

Update on Planning Enforcement Issues

Item 6

Report by Head of Planning Applications Group to the Regulation Committee on 26th July 2016.

Summary: Update for Members on planning enforcement matters.

Recommendation: To endorse the actions taken or contemplated on respective cases.

Unrestricted

Introduction

1. This report provides an update on planning enforcement and monitoring work carried out by the Planning Applications Group since the main 24th January and 15th February 2017 specially convened Regulation Committee Meetings.
2. As part of the reporting format, alleged unauthorised sites are considered as exempt business. This helps to protect the content of any planning enforcement strategies being followed.
3. This report summarises alleged unauthorised activity and is supported by a schedule which is exempt. However, a list of the cases covered in the schedule is given in paragraph 6 of this report.

Report Format

4. The report otherwise follows an established format, equipping Members with the essential facts of a series of cases, varying in their degree of complexity and challenge.
5. The report continues to give details of general site monitoring and progress on statutory chargeable monitoring for minerals development.
6. The list of cases covered under the schedule, attached to Item 9 (exempt report) of these papers includes:
 - **Ashford Waste Water Treatment Works**, Canterbury Road, Bybrook, Ashford
 - **Larkey Wood**, Crockinghill Lane, Chartham
 - **Hoath Primary School**, School Lane, Hoath
 - **Dartford Technology College**, Heath Lane, Dartford
 - **Wilmington Academy**, Common Lane, Wilmington, Dartford
 - **Wentworth Primary School**, Wentworth Drive, Dartford
 - **Land adjoining Long Hill playing field**, Romans Road, Dover.
 - **Aylesham Road, bridleway**, Dover

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- **Reserved land to protect highway widening corridor**, Downs Road, Studdal
- **Longton Wood**, Stockbury Valley
- **Water Lane / Moat Road**, Headcorn
- **Land at Crockenhill**, Sevenoaks
- **‘Pit Stop Café’ site**, near Lychgate Services, Dargate
- **Thirwell Farm**, Drove Lane Hernhill
- **Land at Sites A and C**, Oare Creek, Faversham
- **Willow Farm Equestrian Centre**, Hanslett Lane, Faversham
- **Land adjoining, White Leaf Riding Stables**, Teynham
- **Land adjoining Newington Industrial Estate**, off the A2 primary route between Rainham to the west and Sittingbourne to the west.
- **Spratling Court Farm**, Spratling Street, Manston
- **Blaise Farm Quarry, Offham, Kings Hill**, West Malling

Meeting Enforcement Objectives

Overview

7. For the benefit of new Committee Members, planning enforcement is a high public profile function. It underpins the Development Management service within the Planning Applications Group. Planning enforcement work takes place within a legislative framework and is often constrained by the complexity of cases and jurisdictional issues. There are a range of discrete enforcement powers to use but a great deal of judgement and experience is needed in applying any action successfully. 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 being unable to account for not acting may be challenged through the Local Government Ombudsman.

Enforcement Protocols

8. 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, through established case-law, fall to the respective

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District Council to deal with. This operational requirement is reflected in our main (external) Enforcement Protocol

Enforcement Imperative

9. 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.

Enforcement Approach

10. The more serious and challenging planning contraventions are usually met with formal enforcement action. 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

11. The wider Planning Applications Group is 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. There has to be a 'level playing field'.

Co-ordinating and Advisory Role

12. 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 other regulatory authorities including the police.
13. Given the apparent transition from more single site to criminal network based work, we are seeking to share challenging enforcement cases spanning across the planning field and allied legislation. To reinforce this approach, new enforcement partners are being added in an innovative way, especially from the commercial enforcement sector (e.g. HMRC, Financial Conduct Authority and Trading Standards). This allows tighter scrutiny of contraventions and potentially a wider range of sanctions. These represent additional and supporting avenues of enforcement. All embracing contraventions require an all embracing response.

14. This wider collaboration is also important in fulfilling a duty to co-operate among such bodies and for the County Council to report any commercial or financial irregularities that it may come across. We are connected to NAFN – the National Anti-Fraud Network and are able to use that channel to report any suspicious activity to the relevant authorities. Alleged evasion of landfill tax would be an example and HMRC has recently consulted on the potential for unauthorised waste activities to be subject to prosecution under this heading. This would be highly supportive to the County Council's current planning enforcement efforts.

Enforcement capacity

15. Enforcement capacity derives in large part from the networking of available resources across the public sector. Each partner authority has its own challenges in terms of staffing, funding and skills capacity. This reinforces the need for tight collaboration and efficient targeting of resources, ideally in a shared and intelligence-led way. There are on-going attempts to form smart links between all such interests both within and outside of the County Council.

Achievements / Successes

16. Larkey Wood, Chartham is our notable recent achievement. Restoration is now complete, awaiting a permitted housing development scheme granted by Canterbury City Council. All relevant costs have been absorbed by the private developer.

Monitoring

Monitoring of permitted sites and update on chargeable monitoring

17. In addition to our general visits to sites as a result of planning application work, we also undertake routine visits to sites to formally monitor them under the statutory monitoring charging scheme. Since the last Regulation Committee, we have made a further 24 chargeable monitoring visits to mineral and waste sites, yielding a related income to the Group.

Resolved or mainly resolved cases requiring monitoring

18. 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 reoccur. This accounts for a significant and long-established pattern of high frequency site monitoring. Cases are routinely reviewed to check for compliance and where necessary are reported back to the Committee. In this instance, there are no cases to report back.

Conclusion

19. The County Planning Enforcement Team fields a constant flow of ever more demanding and complex cases. These are increasingly organised and criminal in character. We are advising on some, intervening on others and working within collaborative teams on the remainder. A particular avenue we are trying is to intelligently connect our powers to allied legislation and actions. We are seeking innovative ways to link with financial

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regulatory bodies such as Her Majesty's Revenue and Customs (HMRC) and The Financial Conduct Authority (FCA). Such waste crime (within wider activity circles) demands in our view this more complete and sophisticated approach.

Recommendation

20. I RECOMMEND that MEMBERS NOTE & ENDORSE:

- (i) the actions taken or contemplated in this report.

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Background Documents: see heading.