

Update on Planning Enforcement Issues

Report by Head of Planning Applications Group to the Regulation Committee on 3rd September 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 planning enforcement and monitoring work carried out by the Planning Applications Group since 18th June 2013 Regulation Committee.
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 its normal format, equipping Members with the essential facts of a series of cases, varying in their degree of complexity and challenge. Summary schedules are attached, with the following sub-divisions:
 - 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. 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

5. I briefed the new Committee at its inaugural Meeting on 18th June 2013, on the County Council system for conducting planning enforcement within Kent. I shall give the key points again for Members' convenience.
6. Planning enforcement is a high-profile and essential County Council function. It underpins the Development Management service within the Planning Applications

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Group. There is a high Member and public expectation for this authority to act in a decisive but proportionate way. Seamless working with allied enforcement agencies is another important requirement. The type and degree of intervention is discretionary but failure to act or to account for not acting may be challenged through the Local Government Ombudsman.

Enforcement Protocols

7. The County Council operates an internal and external set of protocols, to ensure a consistent and responsive planning enforcement service. Priority is given to those sites where the activities being carried out have the potential to create the greatest and most irreversible environmental damage. 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 established case-law, fall to the respective District Council to deal with.

Enforcement Imperative

8. The overriding priority for County Matter enforcement is to ensure that the breach (or breaches) and any further damage to the environment is arrested. Restoration will follow within its own timescale. The ideal is to *'remedy the breach'* i.e. a return of the land to its original state. That typically involves the removal off site of imported waste materials. However, highway limitations may dictate a more pragmatic solution of *'alleviating the injury to amenity'*. This may 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 on site. The Woodgers Wharf case at Upchurch (see Schedule 1, No.10) illustrates such restoration dilemmas very well.

Enforcement Approach

9. The more serious and challenging planning contraventions are usually met with formal enforcement action (see for example, the emerging 'Larkey Wood' case at Schedule 1, Number 1). However, alongside these, there are a number of cases with sufficient planning merit to warrant a retrospective approach. A solution through means of a planning application is usually preferable to long and drawn-out enforcement actions. This meets with Government expectations. Nevertheless, if co-operation is missing or submission of the required schemes is slow, the County Council is in a position to take corrective action at any stage. The support of Members for the reserving of such action on a contingency basis is key to this approach.

Wider Group Involvement

10. The wider Planning Applications Group is becoming more engaged in planning compliance work, especially through the use of retrospective planning applications. This is helpfully extending the capacity of the Group in this field. However, it is offset to a degree when applications are delayed or made in an incomplete and imprecise way, frustrating an early determination of the scheme. It is unacceptable for any alleged contravener to gain any form of advantage in relation to all other operators, through use of the retrospective approach. I am therefore reviewing all cases of this type within the attached Schedules, to ensure that a 'level playing field' is maintained.

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Co-ordinating and Advisory Role

11. Alongside the Group's main workload, I am also continuing to offer advice on a number of district enforcement cases. County Officers have been adopting for some time a supportive role, acting in a co-ordinating capacity and forging links between the relevant local planning authority, the Environment Agency and increasingly of late the Kent Police Rural Liaison Team.
12. The Larkey Wood, Chartham case (Schedule 1, No.1); Beechwood Road, Meopham (Schedule 1, No.3); Brotherhood Traveller's site (Schedule 1, No.9) and the former Upper Bell PH site (Schedule 1, No.13) are all representative examples.

Case focus

13. Since the last Meeting resources have been focussed on 8 sites where formal enforcement action has been taken, 3 cases where investigations are underway and a further 8 cases that have been satisfactorily progressed.

Achievements / Successes [including measurable progress on sites]

14. Four Gun Field, Upchurch (Schedule 1, No.8), has an apparent planning solution in place and all matters now lie with Swale Borough Council. A recent flurry of activity caused temporary concern among local residents. However, on closer inspection, the apparent waste processing use was in fact, the handling of deep trench excavations, the result of groundwork preparations for the permitted housing development on site. I shall remain vigilant but all energies on site are now being directed towards the new built development. In fact, the physical opportunity for any alleged waste-related activities is in itself rapidly diminishing.
15. Red Lion Wharf, Northfleet (Schedule 2, No.2), is again close to completion. All stockpiles of waste wood have been shredded and await removal off site for beneficial use elsewhere, within the wider company structure of the operators.

New Cases, especially those requiring action / Member support

16. Five new County Matter cases have arisen since the last Meeting. They include: Beechwood Road, Meopham (Schedule 1, No.3); Brotherhood Traveller's site (Schedule 1, No.9); Northwood Road (Schedule 1, No.12); Former Upper Bell PH (Schedule 1, No.13) and Top Bungalow, Frieszley Lane (Schedule 1, No.14). Details are contained within each of the quoted entries.

Significant on-going cases

17. The most significant case at the moment is at Larkey Wood, Chartham case (Schedule 1, No.1 and Exempt Item 13). The alleged unauthorised activities have attracted the close and co-ordinated attention of four regulators and their respective sub-teams. I would refer Members to the references given for an expanded briefing.

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Other cases / issues of interest and requests from Members

18. The section on 'Meeting Enforcement Objectives' between paragraphs 5 to 13 of this report, gives an operational perspective on the planning enforcement service at the County Council. This space is used at each Meeting to inform Members on emerging trends within the field and how to best combat the increasing sophistication of uncontrolled waste management networks, within the County.

Monitoring

Monitoring of permitted sites and update on chargeable monitoring

19. 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 16 chargeable monitoring visits to mineral and waste sites, yielding a related income to the Group.

Resolved or mainly resolved cases requiring monitoring

20. 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.
21. Cases are periodically removed (with Members agreement) to make way for others when the situation on site has been stabilised; 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: Units 6, 13 & 14 Detling Airfield Industrial Estate (see Schedule 1, No.4); Tutsham Farm, West Farleigh (Schedule 1, No.5) and Thirlwell Farm, Hernhill (Schedule 1, No.11) and A. Winchester & Sons, Little Queen Street (Schedule 2, No.1).
22. 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

23. This report continues from the last Meeting in the same positive vein. A number of new cases have come to the County Council's attention but these generally fall within the remit of the relevant District Council and the Environment Agency. Notwithstanding this, I have taken every opportunity to offer advice and support within an increasingly linked network of enforcement agencies. This applies both between and within sites. The pooling of trained and committed officers, especially with the closer involvement of Kent

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Police is beginning to offer the kind of connected enforcement service that Members and the general public would no doubt wish to see.

Recommendation

24. I RECOMMEND that MEMBERS:

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 5 to 22 above and those contained within Schedules / Appendices 1, 2 and 3.

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Background Documents: see heading