

Update on Planning Enforcement Issues

Report by Head of Planning Applications Group to the Regulation Committee on 22nd January 2013.

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 5th September 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

Operational shift

5. I have previously advised Members' of an apparent operational shift from traditional unauthorised type cases requiring overt action, to more compliance-based work involving already permitted sites. These tend to be within the waste management field and may usually be addressed through means of retrospective planning applications. Between the two are those activities with limited, district or no planning permissions in place but which display sufficient planning merit to warrant a retrospective approach. There is a non-negotiable requirement however, for pre-existing breaches to be held in tight check, pending the outcome of any application. Lancebox Ltd and Sheerness

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Recycling Ltd (Schedule 1, Appendix 1 No. 3 and 9, respectively) are two examples. Experience and expertise from the more severe end of the enforcement spectrum is being made available to help support and service this operational shift. That includes 'surgical' interventions into cases when negotiations have stalled or operators are no longer co-operating, together with specialist advice and mentoring.

Retrospective planning applications

6. Members will notice as part of the above identified trend, a general increase in the number of retrospective planning applications reported within the attached schedules. These mainly arise from the seeking of enforcement solutions through normal planning means. The Government encourages this approach, which acknowledges the needs of business but equally seeks to ensure an equal and compliant 'playing field' for all businesses to operate within. In that way non-compliant operators are prevented from gaining an unfair competitive advantage.

Targeted monitoring

7. 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 reported to the last Meeting (which apparently seems to have abated of late) is surplus volumes of waste wood appearing 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.
8. With that in mind I have instituted 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. A dimension of that exercise involves persistent claims by some major 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. Ridham Dock is a case in point, which I am currently focussing upon, co-ordinating the efforts of a number of case officers. The area has been initially surveyed from the air and Counsel has been instructed and retained. The object is to resolve the planning status of any questionable planning activities and to more generally intensify our monitoring presence in the area as a way to ensure improved operational standards. This work is on-going but has renewed impetus following the return of the Planning Enforcement Team Leader from extended medical leave.

Wider involvement of the Group

9. The wider Planning Applications Group is gradually becoming more involved in the planning compliance field. The aim is to broaden the experience of our planning officers and in doing so, increase our enforcement capacity. This becomes particularly important when a firm line is needed to ensure that retrospective planning applications or not deliberately protracted in order to allow the base alleged contravention to continue

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unhindered. The initiative in such cases must always be with officers and this Committee and not in any way left in the hands of any errant party.

Co-ordinating and Advisory Role

10. 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. That may often be 'behind the scenes' but such interventions are no less influential. The 'Cornell's' case at Lypne (see Schedule 1, No. 5), the 'Milton Creek' case in Sittingbourne (see Schedule 1, No. 8) and Four Gun Field case at Upchurch (Schedule 1, No.10) are leading examples of this advisory approach and of a wider contribution to the public cause.

Case focus

11. 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 10 cases that have been satisfactorily progressed.

Achievements / Successes [including measurable progress on sites]

Forward momentum on some major cases

12. The ratio of positive outcomes to cases, as opposed to those requiring further attention has been particularly high since the last Meeting. That reflects forward momentum on a number of significant cases within the Swale Borough area, including: Milton Creek, Sittingbourne (Schedule 1, No. 8); Four Gun Field, Upchurch (Schedule 1, No.10); Woodgers Wharf, Upchurch (Schedule 1, No.11) and Raspberry Hill Park Farm (Schedule 1, No.12). Recent progress towards completion in each case is the fruition of extensive previous work, often over a number of years.

New Cases, especially those requiring action / Member support

13. No new substantiated cases have arisen since the last Meeting.

Significant on-going cases

14. I would refer Members to the 'Achievements' section under paragraph 12 above, which highlights forward movement on a number of longstanding and complex cases within the Swale Borough area.
15. The advantage of this success is in its release of more specialist enforcement time for wider initiatives such as supporting the operational shift to increased enforcement awareness and capacity within the Group (see paragraphs 5 and 9 above) and the 'Ridham' review exercise (see paragraph 8).

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Other cases / issues of interest and requests from Members

General issues

16. I would refer Members to the extended section on 'Meeting Enforcement Objectives' between paragraphs 5 to 11 of this report, concerning workload shifts, 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.
17. On a separate issue, liaison with the Environment Agency has continued to improve and now dovetails better with my own planning enforcement efforts. I have to inform Members however of a disappointing interlude concerning Ripleys Scrapyard at Ellingham Way, Ashford. The EA failed to consult either the County Council or Borough Council on proposed operational changes to the Environmental Permit. These centred on a proposed three-fold increase in throughput, which the EA sanctioned in principle. Any such change would of course require prior planning permission and the operator has been advised of that in writing. However, that does not detract from the understandable local disquiet and the avoidable need for an enhanced monitoring presence to maintain public confidence in the regulation of the site.
18. Both I and officers from Ashford Borough Council have sent formal representations to the EA and received an apology and assurances that we would both be consulted in similar incidences in the future.
19. The episode is unfortunate and goes against the trend. I am willing with Members agreement to regard it as an isolated incident. Indeed, to help restore faith in our working relationship, EA staff helpfully provided front-line support to help cover for the Planning Enforcement Team Leader's recent extended medical absence.

Growth and Infrastructure Bill – Registration of Village Greens

20. Members may recall a Government consultation by Defra in late 2011 which sought views on proposed changes to the registration of new Town or Village Greens. In its response the County Council recognised that there was merit in reviewing some aspects of the registration process to bring it into line with modern demands, but was not convinced that the key driver for the changes and therefore the solution sought was well founded. In particular, it did not share the Government's assumption that applications to register Town and Village Greens are driven by the desire of the local community to delay and ultimately prevent the development of open land. Whilst this may be the experience elsewhere, that has not been strongly reflected in Kent. Defra has yet to formally respond to the consultation, although two of the questions that it sought views on are reflected in the emerging Growth and Infrastructure Bill.
21. In 2011 Defra asked whether there was support for a proposal which would rule out making a Village Greens registration application where a site was designated for development in a proposed or adopted local or neighbourhood plan consultation. It also asked for views whether there was support for a proposal where a Village Green application could not be made after an application for planning permission had been submitted in respect of the site, or where there was statutory pre-application

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consultation, until planning permission had been refused, implemented or expired.

22. In the response to Government the County Council was not supportive of these two proposals arguing that the proposal failed to address that the considerations for planning and Village Green applications were fundamentally different. Planning applications are determined on their planning merits which are subjective in nature and a balancing of factors, whilst Village Green applications are determined strictly on a factual nature as to whether they met prescribed tests – 20 years, as of right, used by local residents and for lawful sports and pastimes. No evidence was given as to how this conflict was to be addressed in the consultation, nor which legislation would take precedent. This Council was concerned that rather than speed up development proposals (which appears to be the Government's objective) it would have the opposite effect, whilst the planning application and plan making processes grappled with submissions from those wanting to pursue a Village Green proposal at the planning application stage.
23. The Growth and Infrastructure Bill was published in October 2012. Sections 12 – 14 and accompanying Schedule 4A relate to the registration of Village Greens. Section 12 provides for new provisions for owner statements in the registration process and Section 14 provides for minor modification of power to provide for fees. Section 13 is of more substance and proposes restrictions on the right to register land as a Town or Village Green. Where certain defined *trigger events* have taken place then land cannot be registered until a corresponding *terminating event* has taken place. These events are defined in Schedule 4 of the Draft Bill and insert a new Schedule 1A into the Commons Act 2006. The trigger events broadly cover the site being the subject of an application for planning permission, the identification for potential development in an emerging or adopted development plan including the new neighbourhood plans and a proposed application for an order granting development consent under s114 of the 2008 Act. The schedule also defines the terminating acts, essentially the planning application is withdrawn, or refused, the exhaustion of legal challenge where decision is refused and the expiration of the permission without implementation. In terms of plan making, the termination events can be summarised as the withdrawal, revocation of the Plan or it ceases to have effect or where a policy in the plan relates to the development is superseded by another policy.
24. This suggested approach is disappointing since it fails to accept the concerns that the County Council were making to Defra. Only time will tell whether development will be inhibited by these proposed changes and whether ill prepared applications to register Village and Town Greens will be promoted at planning application stage leading to potential delays in the determination of planning applications, poor uses of resources and a stifling of effective pre planning application discussions between developers and communities. The latter is a key principle within the Government's Localism agenda.

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 31 chargeable monitoring visits to mineral and waste sites and 5

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non-chargeable visits to sites not falling within the chargeable monitoring regime. This shows a steady increase in numbers of visits over time and signals an expectation of further increases to the agreed visit frequency at selected sites over the next financial year. I would also refer Members to paragraphs 7 and 8 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

26. Alongside the chargeable monitoring regime there is 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.
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. Examples this time are Tutsham Farm, West Farleigh (see Schedule 1, No. 4) and Four Gun Field, Upchurch (Schedule 1, No.10).
28. 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

29. This report reveals some positive trends. A series of high-profile cases within the Swale Borough area have been well progressed. Indeed, there is an operational shift occurring from costly set-piece enforcement actions of this type, to more application-based approaches, underpinned by the release of available enforcement expertise. This trend reflects in part the current economic climate but also efforts towards a tighter enforcement regime. Drawing on the lessons of major cases over recent years, both the Environment Agency and relevant district councils have been engaging with this Authority in a more meaningful way, to help better protect local residential amenity and the environment. Chargeable monitoring has also been proportionately increased, which further assists in the compliance field.

Recommendation

30. I RECOMMEND that MEMBERS:
 - (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 5 to 28 above and those contained within Schedules / Appendices 1, 2 and 3.

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Background Documents: see heading