

Report by Head of Planning Applications Group to the Regulation Committee on 24<sup>th</sup> January 2012.

Summary: Update for Members on planning enforcement matters.

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

Local Member: Given by case in Appendices 1 to 3

Unrestricted

### Introduction

1. This report provides an update on enforcement and monitoring work carried out by the Planning Applications Group since the 7<sup>th</sup> September 2011 Regulation Committee.
2. Summary schedules of all current cases have been produced (see Appendices 1, 2 and 3). They cover unauthorised breaches of planning control and those occurring on permitted sites, primarily waste-related. The emphasis is on live and active cases along with those resolved between Meetings. Those cases resolved or sufficiently progressed to be removed from our immediate workload are highlighted in bold.

### Report Format

3. Cases have been summarised in the appended schedules and presented in this report under the following categories:
  - Achievements / successes [including measurable progress on existing sites]
  - New cases, especially those requiring Member endorsement for action
  - Significant on-going cases
  - Other cases / issues of interest and requests by Members
4. Members may wish to have verbal updates at Committee on particular sites from the schedules, (ideally with prior notice) or reports returned to the next Meeting. The report continues to give details of general site monitoring and progress on chargeable monitoring for minerals development.

### Meeting Enforcement Objectives

#### *Change in work emphasis*

5. There is a natural division of work between those sites with no form of planning control needing urgent and sustained enforcement action (i.e. the type of cases normally quoted under Schedule 1 / Appendix 1 of these papers) and sites already with planning permission (Schedules / Appendices 2 and 3) that need to be returned to compliance.
6. The pressure of work in the first category has eased slightly of late. That is probably largely due to the recession. The level of economic activity and enforcement workload tend to go 'hand-in-hand'. The winter weather is also a factor and there is the further

deterrent effect of the cases that we have successfully enforced. Four Gun Field, Upchurch (see Schedule Appendix 1, number 11) is a notable example.

7. In addition, the Environment Agency (EA) has deployed appropriate specialists to its frontline enforcement work and is focussing their efforts on the worst waste cases. That in turn, is helping to prevent such cases from spiralling into more intractable problems. The DEFRA website of 8<sup>th</sup> December 2011 points to further resourcing:

*“A specialist environmental crime taskforce which will blitz illegal waste sites in England and Wales over the next two years has been set up by the Environment Agency. It includes former police detectives, and will work closely with enforcement partners to gather intelligence and act quickly to close illegal waste sites. The taskforce will be supported by up to **£5million of Environment Agency funding** for the first two years”.*

8. Reflecting this enforcement drive, there already appears to be a trend towards more severe court fines in the more serious cases brought by the EA. For instance, a Crown Court Judge on Monday 19 December 2011 fined a South London recycling company £191,262. That included £75,000 for each offence and £41,247 in legal costs.

### *Response to changes in work emphasis*

9. The changes to work emphasis mentioned under paragraphs 5 to 8 above, may simply mirror current economic circumstances. It is difficult to be sure at this stage. What it does allow however, at least in the short run, is some freeing of resources along the sliding scale of enforcement from the more challenging unauthorised end towards compliance matters on permitted sites. A partial switch is already reflected in the attached Schedules and in the absence of any green confidential reports on the more protracted cases. This needs to be tempered of course by a proportionate response to on-site problems. It is important to take into account the current economic difficulties that the business community face. Balancing that however, is a related need to ensure that an equal and compliant ‘playing field’ exists for all businesses. Without such planning discipline, non-compliant operators would be able to gain an unfair competitive advantage.

### *Co-ordinating and Advisory Role*

10. I am continuing to offer advice on a number of district enforcement cases. That includes case strategies, project management and guidance on the wider controls and powers available. County Officers have adopted a supportive role and acted in a co-ordinating role where appropriate. The ‘Bydews’ case in Maidstone (see number 3 of Schedule 1 / Appendix 1) is a good advisory example. Milton Creek in Sittingbourne and Chestnut Street, Borden, both within Swale Borough (see numbers 13 and 15 of Schedule 1 / Appendix 1, respectively) are other examples of the pooling of expertise and powers and a sharing of workloads between regulators. Landowners and operators, tend to yield and co-operate more wholeheartedly when they are presented with a united enforcement front.

### *Consultation on draft National Planning Policy Framework (NPPF)*

11. The County Council has been consulted on the Government's proposed streamlining of national planning guidance. The intention is to bring together all current Planning Policy Guidance (PPGs), Planning Policy Statement (PPSs) and related supplementary guidance into one all-embracing and simplified document.
12. The County Council has produced a single co-ordinated response and contributed to various Peer Group responses, such as the Planning Officers Society (POS) and the National Association for Planning Enforcement Officers (NAPE).

### *Policy Position*

13. One of the key concerns conveyed by this Authority to Government has been the potential for a policy vacuum to open-up within the planning enforcement field. Whilst the aim of streamlining national planning policy is acknowledged, it would nonetheless take away a detailed body of guidance, relied upon by staff engaged in enforcement action.
14. Of particular relevance to this Committee, is the proposed removal of PPG 18 'Enforcing Planning Control'. This forms the common and agreed basis for planning enforcement. It informs what might be expected of the service and proscribes how local authorities should carry out the function in a balanced and proportionate way. It also promotes consistency and fairness. For the moment however, it remains in force pending release of the confirmed National Planning Policy Framework (NPPF).
15. In the same context, there is limited mention of planning enforcement within the newly assented Localism Act. Nevertheless, Regional Spatial Strategy (RSS) Policies (which in the case of Kent, is the South-East Plan) will remain in force (probably until the end of 2012), pending completion of the RSS revocation procedures integral to the Act. That is alongside 'saved' policies within the Kent Waste Local Plan.
16. Should the confirmed NPPF not include sufficient policy context for planning enforcement, the County Council would need to rely on the emerging Minerals & Waste Development Framework (MWDF), our agreed Enforcement Protocol, any 'saved' waste local plan policies and any other relevant material considerations. In the case of the MWDF, I reported to the last meeting on the following draft policy which is proposed for inclusion within the document:

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

17. If eventually enshrined as County Council policy, this would act as a vehicle for developing a 'local replacement' version of the current PPG18 (Enforcing Planning Control), expanded to include case law precedents and examples of good practice gleaned from peer group networks. Either way, the Regulation Committee would have a pivotal role in the formation of such 'replacement' policy guidance. The support of Members to a set of operational principles would undoubtedly prove decisive in any subsequent enforcement action.

*Consultation on proposed revisions to the registration of New Town or Village Greens*

18. Village Green Policy comes under the remit of this Committee and has general planning aspects. Under the Chairman's guidance a response has now been made to DEFRA on the proposed revisions to the registration of New Town or Village Greens. The response was jointly prepared by the Planning Applications Group and Public Rights of Way and Commons Registration and signed-off by the respective Cabinet Members.

### *Case focus*

19. Since the last Meeting resources have been focussed on 3 sites where formal enforcement action has been taken, 5 cases where investigations are underway and a further 6 cases have been satisfactorily progressed.

### **Achievements / Successes [including measurable progress on sites]**

#### **Shaw Grange, Charing (Member: Richard King)**

20. I reported to Members at the last Meeting that I would keep them informed of the progress in absorbing this challenging enforcement site back into its sensitive AONB setting.
21. Initial restoration is now complete with attendant control of leachate. Tree-planting and related landscaping is planned to take place during this planting season but has been set back by adverse weather, preventing heavy machinery on site. The aim is to create within available means, a landscape asset drawn from a former contravention site, close to local residents. The ideal outcome in the longer term would be for the site to be made available for low-key recreational use.

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

22. A further and conclusive achievement concerns this longstanding case of alleged waste-related activities on this former lawful brickfield site, at Upchurch. Summary particulars are given under Appendix 1, Schedule 1, No.11.
23. The site remains quiet and inactive. The County Council's Enforcement Notice has been confirmed and compliance has been achieved. Residual matters have been granted planning permission by Swale Borough Council (SBC) such as the site office, turning area and wheel-spinner.
24. SBC is now the first port of call for any question as to what planning use might be carried out under the B2 (General Industrial) Lawful Use on site. The KCC's Enforcement Notice is available to prevent the kind of unacceptable use described within its terms, which should now be in the past. All other planning and enforcement aspects now fall to SBC to manage and control.
25. At the last case conference at SBC's Offices, under the chairmanship of their Chief Executive, it was agreed that the County Council would now draw back from the case in favour of other sites. I shall however maintain contact with the Borough Council and local residents, until a more permanent planning solution is found at the site. I shall assist in

that endeavour, in the public interest but SBC is now the all-purpose lead authority in the case, covering all development management, forward planning, enforcement and environmental health issues.

26. A notable success has been achieved, with the Borough Council extending it's thanks to this Authority for its sustained and decisive intervention in the case.

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

27. Eight new cases have arisen since the last Meeting.

**Appendix 1 / Schedule 1:** Faversham Road, Seasalter (see entry no. 2); the Former KCC Offices at Springfield (see no. 4); a former chalk pit, Wormshill (no.5); Johnson's Recycling Ltd, Folkestone (no. 10) and

**Appendix 2 / Schedule 2:** Lawful waste use at 2-8 Little Queen Street, Dartford (no. 3); SWEEP Kuusakoski Ltd, Gas Road, Sittingbourne (no. 4); Countrystyle Recycling, Ridham (no.5);

**Appendix 3/ Schedule 3:** Seal CEP School, Seal (no.2).

28. These alleged contraventions have been (or are being) investigated and addressed as summarised within the attached schedules.

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

29. I would refer Members to the 'Achievements' section from paragraphs 20 to 26 above. Four Gun Field in particular has been brought to a conclusive point, as far as this Authority is concerned. The staff time saved may now be put to the general enforcement workload reported elsewhere in these papers.

### **Other cases / issues of interest and requests from Members**

30. I would refer Members to the extended section on 'Meeting Enforcement Objectives' between paragraphs 5 to 19 of this report, concerning a tentative change in work emphasis and a growing advisory and co-ordinating role in complex multi-agency cases. Also, the consultee responses made in fields of interest to and on behalf of this Committee

### **Monitoring**

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

31. In addition to our general visits to sites as a result of planning application work, we also undertake routine visits to formally monitor sites. Since the last Regulation Committee, we have made a further 30 chargeable monitoring visits to mineral and waste sites and 8 non-chargeable visits to sites not falling within the chargeable monitoring regime.

### Resolved or mainly resolved cases requiring monitoring

32. Alongside the chargeable monitoring regime there is also a need to maintain a watching brief on resolved or mainly resolved enforcement cases which have the potential to recur.
33. Cases are periodically removed to make way for others when the situation on site has been stabilised; restoration or acceptable restoration has been achieved, a district or Environment Agency (EA) remit confirmed (or with action being a realistic possibility by them). Another occasion is where a planning application would address the various issues and there is the realistic prospect of one being submitted. Cases then go onto a 'reserve' data base, with an in-built monitoring commitment; ready to be returned to the Committee's agenda should further enforcement issues emerge or a positive planning solution becomes available. An example this time is Hooks Hole, Chestnut Street, Borden (see Schedule 1, Appendix 1 and No.15).
34. There is a running list of sites which fall within this category, against which priorities are drawn and enforcement monitoring checks are made.

### Conclusion

35. This report signals a measured change in emphasis (at least in the short run) from uncontrolled and overt enforcement cases to some of the more pressing compliance work on permitted sites. This in turn is being reinforced by standard and chargeable monitoring and the sharper focussing of resources by the Environment Agency. Larger and more taxing cases such as Shaw Grange and Four Gun Field are helpfully coming to a close. That is allowing further scope for our consultative and advisory work with other bodies to be developed. The County Council's enforcement workload will always take precedence but closer working with other regulatory bodies can bring benefits to all parties.

### Recommendation

36. I RECOMMEND that MEMBERS:
  - (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 5 to 34 above and those contained within Schedules / Appendices 1, 2 and 3.

Case Officers: Robin Gregory

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Background Documents: see heading