning permission.

93. In July 2006, the Chief Executive received a formal complaint about the applications that had initially been sent to the Local Government Ombudsman. This was answered and the complainant reverted to the Ombudsman. The County Council has submitted a statement to him and is awaiting the outcome.

Church Marshes, Sittingbourne

94. I have previously been alerted to complaints of odour from green waste being deposited on the former Church Marshes waste landfill site from Civic Amenity sources. This was described as 'land enhancement' on the surface of the site by the contractors carrying out Swale Borough Council's Country Park development.
95. The contractors were advised that the introduction of green waste onto the land would require planning permission from the County Council. The Borough Planning Officer agreed that permission was required and that this waste depositing element should properly fall within the County Council's planning remit. Following the latest meeting with relevant parties at the Borough Council Offices I had been awaiting an application for the use. A submission has not as yet been received and I understand that a commercial soil dressing is being used instead. I am content that no pressing remedial works are necessary in relation to the material already brought onto site and that the case can be removed from the list.

RS Deacon Ltd, Castle Road, Eurolink Estate, Sittingbourne

96. An unauthorised inert waste recycling activity was recently discovered operating at this site, creating unacceptable amenity impacts from dust, noise and mud on the road. The landowner / operator was challenged jointly by KCC and the EA and has ceased the activity, removed all materials and restored the site within the time frame between this Meeting and the last.
97. Storage of similar materials on a nearby site under different ownership was similarly cleared using informal means, with each agency reinforcing each others' position.

Pearsons Sand pit, Addington Lane, Trottiscliffe

98. 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.
99. 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

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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.

100. 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. I shall continue to keep Members informed of progress.

Whiteladies Gas Control Compound, Offham Landfill Site, Offham

101. Regularising issues with the Whiteladies Gas Control Compound have been reported previously to the Regulation Committee. These relate to layout and noise emissions from the plant, which has already been installed. I am satisfied that sufficient measures have now been put in place by the operator to deal with these technical issues subject to the outcome of a regularising application. I have not received any recent complaints.

Site Monitoring

102. We have given a lower priority to our formal routine visits to permitted sites since the last Regulation Committee. This is because we have concentrated on work to implement new powers for chargeable monitoring.

103. Visits have been carried out to 9 permitted sites since the last committee – the majority of which were in order to follow up on issues raised during previous monitoring. Two of these visits have been carried out to landfill sites falling within the chargeable monitoring regime.

104. The most common non-compliance identified as a result of these visits is where activities are not according to the approved details. These, together with other any other issues have been reported to site operators. A number of formal submissions have therefore arisen as a result of monitoring carried out to permitted sites.

Chargeable monitoring

105. Further work has been carried out in order to implement the chargeable monitoring regime and a number of monitoring visits are now scheduled in January 2007. It is expected that in the period up to 31st March 2007, visits to mineral and landfill sites will take priority over visits to other types of permitted sites as no additional resource is in place to implement such monitoring. Members should also note that there are insufficient resources currently available to monitor all chargeable sites to meet monitoring frequencies in line with Government guidance. Some prioritisation will therefore be necessary.

106. We wrote to operators of mineral and landfill sites in August 2006 regarding the new regime and asked them to complete a site survey form to us. Since the last Regulation Committee we have received further indications (via the site survey form) from operators as to whether they agree with our initial categorisation which influences the number of monitoring visits. We have been able to agree site categories with 22 site operators out of the 50 that responded to us with their views on the initial site categorisation. In these cases the first chargeable monitoring visit has generally been deferred to after 31st

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107. Resources are to be concentrated on those sites (19) where operators responded to the site survey with differing views to our initial site categorisation and 11 sites in categories 4 and 5 where we received no response at all from operators. Our intention is that these sites would receive a first chargeable monitoring visit before 31st March 2007, and represent over 1/3rd of all of the sites that we consider fall into the regime. Sites which we initially considered to be in categories 1, 2 and 3, and whose operators did not respond to our site survey would be deferred to the next financial year.

108. By concentrating our monitoring effort for the remainder of the year on those sites that we think should be in site categories with higher visit frequencies, we will be better able to forecast visit (and therefore resource) requirements for the 07/08 financial year.

Resolved cases requiring monitoring

109. Alongside the chargeable monitoring régime there is also a need to maintain a watching brief on resolved enforcement cases which have the potential to reoccur. Such cases would be removed from the reporting lists but officers would keep them under review. Should they reoccur we would then bring them back into the report for Members consideration. Sites which fall into that category for this Meeting include: Detling Quarry, Detling; Kemberland Wood, Fox Hill, Sturry and Foley Site, Plantation Lodge, School Lane, Iwade.

Review of Planning Enforcement

110. In late November 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 intend to report to the next Regulation Committee with a report on the proposed changes and their implications for the planning enforcement service.

Update on Members Concern regarding Court Procedures

111. 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 it's reply, the Courts Service advised that the Committee's concerns would be raised with the Bench Chairman. Since the last Committee I have written to the Magistrates Court to ask for an update on this matter. At the time of writing I have yet to receive a reply, and will therefore report verbally on any update at the meeting.

Proposed working protocols with the Environment Agency

112. At the September meeting, the Committee endorsed the development of working protocols between the County Council and the Environment Agency with regard to its enforcement work. Since the last meeting there have further dialogue with the Environment Agency 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

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to develop better working protocols to ensure that each organisations actions work wherever possible to complement each others activities. Further work is underway to formally develop the protocols.

Summary

113. Since September, good progress has been made on a number of complex enforcement cases and 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 bring restoration and long term protection to sites. In devising appropriate restoration plans, input is required from other parties i.e. the Environment Agency and on occasions the District Councils. As a guiding principle, resources are targeted to those activities that have the potential to create the greatest environmental damage in accordance with the adopted Enforcement Protocol.

Recommendation

114. I RECOMMEND that MEMBERS

(i) ENDORSE the actions taken or contemplated on the respective cases and monitoring work set out in paragraphs 5 - 109 and note the work towards establishing working protocols with the Environment Agency as outlined under paragraphs 112 above.

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