

Update on Planning Enforcement Issues

Report by Head of Planning Applications Group to the Regulation Committee on 26th January 2010

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 10th September 2009 Regulation Committee.
2. Summary schedules of all current cases have been produced (see Appendices 1 and 2). They cover unauthorised breaches of planning control and those occurring on permitted sites, which on this occasion are waste-related.
3. The emphasis is on live and active cases along with those resolved between Meetings. 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 only as a last resort. The priority is always to urgently stop any environmental damage or unacceptable level of amenity impacts. Restoration is then pursued within the shortest practical timeframe.

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 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. Since the last Meeting efforts have been concentrated mainly on defending formal actions that have previously been taken and have progressed or are likely to progress to planning inquiry stage or the High Court. Resources have been focussed on 4 sites where formal enforcement action has been taken, 2 cases where investigations are underway and a further 3 cases have been satisfactorily progressed. Amongst formal monitoring visits on permitted sites there have been 20 chargeable and 8 non-chargeable visits.
8. Unfortunately, the Enforcement Team Leader has been ill since the last Meeting. He has been largely out of commission for half the reporting period. That has invariably impacted on the work achieved in this area of planning. The standard and quality of work has been preserved. However, the progress on selective cases has been affected. Nevertheless, it is important to stress that general momentum has been maintained thanks to the efforts of the Planning Contraventions Officer and the diligent work of the wider legal enforcement team.
9. Operationally, significant time has been absorbed in relation to the action taken at Four Gun Field, Upchurch in Swale (see Appendix 1, Schedule 1, no. 6). 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 long awaited Hearing date has still to be announced. The demands of the case continue.
10. A major related diversion of time and expertise has been an additional appeal by the operators in relation to the same site. This was directed to the Information Commissioner's Office (ICO) seeking disclosure of privileged legal information and advice, including any within confidential (green) reports to this Committee. Members may be familiar with requests for information under the Freedom of Information Act (2000). However, on this occasion the lesser known Environmental Information Regulations (2004) had been invoked. Access to the information was denied by the County Council but the operators appealed against our decision to the Information Commissioner. After a protracted process and with due credit to the County Solicitor, the Information Commissioner eventually supported our decision not to release the confidential information.
11. Another case since the last meeting which has been particularly time-absorbing has been a lawful use case at Queensdown Road, Thanet. That has required in-depth research into a complex planning history in parallel with planning applications on the same site being determined by Thanet District Council.

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12. Notwithstanding that the Enforcement Team Leader has been indisposed for an extended period and the significant diversion of resources from the above cases; some positive outcomes have nevertheless been achieved on other cases.

Achievements / Successes [including measurable progress on sites]

Support from the Information Commissioner on non-disclosure of information

13. The appeal case outlined in paragraph 10 above, has been an important vindication of the County Council's stance against disclosure of information in the particular set of circumstances presented. It was operationally crucial in enforcement terms to have received the support of the Information Commissioner. Our ability to act flexibly and in the public interest on enforcement matters would otherwise have been severely compromised.

Procurement and Implementation of computerised planning application system

14. Work has been ongoing to secure a new IT system for the planning and enforcement service. Good progress has been made with the intention to have a new operational system from April 2010. The current IT system has no proper functionality for enforcement and I have therefore diverted some enforcement resources to ensure that the new system adequately meets the expectations of a modern enforcement service.

New Cases, especially those requiring action / Member support

15. New alleged waste-related cases, include:
- (a) Blu-3 (UK) Ltd / Construction Haulage Ltd, Unit 10, Detling Airfield, Detling, Maidstone (see Appendix 1 / Schedule 1, No. 4) and confidential report Item 11.
 - (b) 'Rosador', London Road, Wrotham (see Appendix 1 / Schedule 1, No. 8)
16. Each case is under active investigation.

Significant on-going cases

Deal Field Shaw, Charing (Member: Richard King)

17. This landfill site requiring restoration is the subject of an exempt report to these papers (Item 9); also see summary under number 1 of Schedule / Appendix 1.

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

18. This case 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. 10). The site also benefits from an outline planning permission granted by Tonbridge & Malling Borough Council (TMBC) in 2005 to develop the yard for housing.
19. 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 of visual impact from the over-stacking of the stockpiles of scrap metals.
20. 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 a potential solution to the concerns of the local residents and the required effort is being injected from both sides.
21. As an interim measure, a site is being sought within which to park the scrap yard vehicle fleet. Subject to planning permission from the Borough Council 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.
22. I reported to the last Meeting that notwithstanding a potential planning solution to the overall amenity impacts from the site, there remained a level of breaching. I am pleased to report that the operator has made a number of attempts to visibly bring down the stockpile heights to a more acceptable level. Complaints have subsided. I have pressed for further compliance and sought an explanation from the operator as to why that is not happening. He points to occasional breakdowns of the shredding plant on site which has resulted in the incremental build-up of materials. Outlets for the scrap are also volatile at the moment given the current economic difficulties. I am satisfied at this stage that required efforts are being made to keep the stack heights down.
23. Nevertheless, should I encounter any level of resistance I would seek compliance through means of a High Court Injunction. Members' continuing support is sought on a contingency basis for such action. That will continue to focus the mind of the operator on significantly reducing the amenity impact from activities on site.

Other cases of interest and those requested by Members

Land under A299, Seasalter Lane, Seasalter (Member: Mike Harrison / Mark Dance)

24. I reported to the last meeting of waste materials and assorted sundry items being deposited and held on spare land beneath the support pillars of the A299 flyover at Seasalter Lane, Seasalter (see Appendix 1, Schedule 1, no.2). County Highways had been alerted and the case passed to Canterbury City Council and KCC's Environmental Crime Team.
25. In reviewing the case, it was clear that insufficient progress was being made. I therefore

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decided to intervene and co-ordinate a more direct County Council solution. It seemed logical that the land under the flyover would be controlled if not owned by Kent County Council. That proved to be the case. Encroachment onto the land was therefore trespass. I then approached structural engineers in County Highways to see if the integrity of support pillars for the flyover were being placed at risk. The current affect on the pillars was not of concern in structural terms. Nevertheless, in my opinion uncontrolled use of the land, particularly with mobile plant and machinery was both unacceptable and posed a potential risk to the pillars over a longer period of time.

26. The best solution to the problem on site and future protection of the land is in my view to set aside planning enforcement powers (City or County Council) and use our ownership of the land to remove the occupants, require / carry out site clearance and fence and police the land from that point onwards. Responsibility for this solution would appear to naturally reside with KCC Highways and Property Services. With Members' support I intend to place that responsibility with them and monitor progress on the Committee's behalf.

D & D Waste Recycling Ltd, Units 6,12 & 13 Detling Airfield, Detling (Member: Ms J.Whittle)

27. This case has been previously reported to Members. I have brought it forward from our reserve monitoring list in the light of renewed complaints on one hand and the prospect of a planning solution on the other (see Appendix 2, Schedule 2, no.9).
28. A small original waste transfer station on the Detling Industrial Estate, Detling, permitted in 1995 has been expanded without planning permission across two adjoining industrial units. The County Council holds a confirmed Enforcement Notice on two of the resulting three-unit footprint for the activity. Conditions attached to the original planning permission are also available to use to help control the situation.
29. Having threatened enforcement action and prosecution on the latest episode of site breaching, talks turned to a potential planning solution for the site. The operator engaged a planning consultant and a planning application has been submitted to the County Council, linking the three units into one and with a dedicated building enclosing the core of the use.
30. The application is still being processed. On the proviso of no escalation in the level of activity on site, I would seek Members' support for enforcement action being reserved pending the outcome of the current planning application. This accords with Government Guidance on the conduct of enforcement scenarios of this type.

Monitoring

Monitoring of permitted sites and update on chargeable monitoring

31. 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

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Committee, we have made a further 20 chargeable monitoring visits to mineral and waste sites and 8 non-chargeable visits to sites not falling within the chargeable monitoring regime.

Resolved or mainly resolved cases requiring monitoring

32. 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.
33. Cases are periodically removed to make way for others when the situation on site has been stabilised; restoration or acceptable 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. The D& D Waste Recycling case, reported in paragraphs 27 to 30 above, is a case in point.
34. The running list of sites which fall within this category have been incorporated into a spreadsheet database and priorities set for enforcement monitoring.

Conclusion

35. A significant amount of time since the last Meeting has unavoidably been given over to the Four Gun Field case at Upchurch. The demands of the case will continue to divert resources. Nevertheless, further successes and measurable progress on other cases has still been achieved.

Recommendation

36. I RECOMMEND that MEMBERS:

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 6 to 34 above and those contained within Schedules 1 and 2 of Appendices 1 and 2.

Case Officers: Robin Gregory

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Background Documents: see heading