

Report by Head of Planning Applications Group to the Regulation Committee on 18<sup>th</sup> June 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 22<sup>nd</sup> January 2013 Regulation Committee. The needs of Members new to the Committee have been taken into account, with in particular an expanded section on Meeting Enforcement Objectives, from paragraph 6 onwards.
2. Summary schedules of all current cases have been produced (see Appendices 1, 2 and 3). They cover alleged 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. Cases resolved or sufficiently progressed to be removed from our immediate workload, are highlighted in bold.

### Report Format

3. The report follows a well-rehearsed and settled format (introduced in May 2008), developed through the suggestions of Members and in particular from the Chairman of the Committee. The search was for a 'user-friendly' and efficient way within which to inform Members of the essential facts of a series of involved cases. Enforcement strategies could then more easily be discussed, supported and agreed, whatever their level of complexity.
4. Central to this approach is the summarising of cases in 'schedule' form; as attached to this current report. They are presented 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
5. 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. New Members may also request individual briefings on existing sites within their area. The report continues to give details of general site monitoring and progress on chargeable monitoring for minerals development.

### Meeting Enforcement Objectives

#### *Overview*

6. Planning enforcement is a high-profile County Council function. It underpins the Development Management service within the Planning Applications Group. Available powers and controls run with the land and in turn derive from statute. The type and degree of action is discretionary (with some qualifications), allowing a flexible and proportionate approach to cases.
7. Each case in turn, has to be considered on its own individual merits. Indeed, it may be expedient not to act or to refer the case to another regulatory body. However, such a decision has to be properly considered and robust enough to withstand scrutiny by the Local Government Ombudsman. Addressing planning enforcement problems is not an optional activity for Local Planning Authorities. There is a high Member and public expectation for this authority to act in a seamless way with allied enforcement agencies. Judges may further direct that enforcement action is taken by a Planning Authority, introducing a level of compulsion in individual cases. In short, it is the degree of intervention that is discretionary, which may on occasion be minimal. Checks and balances ensure that planning authorities are unable to simply side-step difficult enforcement problems.

#### *Enforcement Protocols*

8. The County Council operates an internal and external set of protocols, concerning the conduct of its enforcement business. Resources within the Group are targeted in accordance with these protocols, towards those sites where the activities being carried out have the potential to create the greatest and potentially the most irreversible environmental damage. These cases are investigated as a priority.
9. Formal action is only taken as a last resort, in the full context of the case. Mixed-use sites, under our main (external) Enforcement Protocol and through recent case-law, fall to the respective District Council to deal with.

#### *Policy Position*

10. National Planning Policy has been 'streamlined', including the removal of 'PPG 18 Enforcing Planning Control' guidance. In anticipation of this loss of guidance, I have inserted a draft ('enabling') enforcement policy into the emerging Minerals & Waste Local Plan. That if approved would allow a local version of the former government guidance to be incorporated into our existing protocols.

#### *Enforcement Imperative*

11. The imperative in strategic planning enforcement terms is to ensure that the breach (or breaches) and any further damage to the environment are stopped at the first opportunity. The County Council has a notable track record in this regard. The next aim is to attempt to achieve restoration. That may take considerably longer, for two main reasons.

12. Firstly, there is the need at any given point to switch resources from protracted restoration cases to the urgent protection of land from new alleged contraveners. The other reason is that we do not have immediate call on prosecution powers. Those are only usually available once earlier enforcement action has been exhausted and the contravention still remains.
13. Reluctant contraveners / landowners, with little funding, equipment or expertise have to be cajoled into restoring sites largely through 'out of court' means, including attentive monitoring. Successes are achieved but the speed depends on the circumstances of the case, appeal turnaround times by the Planning Inspectorate and the workload and inclination of the Courts. Officers, especially in serious unauthorised cases have to sustain a high level of determination and commitment over extended periods of time. The length of time to achieve acceptable levels of final or even interim restoration and what those requirements might be will vary on a case by case basis.

### *Restoration Objectives*

14. The main objective in terms of restoration is to '*remedy the breach*'. In other words, to seek a return of the land to its original state. That typically involves the removal off site of imported waste materials. However, often there are highway limitations in seeking such removal and more practically speaking we may only be able to '*alleviate the injury to amenity*'. In general, that involves correcting the breach as far, as is practicable without creating further environmental damage and harm to amenity in the process. This can often involve the retention either of all material on site or part removal of the imported spoil, leaving the remainder to be spread and levelled to best effect given the circumstances of the site and its surroundings. The Woodgers Wharf case at Upchurch (see Schedule 1, No.8) illustrates very well such restoration dilemmas.

### *Operational Shift*

15. I have previously advised Members' of an apparent operational shift from traditional unauthorised types of 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.
16. The Government encourages this approach, which acknowledges the needs of business but also seeks to ensure an equal and compliant 'playing field' for all businesses to operate within. Non-compliant operators are in that way prevented from gaining an unfair competitive advantage.

### *Wider Group Involvement*

17. It is true that retrospective planning applications are by definition '*after the event*' but targeted and more frequent site monitoring will help to reduce the number. 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 broad compliance efforts of officers.

18. The wider Planning Applications Group is becoming more engaged in planning compliance work. The aim is to help broaden the experience of our planning officers and in doing so, usefully increase our enforcement capacity. This becomes particularly important when a firm line is needed to ensure that retrospective planning applications are not wrongly used to deflect attention from a continuing breach. The initiative in such cases must always reside with officers and this Committee. In no way must it be left in the hands of any errant party.

### *Co-ordinating and Advisory Role*

19. Within the two main workload streams (i.e. set-piece enforcement actions and more mainstream compliance monitoring), 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 been adopting for some time a supportive role, acting in a co-ordinating capacity where appropriate. That may often be 'behind the scenes' but such interventions are no less influential.

### *Case focus*

20. Since the last Meeting resources have been focussed on 5 sites where formal enforcement action has been taken, 1 major case where investigations are underway and a further 6 cases that have been satisfactorily progressed.

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

### *Effective completion of some major cases*

21. Several longstanding cases have been brought to an effective and welcome close. Foremost among these is the restoration of Shaw Grange, Charing (Schedule 1, No.1), which Members visited on 26<sup>th</sup> March 2013.
22. Four Gun Field, Upchurch (Schedule 1, No.7), has an apparent planning solution in place and all matters now lie with Swale Borough Council.
23. Red Lion Wharf, Northfleet (Schedule 2, No.1), is again close to completion, with a large proportion of the errant stockpile of waste wood, shredded and removed off site for beneficial use elsewhere.
24. Recent progress towards completion in each of the above cases is the culmination of years of sustained and intense enforcement work.

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

25. No new substantiated County Matter cases have arisen since the last Meeting.

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

26. I would refer Members to the 'Achievements' section under paragraph 21 to 24 above, which highlights some conclusive work on a number of very significant and complex cases.

27. The advantage of clearing major cases 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 17 and 18 above) and for more interlinking work with District Councils, Medway Council Unitary and the Environment Agency.

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

28. I would refer Members to the extended section on 'Meeting Enforcement Objectives' between paragraphs 6 to 20 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.

### **Monitoring**

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

29. In addition to our general visits to sites as a result of planning application work, we also undertake routine visits to formally monitor them. Since the last Regulation Committee, we have made a further 28 chargeable monitoring visits to mineral and waste sites and 5 non-chargeable visits to sites not falling within the chargeable monitoring regime. This shows a sustained number of visits and related income over this period.

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

30. 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.

31. 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, No.2) and Red Lion Wharf (Schedule 2, No.1).

32. 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

33. This report reveals some positive trends. Several high-profile cases have been brought to a conclusion (or very nearly). The operational shift from costly set-piece enforcement actions, to more application-based approaches is becoming more the norm. This trend reflects in part the current economic climate but also efforts towards a tighter enforcement regime. We share this drive to compliance with our District and Unitary counterparts and the Environment Agency. The aim is a seamless array of enforcement powers trained on the more persistent and determined contraveners within the County. Closer collaboration and joint action is the key to more successful and cost effective protection of local residential amenity and the environment.

### Recommendation

34. I RECOMMEND that MEMBERS:

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 6 to 32 above and those contained within Schedules / Appendices 1, 2 and 3.

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Background Documents: see heading