

Update on Planning Enforcement Issues

Report by Head of Planning Applications Group to the Regulation Committee on 19th May 2009

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 27th January 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 3 cases have been satisfactorily progressed or resolved. Amongst monitoring visits on permitted sites there have been 13 chargeable visits.

Update on Planning Enforcement Issues

6. Significant time has been absorbed in servicing a recent public inquiry, into an action taken at Four Gun Field, Upchurch in Swale. The case has proved exceptionally demanding and has required the active and on-going involvement of Counsel. The appeal has been dismissed but the appellants have sought leave to appeal the Planning Inspector's decision in the High Court. The demands of the case continue unabated. Notwithstanding this significant diversion of resources, some positive outcomes have been achieved on other cases.

Achievements / Successes [including measurable progress on sites]

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

7. 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.5). The waste was in part surplus from a redevelopment of the landowner's local business. The remainder was from general sources.
8. 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 carried out, without the need for protracted formal action. I now propose to move this site to my site monitoring list.

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

9. 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. 14). The waste materials have been imported on to the site by a local skip hire business, causing physical changes to the site.
10. There are two separate private landowners involved. I have previously 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 were allied to those of the Environment Agency and Shepway District Council, whom have both served similar Notices on one of the landowners.
11. I have since met with the site operator and prospective new landowner on site. A remedial plan was agreed concerning the materials on site. I am pleased to announce that the work has been carried out satisfactorily and ahead of schedule. The site is now in a position to change hands for a more beneficial use. Potential future uses of the site will need to be discussed with Shepway District Council. There would be an opportunity of incorporating any minor residual breaches on the land into any later permitted redevelopment scheme.

Update on Planning Enforcement Issues

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. An acceptable outcome has been achieved and I again propose to move this site to my monitoring list.

Four Gun Field, Otterham Quay Lane, Upchurch

13. I would direct Members to Schedule 1 (16) of these papers for a summary update and the confidential report as Item 8.
14. Given the on-going nature of the case, I have to be circumspect in my public briefings to Members. I am pleased to relay however, that the 24 April 2009 edition of 'Planning' (the official journal of the Royal Town Planning Institute) carried a useful and independent summary of the case, offering good interim publicity. I reproduce the article here for Members information:

"Waste claim proven in enforcement case"

"An enforcement notice alleging that a waste management centre has been established at former brickworks in Kent has been upheld after an inspector agreed that the activities do not fall within the lawful use of the site.

The site had a long history of uses associated with brick making. In 1999, a lawful development certificate was issued confirming that the land had a lawful use as a brickworks under class B2 of the Use Classes Order 1987. The appellants then occupied the site with the intention of manufacturing secondary aggregates. The council issued a contravention notice alleging that wastes were being imported for processing, leading ultimately to the serving of an enforcement notice.

The appellants accepted that broken concrete was brought onto the site for crushing and feeding into a mobile power screen to provide saleable products. However, they maintained that when the materials left the site they were no longer wastes. They referred to various definitions, including those adopted by the Waste and Resources Action Programme. On this basis, they claimed that the activities conducted at the site remained within class B2 and no material change of use had occurred.

The inspector reviewed precedents including the European Court of Justice ruling in *Vesso & Zanetti* [1990], where it was held that wastes include substances discarded by their owners even if the product is capable of "economic reutilisation". Although the appellants claimed that secondary aggregates were produced to a recognised specification, he found that a high proportion of the materials leaving the site did not involve fully recovered wastes.

On that basis, he held that the activities did not fall solely in the B2 use class. The

Update on Planning Enforcement Issues

importation and screening of soils reinforced his view that the site was used for waste processing. He also decided that the construction of a hardstanding and fencing and the siting of equipment including a weighbridge involved operational development that required planning permission. These elements had enabled the change of use and it was appropriate for them to be removed as part of the enforcement action, he determined.”

15. The Enforcement Notice against the alleged unauthorised waste management activities at the site has therefore been upheld following a recent Public Inquiry. I am pleased to report that the appeal was dismissed on all grounds (apart from a very minor technical point on vehicle routeing). This represents a very significant win at appeal. Nevertheless, as mentioned under paragraph 6 above, the operator / landowner has exercised his right to seek leave to appeal the Planning Inspector’s decision in the High Court.
16. Should leave to appeal be granted, a High Court hearing would be scheduled. The Secretary of State for the Department of Communities and Local Government (DCLG) would be the defendants and the County Council an interested party. For the case to succeed, the prospective appellants would have to demonstrate on strict legal grounds that the Inspector had *‘misguided’* himself in the conclusions that he had reached and the way in which he arrived at them. Should a High Court Judge rule that the appeal decision is fatally flawed; the Public Inquiry would have to be re-re-run under a different Planning Inspector. I shall advise Members on the latest procedural position, at the Meeting.
17. Aside from matters in the High Court, the appellants legal representative has sought a ruling from the Information Commissioner on whether the County Council was right (under a Freedom of Information Request) to deny him access to Exempt Regulation Committee reports concerning the case. I shall also inform Members at the Meeting on any development concerning this challenge.

Other achievements

18. I am pleased to announce that Alan Goodison, Kent County Council’s Planning Contravention Officer, has been awarded Technical Membership of the Royal Town Planning Institute. Alan has successfully completed the Planning Enforcement certificated programme at Cambridge University’s Madingley Hall. His certificate has contributed towards eventual Technical Membership of the Royal Town Planning Institute. His qualification was immediately put to use in lending weight to the evidence he was able to give at the adjourned public inquiry into the Four Gun Field, appeal case.

New Cases, especially those requiring action/ Member support

19. The following new alleged waste-related cases have been reported:
 - (a) Hillborough Business Park, Herne Bay (Schedule 1, no. 3)
 - (b) Canterbury Business Park, Hersden (Schedule 1, no. 4)

Update on Planning Enforcement Issues

- (c) Timberlakes, Port Richborough, Sandwich (Schedule 1, no. 6)
- (d) Land off Redland Glade, Bredhurst (Schedule 1, no. 9)
- (e) Stonelees Golf Club, Ramsgate (Schedule 1, no. 20)
- (f) Ford Lane, Trottiscliffe (Schedule 1, no. 21)

20. The above sites are at an initial stage of investigation. A summary of each can be found in Schedule 1 (Appendix 1) to this Report, as indicated. I intend to report on each case in more detail at the next Meeting.

Significant on-going cases

Deal Field Shaw, Charing

21. This landfill site requiring restoration is the subject of an exempt report to these papers (Item 9); also see summaries under number 1 of Schedules / Appendices 1 and 2, respectively).

Other cases of interest and those requested by Members

22. I would further direct Members to (Schedule 2, no.4) of these papers concerning the support being sought for enforcement action at Aylesford Metals, Aylesford.

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

23. Sevenoaks District Council has 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.12). The alleged unauthorised activity has attracted complaint from local residents.

24. The site has been inspected several times both independently and with Sevenoaks District Council. The site is also known to the Environment Agency.

25. The landowners were told to cease the alleged activity. A Planning Contravention Notice elicited some further information on the case. It is evident that a mix of planning uses is taking place, which would indicate that the case at this stage is best handled as a District Council matter. That is particularly appropriate given the long planning history on the site. My current stance is to assist the District Council in monitoring the site. I have adopted this approach on a successful enforcement case in Ashford and in relation to the current site at Redwood Glade, Bredhurst (see Schedule 1, no. 9).

26. Should a material and primary waste use arise at Park House Farm, I would revise my position. With that in mind, I seek Members further support for the issuing of a Temporary Stop Notice and / or the service of an Enforcement Notice, should it prove

Update on Planning Enforcement Issues

expedient to do so.

Monitoring

Monitoring of permitted sites and update on chargeable monitoring

27. In addition to our general visits to sites as a result of planning application work, we also undertake routine visits specifically to formally monitor sites. Since the last Regulation Committee in January and up until 30 April, we have made a further 13 chargeable monitoring visits to mineral and waste sites and 9 non chargeable visits to sites not falling within the chargeable monitoring regime. That is 22 monitoring visits overall.

Resolved or mainly resolved cases requiring monitoring

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

29. The running list of sites which fall within this category have now been incorporated into a spreadsheet database and priorities for enforcement monitoring are being identified.

Conclusion

30. A significant amount of time since the January Meeting has unavoidably been given to the public inquiry case at Upchurch. That in turn has now moved to the High Court arena and will continue to divert resources. Nevertheless, further successes and measurable progress on other cases has been achieved. I intend to restore the balance still further with an enforcement monitoring drive over the next few months. I shall report on progress at the next Meeting.

Recommendation

31. I RECOMMEND that MEMBERS:

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 5 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