

Report by Head of Planning Applications Group to the Regulation Committee on 28th January 2014.

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 3rd September 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 established 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. The report continues to give details of general site monitoring and progress on chargeable monitoring for minerals development.

Meeting Enforcement Objectives

Surge in Cases

5. Since the last Meeting there has been a marked surge in serious planning enforcement cases. The number and severity are reflected in the number and content of the confidential reports that have been required this time. I have pre-briefed the Chairman on this new business pressure.
6. The reasons behind this sudden influx in cases are difficult to adduce but it appears that it reflects (in an allegedly contravening way) the growing upturn in the economy. Any

new development would usually involve the generation of surplus spoil. A percentage of that may in turn be dispensed of in an unauthorised way through the contract chain (so avoiding landfill tax and general regulation). It is the increase in the number of occasions that this seems to be occurring and the quantities involved, which appears to indirectly highlight the economic resurgence.

Update to Enforcement Protocol

7. These new cases have been attended to as a matter of urgency and in line with our Enforcement Protocol commitments. That in turn has required updating to reflect the new legislative planning framework introduced by the Coalition Government. The opportunity has also been taken to update all contact details, so that the document is as useable and relevant as it can be. No other substantive changes have been made. A copy of the 2014 document is contained at **Appendix 4**. On Members endorsement, the document will be able to replace the current version on the County Council's website.

Co-ordinating and Advisory Role

8. 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.
9. The Larkey Wood, Chartham case (Schedule 1, No.1); Nt Rix Scaffolding Ltd, Dover (Schedule 1, No.4) and Foxdene, Stockbury (Schedule 1, No.6) are representative examples. Jurisdiction is often an issue given the division of planning responsibilities between County and District Planning Authorities and the complexity of some of the alleged unauthorised activities. A guiding principle however, as reflected on page 1 of our Enforcement Protocol with the districts (as made available to Members at this Meeting) and also later case law, is that mixed-use sites fall to the respective District Council to deal with; even those involving some waste element, which of itself would usually be for the County Council to handle. In these sorts of cases we freely offer technical and procedural advice to our district colleagues in order to help them with this work and in the overall interests of the public, local amenity and the environment.

Pooling of Resources and Expertise

10. This pooling of resources and expertise is becoming a very necessary feature of modern planning and related enforcement. For one thing, it helps to compensate for substantial staff reductions in the various organisations. The Environment Agency for instance is currently facing a national reduction of 1700 staff. The recent debate around the potential impact of this upon flood protection work, could lead as a consequence, to further contraction of the EA's waste enforcement capability. These proposed changes will need to be carefully watched.
11. Internally, new and pragmatic links have also been forged between the Planning Enforcement team (upholding the Internal Enforcement Protocol) and the KCC Gypsy & Travellers Unit. Waste management enforcement at Greenbridge Park, Canterbury

(Schedule 3, No. 1) and Barnfield Park, Sevenoaks (Schedule 3, No. 2) give details of the approach taken.

Case focus

12. Since the last Meeting resources have been focussed on 5 sites where formal enforcement action has been taken, 5 cases where investigations are underway and a further 7 cases that have been satisfactorily progressed.

Achievements / Successes [including measurable progress on sites]

13. Red Lion Wharf, Northfleet (Schedule 2, No. 4), is now restored. All stockpiles of waste wood have been shredded and removed off-site for beneficial use elsewhere within the wider company structure of the operators. The site is now available for re-development.
14. Long awaited and retrospective planning applications have also been received from Lance Box Ltd (Schedule 1, No. 3); Units 6,13 & 14 Detling Airfield (Schedule 1, No. 5) and (with qualifications) from Sheerness Recycling Ltd, Sheerness (Schedule 1, No. 9).
15. Further positives are that Cube Metal Recycling (Schedule 1, No. 8) and CLC Construction Ltd, Westedene (Schedule 2, No. 7) have been granted planning permission, offering enforceable conditions on their respective site activities. Planning permission by Sevenoaks DC for a 9 hole golf course extension, incorporating the Brasted Sandpits restoration requirements (Schedule 2, No. 5) is also welcome.

New Cases, especially those requiring action / Member support

16. Seven new County Matter cases have arisen since the last Meeting. They include: Nt Rix Scaffolding Ltd, Dover (Schedule 1, No.4); Orchard Place, Maidstone (Schedule 1, No.7); Wyecycle, Hinxhill (Schedule 2, No.1); FM Conway Ltd (Schedule 2, No.3); Sheerness Recycling, Tonbridge (Schedule 2, No.6); Greenbridge Park Gypsy & Travellers site, Canterbury (Schedule 3, No.1) and Barnfield Park, Gypsy & Travellers site, Sevenoaks (Schedule 3, No.2).

Significant on-going cases

17. The most significant cases at the moment are the Larkey Wood, Chartham case (Schedule 1, No.1 and Exempt Item 10) and related site at Thirwell Farm, Hernehill (Schedule 1, No.11 and Exempt Item 11). These 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 above for an expanded briefing on both cases.
18. Given that the repossession of both sites is a distinct possibility and we may soon be negotiating with new landowners, it is timely for the County Council to reassert in the case of Larkey Wood, the full restoration requirements of our Enforcement Notice on the land. Similarly, full restoration of Thirwell Farm is again required. These objectives are

written into the respective Schedule entries for Members endorsement.

Other cases / issues of interest and requests from Members

19. A site which I should like to bring to Members attention is Foxdene, Rumstead Lane, Stockbury (Schedule 1, No.6). This alleged unauthorised activity concerns a mixed skip hire, storage and waste transfer use within the countryside. The operators exercised their right in early 2012 to apply to Maidstone BC (MBC) for lawful use status. They also sought the retention of their revised access arrangements and security bund. The applications have still to be determined. Surprisingly, rather than proceed to a decision on either application after nearly two years, MBC have made very recent attempts to pass the lawful use application to the County Council for us to process and by implication also to resolve the related enforcement case. No mention has been made of the linked access / bunding application.
20. I have researched the case and met with the relevant MBC officers. My conclusion is that the case is properly a district matter, should be retained by them and determined expeditiously. The case involves a mixed-use activity, which Kent Districts have previously agreed under our Enforcement protocol to deal with. That remains the position and indeed has been reinforced by subsequent case law. On this basis, the County Council is not the determining authority (for either application) and is therefore unable to accede to the Borough Council's request.
21. I intend to reply to MBC, stating that they should exercise their statutory duty and determine this mixed-use case. I shall also make it clear that the County Council is unable to substitute for them.
22. Notwithstanding the apparent misunderstanding over jurisdiction by MBC, I have still analysed the case and provided quite extensive and specialist advice to the relevant officers. That has included a range of enforcement options, drawing upon years of experience in similar cases across the County and the advice of specialist Counsel.
23. The Schedule entry (see 19 above) seeks Members support for this approach, including a firm stance on jurisdiction.

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 them. Since the last Regulation Committee, we have made a further 27 chargeable monitoring visits to mineral and waste sites, yielding a related income to the Group.

Resolved or mainly resolved cases requiring monitoring

25. 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.
26. 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. Among the examples this time are those listed within the Achievements / Success section between paragraphs 13 to 15 of this report.

Conclusion

27. The notable feature of this particular report is the marked surge in serious planning enforcement cases since the last Meeting. These are principally covered within a series of confidential items elsewhere within these papers. The challenge has been met with sustained and urgent work. Of further note is the County Council's Planning Enforcement Protocol, which in its latest version reflects up-to-date contact details and any related policy changes. Within the Protocol is guidance covering issues of jurisdiction between the County Council and the Kent Districts. Supporting this position is a commitment by our Planning Enforcement Team, to advise and assist our counterparts in the districts and also in the Environment Agency, on cases where our interests intersect. Pooling such expertise and resources is becoming increasingly important given the contraction of many of the authorities and agencies that we interact with.

Recommendation

28. I RECOMMEND that MEMBERS NOTE & ENDORSE:

- (i) the actions taken or contemplated on the respective cases set out in paragraphs 5 to 26 above and those contained within Schedules / Appendices 1, 2 and 3.
- (ii) the minor revisions to the County Council's Planning Enforcement Protocol, pursuant to paragraph 7 of this report.

Case Officer: Robin Gregory

01622 221067

Background Documents: see heading

