

# Update on Planning Enforcement Issues

Report by Head of Planning Applications Group to the Regulation Committee on 27th January 2008

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 18<sup>th</sup> September 2009 Regulation Committee.
2. Summary schedules of all current cases have been produced (see Appendices 1 to 3). The cases are organised by District and the local County Member(s) identified in each case. Members are already notified on any new County enforcement cases under the existing Enforcement Protocol arrangements. The summary tables cover unauthorised breaches of planning control and those occurring on permitted sites, whether minerals or waste related or those further connected with County Council developments.

## Report Format

3. Cases have been taken from the appended schedules and expanded reports produced. These in turn 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 of interest and those requested 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 site monitoring and progress on chargeable site monitoring arrangements for minerals development.

## Meeting Enforcement Objectives

5. Planning enforcement is an important but discretionary service. The resources allocated have to be balanced against those directed to statutory services, in turn referenced to corporate BVPI targets. Efforts have been concentrated chiefly on defending formal actions that have previously been taken and have progressed or are likely to progress to planning inquiry. Resources have been focussed on 4 sites where formal enforcement action has been taken, 6 cases where investigations are underway and a further 7 cases have been satisfactorily progressed or resolved. Amongst monitoring visits on permitted sites there have been 12 chargeable visits. Significant time has been absorbed in servicing a recent and now adjourned public inquiry at Four Gun Field, Upchurch in Swale. The case has proved exceptionally demanding and has required the active and

## Update on Planning Enforcement Issues

on-going involvement of Counsel.

6. Each case has to be considered on its own merits and as a discretionary function. Action should only be taken as a last resort and only where it is expedient to do so. Resources are targeted in accordance with the Council's Enforcement Protocol to 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.
7. The imperative in strategic enforcement action is to ensure that the breach and any further damage to the environment are stopped at the first opportunity. That is the first and overriding objective. 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. Firstly, there is the need at any given point to switch resources from protracted restoration cases to the urgent protection of land from new contraveners.
8. The other reason is that we do not have immediate call on prosecution powers, despite repeated lobbying of Government. This is only available to us once earlier enforcement action has been exhausted and the breach still remains. Reluctant contraveners / landowners, with little funding, equipment or expertise have to be cajoled into restoring sites largely through 'out of court' means. 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 concentration and effort 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.
9. 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. However, often there are highway limitations in seeking this remedy. 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. A balanced judgement is required on the individual circumstances of each case.

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

#### **Roman Road, Dover (Members: Gordon Cowan & Bill Newman)**

10. This case referred to us by Dover District Council concerns the unauthorised depositing of imported waste materials on agricultural land (see summary schedule 1, no. 3). The waste was in part surplus from a redevelopment of the landowner's local business. The remainder was from general sources.
11. I immediately required the imports to cease. Realising the level of control and severity of sanction available to the County Council, a negotiated solution was quickly agreed with the alleged contravener. An acceptable scheme of restoration, respecting adjoining contours and capable of being properly enforced has been submitted. This has been carried to near completion on a firm negotiated basis without the need for protracted

## **Update on Planning Enforcement Issues**

formal action.

### **Warren Court Farm, Knockholt Road, Halstead (Member: Richard Parry)**

12. This case was originally referred to us by Sevenoaks District Council. It concerns the alleged unauthorised depositing of waste materials on agricultural land (see summary schedule 1, no. 7). The waste materials were brought on site to develop a large screening earthbund. I immediately required the imports to cease. A negotiated settlement with the landowner (as opposed to formal action) has resulted in removal of the deposited waste stockpiles from the land.

### **Eglesden Farm, Mill Street, Iden Green, Benenden (Member: Roger Manning)**

13. This case involves the unauthorised depositing of waste materials into a small dry valley on agricultural land (see summary schedule 1, no. 16). The Environment Agency (EA) took the lead and secured a conviction under the Environmental Protection Act 1990. The landowner was fined £15,000 with £2,000 in costs. A subsequent appeal lodged by the landowner was dismissed and a further £1,500 costs were awarded to the EA.
14. No further waste imports have taken place on the site. The land has been shaped and contoured in keeping with its surroundings and has regenerated naturally. The landowner has confirmed in writing that no further waste materials will be imported or tipped on to the land. He appreciates that the consequences would be a further likely prosecution by the EA and action under planning enforcement powers.

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

### **Land to the north of Southern Way, Folkestone (Member: Roland Tolputt)**

15. Shepway District Council have referred this new case to us, concerning the alleged unauthorised depositing of waste materials on land adjacent to the rail network formerly owned and used by KCC and Railtrack (see summary schedule 1, No. 10). The waste materials have allegedly been imported on to the site by a local skip hire business, significantly raising the levels of the land.
16. There are two separate private landowners involved. I have served a Planning Contravention Notice on both parties requiring them to submit information to me as to why this alleged unauthorised development has taken place without planning permission. My investigations are allied to those of the Environment Agency and Shepway District Council, whom have served a similar Notice on one of the landowners. I have met with the site operator and impressed upon him unequivocally that no further depositing of waste materials will be tolerated by this Authority. Indeed, investigations are continuing into whether quantities of materials on site should be removed.
17. I am in the process of evaluating the replies to the Planning Contravention Notice and exchanging information with other agencies. Once this has taken place I shall be in a better position to formulate an enforcement action plan. In that context, I seek support from Members for the issuing of a Temporary Stop Notice and / or the service of an Enforcement Notice, as required.

## **Update on Planning Enforcement Issues**

---

### **Aylesford Metal Co. Ltd., Millhall, Aylesford (Member: Geoff Rowe)**

18. A further new case, this time reported to us by Tonbridge & Malling Borough Council and local residents, involves a site with a 1971 Planning Permission for use as a Scrap yard. A confirmed 1972 Enforcement Notice also applies (see summary schedule 2, No. 7).
19. The main allegations concern working outside permitted hours and over-stacking of the stockpiles of scrap metals stored on site. It appears that the current business activities have outgrown the site's permitted use, now impinging on local residential amenity.
20. Meetings have been held with both the local residents and the site operator, who has informally agreed to resolve the breaches by 31 January 2009. As a contingency however, I am seeking the flexibility of Members support for the issuing of a Temporary Stop Notice and / or the service of an Enforcement Notice, as required.

### **Park House Farm, Bower Lane, Eynsford (Member: Roger Gough)**

21. Sevenoaks District Council have reported this case to the County Council. It concerns the alleged unauthorised importation, sorting, storage and transfer of mixed waste materials on a farm located at Eynsford, in the Metropolitan Green Belt, Area of Outstanding Natural Beauty and Special Landscape Area (see summary schedule 1, No.8).
22. The amenity impact caused by the unauthorised waste-related activities, combined with traffic movements of large vehicles on the narrow rural network, has attracted complaints from local residents.
23. The site has been visited. The farm has recently been purchased and is being used as an outlet to facilitate a waste collection business operated by the landowners. Its catchment covers the London area. A barn is being used as an apparent unauthorised transfer station to import, sort, store and transfer mixed waste materials in the form of hardcore, wood, metal and plasterboard. The landowners have been advised to cease the activity immediately.
24. The site is also known to the Environment Agency who have issued similar advice. However, I shall be serving a Planning Contravention Notice on all relevant parties to gather information to enable me to formulate an enforcement strategy to deal with this alleged breach. An application for planning permission for a change of use from agriculture to waste sorting has been submitted to Sevenoaks District Council. I have confirmed with them that the County Council will assume jurisdiction and the application is to be passed to us. I have also requested from them a detailed planning and enforcement history of the site.
25. As the alleged breach may continue, I seek Members support for the issuing of a Temporary Stop Notice and / or the service of an Enforcement Notice.

## **Update on Planning Enforcement Issues**

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

#### **Deal Field Shaw, Charing**

26. This landfill site requiring restoration is the subject of an exempt report to these papers (Item 10); also see summaries under number 1 of Schedules / Appendices 1 and 2, respectively).

#### **Four Gun Field, Otterham Quay Lane, Upchurch**

27. I would direct Members to Schedule 1 (12) of these papers for a summary update. The Enforcement Notice served on alleged unauthorised waste management activities at this site is the subject of a current Public Inquiry, adjourned until 2 March 2009. No discussion can therefore take place on any aspects of the case. Any point made or comment passed would potentially become new material evidence at the re-convened hearing.

28. I should inform Members, that aside from this Inquiry procedure, the appellants legal representative has sought a ruling from the Information Commissioner on whether the County Council was right (under a request for information) to deny him access to Exempt reports concerning the case. I shall keep Members informed of this legal challenge to the very basis upon which we conduct our business at this Committee.

### **Other cases of interest and those requested by Members**

29. I would further direct Members to Schedule 1 (2) of these papers concerning the support being sought for the contingency service of an Enforcement Notice at Church Lane, Sellindge and Schedule 1 (4) for a summary update on the Monk Lake case (formerly referred to 'Riverfield Fish Farm'), at Staplehurst, Maidstone.

### **Monitoring**

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

30. In addition to our general visits to sites as a result of planning application work, we also do routine visits specifically to formally monitor sites. Since the last Regulation Committee in September, we have made a further 12 chargeable monitoring visits to mineral and waste sites and 10 non chargeable visits to sites not falling within this regime.

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

31. 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 reoccur. It is intended that cases in this category should continue to be removed from the reporting lists (now the appended schedules 1 to 3, to this and subsequent reports) on the understanding that officers will keep them under review. Any recurrence will be reported back under the *'new cases, especially those requiring Member endorsement for*

## Update on Planning Enforcement Issues

*action*' section at the front of subsequent reports to Committee.

32. The running list of sites which fall within this category are being incorporated into an appropriate database, to be used as a monitoring checklist.

### Working protocols with the Environment Agency

33. The Committee has previously endorsed the development of better working protocols between the County Council and the Environment Agency with regard to its enforcement work. Close dialogue has ensued on the basis of bi-monthly meetings to discuss cases and agree enforcement strategies.
34. A joint event recently organised by the EA and opened up to Kent's District Councils, explored the terms of the new Environmental Permitting regime (formerly Waste Management Site Licensing). The significant feature for this Authority is that the prior need for planning permission is built into the EA's new procedures, at least in the case of more substantial waste activities. This should go some way towards inhibiting unauthorised development in its early stages, offering more protection to the environment and local amenity.

### Conclusion

35. Timely and decisive intervention since May 2008 has allowed further successes and measurable progress on a number of enforcement cases. The knowledge that the County Council will not hesitate from taking any necessary formal action and our appeal successes is a strong negotiating tool. It often helps to achieve results in its own right. As a guiding principle, resources are targeted to those activities that have the potential to create the greatest environmental damage in accordance with the adopted Enforcement Protocol. However, actions once taken invariably result in costly and time-consuming appeals and public inquiries. Those involve as at present, extensive work and a diversion of resources.

### Recommendation

36. I RECOMMEND that MEMBERS:

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 15 to 29 above and those contained within Schedules 1 to 3 of Appendices 1 to 3.

Case Officers: Robin Gregory / Alan Goodison

01622 221067 / 1065

Background Documents: see heading