

Report by Head of Planning Applications Group to the Regulation Committee on 15<sup>th</sup> May 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 24<sup>th</sup> January 2012 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

#### *Continuing change in work emphasis*

5. I reported to the last Meeting on the 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. As anticipated, the pressure of work in the first category has continued to ease. I suspect that this may be due in large part to the recession and the deterrent effect of the

cases that we have successfully enforced.

7. A third element is the new Environment Agency (EA) Permitting régime. This seeks to capture waste activities previously exempted from such controls. The activation date was 6<sup>th</sup> April.2012. A number of unauthorised sites (under planning and EA legislation) have started to emerge. LanceBox Ltd and Sheerness Recycling Ltd (Schedule 1, Appendix 1 No. 3 and 11, respectively) are two examples. The response in each case to such scrutiny has been the submission of applications for Lawful Use. These will need to be processed, with any apparent breaches of planning control addressed under established protocols. I have suggested contingency positions for each case within the attached schedules. There may be a short-run surge in this type of work given the tightening of the Environment Agencies controls. I shall need to monitor the situation but for the moment this new business pressure is being absorbed within normal workloads.
8. As a precursor to a tightened control régime, the Environment Agency has assigned enforcement specialists to the worst waste cases. That should help in turn to prevent such cases from spiralling into more intractable problems. EA resourcing has also been increased in this frontline area and the courts have responded with more meaningful levels of fines, particularly in higher profile cases.

### *Response to changes in work emphasis*

9. The changes to work emphasis mentioned under paragraphs 5 to 8 above are continuing. I am using this opportunity to free some resources along the sliding scale of enforcement from the more challenging unauthorised end towards compliance matters on permitted sites. This switch is reflected in the cases reported within the attached Schedules and in the absence again of any green confidential reports on more expansive and complex cases.
10. A different enforcement style is needed in relation to permitted sites. On-site problems should be kept in perspective and any intervention has to be proportionate to off-site amenity impacts. It is also important to take into account the current economic difficulties that the business community face. Of equal importance in my view 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*

11. 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 capacity where appropriate. The 'Bartonlea' case in Canterbury (see no. 2 of Schedule 1 / Appendix 1) is a good advisory example. 'Keith Cornell's' in Shepway (no. 6 of Schedule 1 / Appendix 1) and Milton Creek in Sittingbourne (no. 9 of Schedule 1 / Appendix 1) are other examples of the pooling of expertise and powers between regulators. Landowners and operators, tend to yield and co-operate when faced with a united enforcement front.

### *National Planning Policy Framework (NPPF)*

12. The Government's streamlining of national planning guidance came into effect on 27<sup>th</sup> March 2012. Previous Planning Policy Guidance (PPGs), Planning Policy Statements (PPSs) and related supplementary guidance, is now essentially within one all-embracing and simplified document – the National Planning Policy Framework (NPPF). This document replaces PPG 18 'Enforcing Planning Control', though PPS10 'Planning for Sustainable Waste Management' has currently been retained. A verbal presentation on this important new national policy context is intended for this Meeting.

### *Policy Position*

13. One of the key concerns conveyed by this Authority to Government when consulted upon the impending NPPF was the potential for a policy vacuum to develop within the planning enforcement field. Whilst the aim of streamlining national planning policy was acknowledged, a detailed body of guidance, relied upon by staff engaged in enforcement action, was due to be lost. That has transpired, with the removal of PPG 18 'Enforcing Planning Control'. In return, planning enforcement is barely mentioned within the NPPF document. That mirrors limited mention within the newly assented Localism Act.
14. 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.
15. The NPPF may also be viewed as an opportunity rather than a constraint within the planning enforcement field. Having anticipated this situation, I have previously reported to this Committee that the County Council has the ability to use in combination, the emerging Minerals & Waste Development Framework (MWDF), our agreed Enforcement Protocol, any 'saved' waste local plan policies and any other relevant material considerations to conduct its planning defence work.
16. In the case of the MWDF, a draft enforcement policy is already in place as a potential vehicle for developing a 'local replacement' version of the displaced- PPG18 (Enforcing Planning Control), expanded to include case law precedents and examples of good practice gleaned from peer group networks. The Regulation Committee would have a key role in marshalling and endorsing future local planning enforcement guidance.

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

17. Village Green Policy comes under the remit of this Committee and has general planning aspects. Members may recall that under the Chairman's guidance a response was made to DEFRA on the recent 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 on Commons Registration and signed-off by the respective Cabinet Members. So far, there has been no stated outcome on the position by DEFRA. I shall however keep Members informed.

### *Case focus*

18. Since the last Meeting resources have been focussed on 2 sites where formal enforcement action has been taken, 5 cases where investigations are underway and a further 3 cases have been satisfactorily progressed.

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

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

19. Initial restoration is now complete with attendant control of leachate. Tree-planting and related landscaping is planned. 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. Summary particulars are given under Appendix 1, Schedule 1, No.1.
20. Members have shown an interest in visiting the site to see first hand the progress being made on site. A provisional date of 13<sup>th</sup> July 2012 has been set.

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

21. Three new cases have arisen since the last Meeting.

**Appendix 1 / Schedule 1:** Bartonlea Cottage (see entry no. 2); LanceBox Ltd (see no. 3) and Sheerness Recycling Ltd, Isle Of Sheppey (no. 11).

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

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

23. I would refer Members to the 'Achievements' section from paragraphs 19 and 20 above. Shaw Grange is in the final landscaping phase and Four Gun Field, Upchurch has significantly not warranted an entry.

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

24. I would refer Members to the extended section on 'Meeting Enforcement Objectives' between paragraphs 5 to 16 of this report, concerning a change in work emphasis and a growing advisory and co-ordinating role in complex multi-agency cases. Also, the arrival of the new National Planning Policy Framework.

### **Monitoring**

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

25. 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 21 chargeable monitoring visits to mineral and waste sites and 5 non-chargeable visits to sites not falling within the chargeable monitoring regime.

#### **Resolved or mainly resolved cases requiring monitoring**

26. 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. That accounts for a significant and long-established pattern of high frequency site monitoring. It is worth drawing attention, to the central importance of this often overlooked and integral feature of planning enforcement in its most challenging form.
27. 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 Woodgers Wharf, Upchurch (see Schedule 1, Appendix 1 and No.12).
28. There is a running list of sites which fall within this category, against which priorities are drawn and enforcement monitoring checks are made.

### **Conclusion**

29. This report confirms an apparent and continuing change in emphasis from uncontrolled and overt enforcement cases to some of the more pressing compliance work on permitted sites. A re-tightening of site management controls by the Environment Agency under their new Permitting régime is likely to consolidate this trend. The successful resolution and the removal of larger cases such as Four Gun Field from these papers and the current nature of unauthorised activities, is allowing room for our emerging consultative and advisory work with other bodies. The County Council's enforcement workload will always take precedence but closer working with other regulatory bodies can bring benefits to all parties, particularly when we are able to bring our project management and strategic enforcement skills into play.

**Recommendation**

30. I RECOMMEND that MEMBERS:

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 5 to 29 above and those contained within Schedules / Appendices 1, 2 and 3.

Case Officers: Robin Gregory

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Background Documents: see heading