

Report by Head of Planning Applications Group to the Regulation Committee on 5th September 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 15th May 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

Consolidation of workload streams

5. Two main workload streams are becoming more evident within the planning enforcement field. There are 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 continues but has been abated it seems by the recession and the deterrent effect of the cases that we have successfully enforced. The

new Environment Agency (EA) Permitting régime is another reason, with enhanced parallel controls. A sub-set of unauthorised sites (under planning and EA legislation) have started to emerge, prompted in part by this new régime. Lancebox Ltd and Sheerness Recycling Ltd (Schedule 1, Appendix 1 No. 3 and 8, respectively) are two examples. The response in each case to this increased scrutiny has been the submission of applications for Lawful Use. Nevertheless, under negotiation the first of the two applications has been withdrawn and the second is due to be returned very shortly.

Retrospective planning applications

7. The two Lawful Use submissions just mentioned have been (or are intended to be) withdrawn in favour of retrospective planning applications. These offer in general the opportunity to settle complex enforcement issues on site within the context of fully detailed schemes, capable if granted of being controlled through planning conditions and possible legal agreements. In fact, Members will notice a general increase in the number of retrospective applications reported within the attached schedules. These mainly arise from the seeking of enforcement solutions through a formal planning route. Permissions usually offer the best management framework for dealing with mainstream planning infringements. That particularly applies in the case of existing permitted or potentially permissible sites in the right type of locations.
8. 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, 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.

Targeted monitoring

9. It is true that retrospective planning applications are by definition '*after the event*' but targeted and more frequent site monitoring will help to reduce that possibility. Site monitoring guided in particular by a good understanding of new surges and trends within the waste management field, is a useful way to focus the compliance efforts of officers. An example at the moment is the surplus volumes of waste wood on the market, seeking an outlet. New handling capacity may be needed and any proposals would be channelled through the Planning Applications Group. In the meanwhile, compliance issues through the over-use of existing sites (however temporary) might reasonably be anticipated.
10. With that in mind I am planning to conduct a review of all current waste wood handling sites to ensure that planning permissions are being kept to and that stockpiles at alleged contravention sites are being run-down and not increased in height and footprint. Within that exercise. I shall review the claims of some operators that permitted development rights exist (i.e. planning permission is not required) within dock-side locations, to receive, store and despatch such waste wood materials and their derivatives. I intend to report back to Members with a compliance review of this sub-waste sector at the next Meeting. The Group will be particularly focussing on the Ridham area.

Wider involvement of the Group

11. The wider Planning Applications Group is gradually becoming more involved in the planning compliance field. The aim is to provide more capacity and to allow more opportunities for staff development. A greater number of retrospective applications in the first phase of this transition could be viewed in the positive. It reflects, for instance, a tightening of scrutiny and audit on permitted sites and highlights the dynamic and combined involvement of the Regulation and Planning Application Committees.

Emerging Protocol

12. Notwithstanding possible planning solutions through the application route, the original alleged breach must not be overlooked. I am developing a more detailed protocol to cover this area but in essence the owner / occupiers must be left in no doubt that they are in breach and that submission of a planning application whilst in many cases may be welcome, in no way excuses or exonerates any wrongful activity. The duty to comply with Planning Law is overriding and enforcement action may be taken at any time. It is also of note that retrospective planning applications are determined on the basis that the development has not taken place, underlining that no benefit should be construed for activities undertaken prior to the necessary planning permissions being in place.
13. The use of enforcement powers may be reserved by this Committee. However, in return I would usually seek to impose interim controls and restraint on any alleged contraveners. I would also expect to see a timetable for the submission of a valid application and to receive open co-operation from the owner / occupier. Should any of these requirements not be forthcoming, I would look to act. The initiative in such cases must always be with officers and this Committee and not left in the hands of any errant party.

Co-ordinating and Advisory Role

14. Within the two main workload streams, I am also 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 'Milton Creek' case in Sittingbourne (see no. 7 of Schedule 1 / Appendix 1) is a good example of this advisory approach and contribution.

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

15. 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.
16. Given the year or so that has elapsed since the County Council's submission, an update has been sought from DEFRA. They have said that they hope to publish the outcome of the consultation by this October. That will be beyond this current Meeting but I shall ensure that the Chairman at least is informed at the first opportunity. I shall

otherwise report back to Members at the next Meeting in January 2013.

Case focus

17. Since the last Meeting resources have been focussed on 4 sites where formal enforcement action has been taken, 5 cases where investigations are underway and a further 5 cases that have been satisfactorily progressed.

Achievements / Successes [including measurable progress on sites]

Milton Creek, Sittingbourne (Members: Mike Whiting & Alan Willicombe)

18. In company with Swale Borough Council, the Environment Agency and Medway Ports Authority a formula has been found for resolution of the land and navigation issues at this Creek-side soil manufacturing yard.
19. I have used my negotiating influence with the operator and his planning consultant to ensure that their intended regularising application to the Borough Council and remedial package covers all required elements. Key is a retraction of the use and inescapable written commitments by the operator to return the site and its features, along with the adjoining navigation channel, to their former undamaged state. I have further suggested a range of conditions which should help to consolidate this negotiated and multi-agency solution.

New Cases, especially those requiring action / Member support

20. Three new cases have arisen since the last Meeting:

Appendix 1 / Schedule 1: Larkey Wood Farm, Chartham (see entry no. 2); Cube Metal Recycling, Folkestone (see no. 6) and Wey Street Farm, Hernhill (see no. 9).

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

Significant on-going cases

22. I would refer Members to the 'Achievements' section under paragraphs 18 and 19 above. Negotiations for the restoration of Woodgers Wharf, Upchurch (see Schedule 1, no. 10) have been noticeably advanced.

Other cases / issues of interest and requests from Members

23. I would refer Members to the extended section on 'Meeting Enforcement Objectives' between paragraphs 5 to 14 of this report, concerning a consolidation of workload streams, the wider involvement of the Planning Applications Group within general planning compliance and a growing advisory and co-ordinating role in complex multi-agency cases.

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

24. 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 23 chargeable monitoring visits to mineral and waste sites and 6 non-chargeable visits to sites not falling within the chargeable monitoring regime. I would also refer Members to paragraphs 9 and 10 of this report, on targeted Group monitoring with a multi-site purpose. On this occasion in the field of waste wood handling.

Resolved or mainly resolved cases requiring monitoring

25. 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. I have pointed to the importance of this effort under paragraphs 9 and 10 above. Targeted monitoring, offers a means to prevent and curtail alleged breaches; reducing the need for retrospective applications, which are generally perceived to bring the credibility of planning enforcement into doubt.
26. 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. Examples this time are Larkey Wood, Chartham (see Schedule 1, Appendix 1, no.2) and Raspberry Hill Park Farm, Iwade (see Schedule 1, Appendix 1, no.11).
27. There is a running list of sites which fall within this category, against which priorities are drawn and enforcement monitoring checks are made. The frequency is usually high but may vary according to the site under surveillance.

Conclusion

28. This report points to a consolidation of workload streams both within high-profile enforcement scenarios and on a wider Group footing, around compliance work on permitted sites. A more focussed and determined Environment Agency is helping to underwrite the County Council's efforts. The use of retrospective applications to help resolve enforcement situations on site is a valid approach. However, I am ensuring that pending the outcome of any application the relevant site is monitored, the use is constrained and unwavering co-operation with this Authority is regarded as a non-negotiable pre-condition for the reserving of any enforcement action. Also, that a contingency plan is drawn up, should an application not be submitted, is unaccountably

delayed or on the grant of permission is not properly followed. Any escalation of the original breach in the knowledge of all these stipulations would naturally be grounds for action.

Recommendation

29. I RECOMMEND that MEMBERS:

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 5 to 27 above and those contained within Schedules / Appendices 1, 2 and 3.

Case Officer: Robin Gregory

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Background Documents: see heading