

# Update on Planning Enforcement Issues

Report by Head of Planning Applications Group to the Regulation Committee on 10th September 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 19<sup>th</sup> May 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.
3. The schedules are designed to help focus officer and committee time on those cases requiring the most attention. The accent is on live and active cases along with those resolved between Meetings (see paragraph 15). They exclude cases where other agencies are pursuing a solution. This close targeting of effort is in accordance with the County Council's Enforcement Protocol. A phased approach is taken, with an initial attempt to negotiate an informal settlement. Formal and more costly action is used as a last resort to stop determined contraveners in accordance with Government guidance and enforcement good practice. The priority is always to urgently stop any serious environmental damage or unacceptable level of amenity impacts. Restoration tends to take place over a longer timescale.

## Report Format

4. 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
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. The report continues to give details of site monitoring and progress on chargeable site monitoring arrangements for minerals development.

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## Meeting Enforcement Objectives

6. Planning enforcement is a high profile County Council function. The powers used derive from planning statutes but the type and degree of action taken is discretionary. That is to allow a flexible and proportionate approach to cases. The resources allocated have to be balanced against those directed to other planning services, in turn referenced to national and corporate BVPI targets. There also needs to be a balance between responding at speed to live cases within our Enforcement Protocol commitments and attending to longer-term restoration objectives on existing sites.
7. 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 or the High Court. Resources have been focussed on 4 sites where formal enforcement action has been taken, 4 cases where investigations are underway and a further 12 cases have been satisfactorily progressed or resolved. Amongst monitoring visits on permitted sites there have been 18 chargeable visits.
8. Significant time has been absorbed in relation to the action taken at Four Gun Field, Upchurch in Swale. The appeal against the service of our Enforcement Notice was dismissed but the appellants have been granted leave to appeal the Planning Inspector's decision in the High Court. The demands of the case are ongoing. Notwithstanding this significant diversion of resources, some positive outcomes have been achieved on other cases.

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

### Larkey Wood, Chartham (Member: John Simmons)

9. This case concerns the unlawful deposit of construction spoil and related waste processing activities on a Special Landscape Area section of the scarp slope at Chartham, near Canterbury. A confirmed Enforcement Notice and County Court Injunction require restoration to a standard, which reflects its landscape status. The scarp slope includes land adjacent to the farm itself and the 'upper' and 'lower' fields.
10. Canterbury City Council have also served 2 Enforcement Notices against residential and related buildings on site, together with a Section 215 (site clearance) Notice to support the County's own injunction requiring removal of 'non-agricultural' items from the site. Both Enforcement Notices were upheld on appeal. The S215 Notice was also confirmed in court.
11. Patient litigation in this case and regular monitoring has paid dividends. The land has been progressively restored to agriculture over a number of years. The last and most substantial of the 3 original fields has been cleared of surplus imported material, profiled and planted with kale. This represents an acceptable level of compliance with the County Council's Enforcement Notice.
12. A self-generating motive for the land to remain in agriculture has been established with the owners. I am confident that given this and the existing controls remaining in place

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that no further waste-related contraventions should occur.

13. The case has now been formally passed to Canterbury City Council as an agricultural district matter. Any residual enforcement matters would now fall to them. In view of this successful restoration outcome, I shall now transfer the case to our monitoring database.

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

14. I give below a list of new alleged waste-related cases. A summary of each can be found in Schedule 1 (Appendix 1) to this Report, as indicated.

- (a) Woodlands Park, Tenterden (Schedule 1, No. 3)
- (b) Howfield Lane, Howfield (Schedule 1, No. 4)
- (c) Seasalter Lane, Seasalter (Schedule 1, No. 7)
- (d) Chippies Way, Ash Road, Sandwich (Schedule 1, No. 10)
- (e) Bleriot Memorial Car Park, Upper Road, Dover (Schedule 1, No. 11)
- (f) Gabriels Farm, Edenbridge (Schedule 1, No. 14)
- (g) East Kent International Freight Terminal, Dargate (Schedule 1, No. 18)

15. Although new to the Group, each case has been accounted for, transferred to other regulators or resolved within the terms of paragraph 3 of this report.

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

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

16. This landfill site requiring restoration is the subject of an exempt report to these papers (Item 7); also see summaries under number 1 of Schedules / Appendices 1 and 2, respectively).

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

#### **Aylesford Metals Co. Ltd, Millhall, Aylesford (Member: Peter Homewood)**

17. This case was reported to us by Tonbridge & Malling Borough Council (TMBC) and local residents. It involves a site with a 1971 Planning Permission for use as a Scrap yard. A confirmed 1972 County Council Enforcement Notice also applies (see Schedule 2, No. 2). The site also benefits from a planning permission granted by TMBC in 2005 to develop the yard for housing.

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18. The main allegations concern working outside permitted hours, which involves the traffic movements of large goods vehicles exiting the site in the early morning and disturbing the rest of the local residents. There are further concerns that the over-stacking of the stockpiles of scrap metals stored on site is also impinging on local residential amenity. The permitted stacking level is limited to a maximum height of six feet (1.8m). It appears that the current business activities have outgrown the site's permitted use.
19. Meetings have been held with local residents, the site operator and his agent. The operator is actively seeking a new site in the local area to relocate his business in favour of housing on the existing site. That offers an eventual solution to the concerns of the local residents and the required effort is being injected from both sides.
20. As an interim measure, a site is being sought within which to park the scrap yard vehicle fleet. That would give some traffic relief to the local area and offer more space on the existing site to lower the levels of the stockpiles of scrap metal.
21. Notwithstanding a potential planning solution to the overall amenity impacts from the site, there remains a current level of breaching. After a slow start the operator has shown intent to comply but needs to demonstrate a more tangible commitment. I am currently pressing for a meaningful reduction in scrap heights. Should I encounter any unreasonable level of resistance and acting on Counsel's advice I should seek a High Court Mandatory Injunction to enforce the required compliance. I would seek Member's support on a contingency basis for such action, so that I may convey that to the operator and add weight to our enforcement position.

### **Monitoring**

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

22. 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, we have made a further 18 chargeable monitoring visits to mineral and waste sites and 9 non-chargeable visits to sites not falling within the chargeable monitoring regime.

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

23. 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 (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.
24. The running list of sites which fall within this category have been incorporated into a spreadsheet database and priorities for enforcement monitoring are being identified.

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### **Conclusion**

25. A significant amount of time since the May Meeting has unavoidably been given over to the High Court case at Upchurch that will continue to divert resources. Nevertheless, further successes and measurable progress on other cases has been achieved. The balance has been further restored with an enforcement monitoring drive over the last few months.

### **Recommendation**

26. I RECOMMEND that MEMBERS:

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 9 to 21 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

**Active Enforcement Cases**

**Schedule 1: Contraventions on (part) unauthorised sites**

	<u>Site &amp; Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
1	<p><b>Ashford</b></p> <p>DC3/AS/03/COMP/0090 Shaw Grange, Charing (Member: Richard King)</p>	<p>Multiple breaching of landfill permissions Enforcement Notices and High Court Injunctions</p>	<p>To prevent further breaching and secure restoration of the site.</p>	<p>The site has now been acquired as a means of directly addressing the enforcement issues on site.</p>	<p>This landfill site in need of restoration is the subject of an exempt report to these papers (see Item 7).</p>

2	<p>DC3/AS/08/COMP/0006 Church Lane, Sellindge</p> <p>(Member: Andrew Wickham)</p>	<p>Alleged unauthorised composting activity at a rural location, involving the construction of a new access and hardsurface, receipt of two main streams of waste (sewage sludge and wood chippings), and their mixing and informal composting, before being deposited on adjoining land.</p>	<p>To investigate and see if the activity falls within the County Council's waste related remit.</p>	<p>The activity has ceased. A retrospective planning application for a composting use was withdrawn.</p>	<p>Removal of the access, track and turning area are required within existing workloads. Service of an Enforcement Notice if required has already been endorsed. The EA and Ashford BC (EHO) have their own pollution and amenity remits to use.</p>
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	<u>Site &amp; Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
3	DC3/AS/09/COMP/0009 Woodlands Park, Tenterden  (Member: Mike Hill OBE)	Complaint by Ashford BC of waste depositing on adjacent land to a residential caravan / mobile home park.	To investigate and see if the activity falls within the County Council's waste related remit.	No evidence of waste processing activity was evident but the waste stockpiles have been removed by negotiation in any event.	Ashford BC has been notified and the site will now be added to our monitoring sheet.
4	DC3/AS/09/COMP/0012 Howfield Lane, Howfield  (Member: John Simmonds)	An anonymous call reported waste materials being tipped on a field adjacent to Howfield Lane.	To investigate and see if the activity falls within the County Council's waste related remit	Whilst small stockpiles of chalk have been deposited in a field adjacent a dwelling in Howfield Lane there was no evidence of any waste processing.	Canterbury City Council are pursuing the development in apparent connection with an adjoining small encampment.



	<b>Canterbury</b>				
5	DC3/CA/09/COMP/0006 Hillborough Business Park, Herne Bay  (Member: David Hirst)	Complaint of alleged unauthorised waste / skip activities.	To investigate and see if the activity falls within the County Council's waste related remit.	A minor waste transfer station was found involving the sorting and transfer of waste materials between skips and containers.	The EA have taken the lead and compliance has been achieved through negotiated settlement. The waste transfer station activity has ceased. KCC has agreed to support the EA in any further required action.

	<b>Site &amp; Case Reference</b>	<b>Alleged Breach</b>	<b>Objectives / Actions</b>	<b>Progress</b>	<b>Notes / Remarks</b>
6	DC3/CA/09/COMP/0007 Canterbury Business Park, Hersden  (Member: Alan Marsh)	Reported previously by Canterbury City Council of alleged unauthorised tipping of waste building materials.	To investigate and see if the activity falls within the County Council's waste related remit.	The material was waste tipped directly outside a building already controlled by the City Council.	The case falls within the remit of Canterbury City Council and has been returned accordingly.
7	DC3/CA/09/COMP/0013 Seasalter Lane, Seasalter  (Member: Mike Harrison / Mark Dance)	Canterbury City Council reported the depositing of waste materials taking place on land off Seasalter Lane	To investigate and see if the activity falls within the County Council's waste related remit	It was established that waste materials were being deposited to raise the land between the large concrete pillars supporting the A299 Flyover.	Such unauthorised activity may affect the integrity and safety of the flyover. Full details have been passed to KCC Highways for enforced and supervised removal.
8	DC3/CA/03/COMP/0089 Larkey Wood, Chartham  (Member: John Simmonds)	Multiple breaching of landfill permissions Enforcement Notices and County Court Injunctions	To prevent further breaching and secure restoration of the site.	The site has been satisfactorily restored and terms of the Enforcement Notices complied with.	This site is reported in more detail in paragraphs 9 – 13 of the Main Report.

	<b><u>Dover</u></b>				
9	DC3/DO/09/COMP/0003 Timberlakes, Port Richborough, Ramsgate Road, Sandwich  (Member: Leyland Ridings)	Alleged unauthorised use for the storage and baling of paper and plastic waste materials. Dover DC report that this site generates regular complaints of untidiness.	To investigate and see if the activity falls within the County Council's waste related remit	This case was passed to KCC by Dover DC as the operator had submitted a planning application to process waste at the site, since withdrawn	The use in my view is a matter for Dover DC. Any untidiness could be addressed through a S215 Site Clearance Notice which is available to the district council.

	<b>Site &amp; Case Reference</b>	<b>Alleged Breach</b>	<b>Objectives / Actions</b>	<b>Progress</b>	<b>Notes / Remarks</b>
10	DC3/DO/09/COMP/0014 Chippies Way, Sandwich  (Member: Leyland Ridings)	Complaint from local resident of tipping on land adjacent to the (KHS) Ringways Depot off Ash Road, Sandwich.	To investigate and see if the activity falls within the County Council's waste related remit.	Small stockpiles of various waste materials were being temporarily stored on KCC land adjacent to the depot.	The materials were deposited in error and were promptly removed and the land restored.
11	DC3/DO/COMP/0015 Bleriot Memorial Car Park, Upper Road, Dover  (Member: Nigel Collor / Bryan Cope)	Report by Dover DC of unauthorised landraising.	To investigate and see if the activity falls within the County Council's waste related remit.	Land adjoining a car park for tourists has been contoured to match.	Dover DC is the appropriate authority to handle the matter.
12	<b>Maidstone</b>  DC3/MA/05/COMP/0010 Monk Lake (formerly known as Riverfield Fish Farm), Staplehurst  (Member: Mrs Paulina Stockell)	Alleged breaches of planning permission granted by Maidstone BC for a fish farm. There is concern at the quantities of waste materials entering the site	Maidstone BC has primary enforcement responsibility. It is being advised by specialist retained Counsel under the recommendation of County Officers.	The EA has issued an Exemption from Site Licensing. Maidstone BC however has served an Enforcement Notice to arrest the use and secure restoration. That has been appealed.	KCC holds no immediate remit on available evidence but is tracking events. A Public Inquiry was convened in early July then immediately adjourned until further notice.

	<u>Site &amp; Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
13	<p align="center"><b>Sevenoaks</b></p> <p>DC3/SE/09/COMP/0001 Park House Farm, Bower Lane, Eynsford</p> <p>(Member: Roger Gough)</p>	<p>Unauthorised waste transfer station including mixed waste materials.</p>	<p>To investigate and see if the activity falls within the County Council's waste related remit</p>	<p>The landowner has been instructed by this Authority and by the EA to cease any unauthorised waste-related activities. A District Council mixed use activity seems to be occurring.</p>	<p>A meeting was recently held between residents, Members, Sevenoaks DC and KCC to address local concerns. Sevenoaks DC are to take the lead with the support of the EA and KCC as required.</p>
14	<p>DC3/SE/09/COMP/0010 Gabriels Farm, Edenbridge</p> <p>(Member: Peter Lake)</p>	<p>Sevenoaks DC reported unidentified waste planning breaches occurring during the construction of a new road in Surrey adjacent to its border with Kent.</p>	<p>To investigate and see if the activity falls within the County Council's waste related remit</p>	<p>A full area search has proved negative.</p>	<p>Sevenoaks DC have been asked to identify the location of any further complaints more precisely.</p>

15	<p><b>Swale</b></p> <p>DC3/SW/05/COMP/0016 Woodgers Wharf, Upchurch</p> <p>(Member: Keith Ferrin)</p>	<p>Unauthorised use of marine wharf for screening and crushing of imported spoil and alleged related waste management breaches</p>	<p>To arrest the alleged breaches and return the site to its lawful wharf-related use</p>	<p>An Enforcement Notice has been served and upheld at appeal. No further importation and has occurred on site.</p>	<p>Restoration is required under the timescales set within the Enforcement Notice. There is a further report in the green papers (Item 9).</p>
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	<u>Site &amp; Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
16	DC3/SW/04/COMP/0059 Four Gun Field, Upchurch  (Member: Keith Ferrin)	Alleged and sporadic waste-activities on a former brickfield related site with an associated lawful use	To ensure that no waste-related use is carried out on site, particularly given its sensitivity close to housing.	An Enforcement Notice was served, appealed against, heard at Inquiry and upheld. However, the landowner / operator have now sought and been granted leave to appeal the Inspector's decision in the High Court.	Given the potential High Court hearing and complaint by the appellants to the Information Commissioner, I am unable to comment any further publically on the case. To assist, I have prepared a confidential report to Committee as Item 8. Continuing support is sought for any High Court action deemed necessary to restrain the use.
17	DC3/SW/04/COMP/0049 Raspberry Hill Park, Farm, Iwade  (Members: Mike Whiting / Alan Willicombe)	Unauthorised importation, burning and depositing of mixed construction spoil, stationing of mobile homes and haulage distribution use on the waste deposit.	KCC and Swale BC's 3 Enforcement Notices were upheld on Appeal. They require all traces of the unauthorised uses to be removed from the site, within given timescales.	Compliance monitoring with the Enforcement Notice is required. There have been no further breaches on site.	The operators are currently in prison but the landowners have been pursued for restoration. However, following the convictions of the site operators a Court Restraining Order has been served which effectively 'freezes' the situation on site. Further advice from Counsel is being sought to help break the deadlock.

18	DC3/SW/09/COMP/0011 East Kent International Freight Terminal, Dargate  (Member: Andrew Bowles)	Report of an unauthorised waste transfer station operating within this site.	To investigate and see if the activity falls within the County Council's waste related remit.	It was established that a small area of the site was being used by a local operator as a vehicle park and to temporarily store both loaded and unloaded skips.	Whilst the site remains as a vehicle park the waste- related activity has ceased and been removed to a registered landfill site.
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**Schedule 2: Alleged breaches on Permitted Minerals & Waste Sites**

*Appendix 2*

	<b><u>Site &amp; Case Reference</u></b>	<b><u>Details of Alleged Breach</u></b>	<b><u>Objectives / Actions</u></b>	<b><u>Progress</u></b>	<b><u>Notes / Remarks</u></b>
1	<b>Ashford</b> DC3/AS/03/COMP/0090 Shaw Grange, Charing (Member: Richard King)	Multiple breaching of landfill permissions, Enforcement Notices and High Court Injunctions (q.v. No.1, Schedule 1).	To prevent further breaching and secure restoration of the site.	The site has now been acquired as a means of directly addressing the enforcement issues on site.	This landfill site in need of restoration is the subject of an exempt report to these papers (see Item 7)

2	<p style="text-align: center;"><b>Tonbridge &amp; Malling</b></p> <p>DC3/TM/08/COMP/0013 Aylesford Metals Co. Ltd, Mill Hall, Aylesford</p> <p>(Member: Peter Homewood)</p>	<p>Complaints from local residents of out of hours working and amenity impacts from the over-stacking of scrap. The current economic downturn appears to have contributed to the over-stacking on site and related alleged breaches</p>	<p>To ensure compliance with the base planning permission and related Enforcement Notice.</p>	<p>The site activity has intensified over time requires to be reined back.</p>	<p>This site is reported in more detail in paragraphs 17 - 21 in the Main Report.</p> <p>Support for the service of a High Court Injunction is sought from Members should the operator fail to resolve the alleged breaches through negotiation.</p>
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**Schedule 3: Alleged breaches on Permitted County Council Developments**

***Appendix 3***

	<b><u>Site &amp; Case Reference</u></b>	<b><u>Alleged Breach</u></b>	<b><u>Objectives / Actions</u></b>	<b><u>Progress</u></b>	<b><u>Notes / Remarks</u></b>
1	<b>Swale</b> SW/02/221 Preston Depot, Canterbury Road, Faversham  (Member: T.Gates)	Extension of site for waste aggregate recycling outside of the original permitted area	To regularise the position.	The content of a retrospective planning application to address (amongst other matters) the identified breach has been negotiated with KCC Highways.	Planning permission has now been granted to regularise the use.