

Report by Head of Planning Applications Group to the Regulation Committee on 21st September 2022.

Summary: Update for Members on planning enforcement matters.

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

Unrestricted

### Introduction

1. This report gives an insight into events, operational matters and recent activities of the County Planning Enforcement service. The period covered, starts from the previous Regulation Committee of 9<sup>th</sup> June 2022, to date.
2. The planning enforcement service continues to work flexibly, principally from home. This appears to be the best all round arrangement at the moment. Time is saved from commuting to a fixed office location and avoiding parking issues. More focus is possible on the work itself, including important research, detecting patterns of apparent contravening activity and in workload planning.
3. KCC planning enforcement welcomes and often initiates ways to work collaboratively with other public sector enforcement agencies and there is a number of cases where this work ethic is being implemented. Seeking to work more strategically with other authorities, including the sharing of site visits and photographs (by those who are nearest) has a number of advantages.
4. This operational congruence is also an opportunity to help overcome any procedural problems, such as Environment Agency Waste Management Permits being granted ahead of the planning system.

### Report Format

5. Our reporting to the Regulation Committee on planning enforcement matters comprises of two main parts.
6. The first being this 'open' report, summarising in general, our findings and observations relating to enforcement matters, for discussion. In addition, it includes the nature of the alleged unauthorised activities and types of responses, incorporating as much as can be released on operational matters and in data protection terms, without prejudicing any action that the Council may wish to take, or indeed in relation to team actions with other regulatory bodies.
7. The second is the 'closed' or exempt report (within Item 8 of these papers) containing restricted details of cases. These emphasise the work that has been

achieved, in priority order, with the strategic level cases first (those with a County Council interest / remit). These are followed by district referrals, including those where issues of jurisdiction remain and 'cross-over' work with partner bodies, and finally operational compliance issues at permitted sites.

8. This format (Item 8) provides a more in-depth analysis of alleged unauthorised development. Its confidential nature is to protect the content and strategy of any proposed planning enforcement action that may be taken and any gathered evidence, which may subsequently be relied upon in court as part of any legal proceedings. The requirement also applies to any contemplated direct action, by multi-disciplinary teams across the various enforcement authorities.
9. Data protection and security is paramount and a statutory duty of the County Council. It is important in case management terms but also concerning the personal safety and security of all the parties involved.
10. Hearing the details of cases in closed session allows for uninhibited discussion, in seeking Member endorsement, on our own or joint enforcement strategies with other regulatory authorities (who have their own need for confidentiality). In this context and especially with live cases, great care has to be taken in handling any related and sensitive information. Also, in striking the right balance against operational needs and the outcome being sought in the wider community interest.
11. Part of this balancing exercise is to provide a list, under paragraph 12 below, of the cases that will be discussed in the exempt report. This covers those sites currently active or requiring investigation. Those previously reported and inactive, remain on a 'holding / monitoring' database to be brought back to the Committee, should further activity occur, or as an update on site restoration and after-uses. A balance of attention is always sought between live activities and forward momentum on the restoration of affected sites.
12. Our current and immediate operational workload, qualified by remit and with resource priority, is as follows:

**County Matter cases** (complete, potential or forming a significant element)

- 01 **Raspberry Hill Park Farm**, Raspberry Hill Lane, Iwade, Sittingbourne (and related multi-site investigations further afield).
- 02 **Spring Hill Farm**, Fordcombe, Sevenoaks.
- 03 **Water Lane, North of M20**, Thurnham, Maidstone.
- 04 **Hoads Wood Farm**, Bethersden, Ashford.

- 05 **Double-Quick Farm**, Lenham, Maidstone.
- 06 **Woodside East**, Nickley Wood, Shadoxhurst, Ashford

**District referrals** (or those district cases of potential interest)

- 07 **Ringwould Alpine Nursery**, Dover Road, Ringwould
  - 08 **Fairfield Court Farm**, Brack Lane, Brookland, Romney Marsh.
  - 09 **Chapel Lane**, Sissinghurst, Tunbridge Wells.
  - 10 **Land off Maypole Lane**, Hoath, Canterbury
  - 11 **Manor Farm, Willow Lane**, Paddock Wood
  - 12 **Knowle Farm**, Malling Road, Teston
13. All alleged unauthorised cases received are triaged, researched and investigated to establish whether there is a statutory remit for the County Council. That is a pre-requisite for any formal action. Among the cases are those that may ultimately be handled by other authorities and agencies, without the need for our strategic input, other than within a multi-agency context.
14. Progress has been made on a number of the cases above to the stage where the planning enforcement team is no longer pursuing the primary breach. Instead, we are either bringing restoration to a close or maintaining a watching brief. It is proposed that these cases be taken off the reporting case list and retained on our monitoring data base. The intention being to return the cases to this Committee, when there is a material change of circumstances, such as the completion of restoration for 'sign-off', the reporting of any undue delay or the resumption of the original activities.
15. This would allow for more focus at Committee on fully active cases, particularly those requiring authority to act or endorsement of actions already taken under delegated powers. That is either in a county planning enforcement capacity, or in combination with other bodies.
16. It is common that just as a case is resolved in this field, or we see a reversal in any alleged unlawful waste (and very occasionally mineral-related) activities, there are new 'replacement' sites to add to our running case list for investigation. Making way for these, would allow more attention to be put to them and to allow for this *revolving door* of incoming and outgoing cases to be more evenly balanced.

17. A further workload area relates to potential compliance issues at permitted sites, mainly alleged breaches of planning conditions. They are listed in alphabetical district order.

**Permitted sites** (compliance issues)

- 01 European Metals Recycling, **Cobbs Wood Industrial Estate**, Ashford.
- 02 **The Old Tilmanstone Colliery**, Pike Road, Eythorne.
- 03 **Cube Metals**, Unit A, Highfield Industrial Estate, Bradley Road, Folkestone.
- 04 **RS Skips**, Apex Business Park, Shorne.
- 05 **Unit 2, Katrina Wharf**, Wharf Road, Gravesend.
- 06 **Mayfield Grammar School**, Pelham Road, Gravesend
- 07 **Trosley Country Park**, Waterlow Road, Vigo, Vigo Village, Gravesend.
- 08 **Teston Bridge Country Park**, Teston Lane, Maidstone
- 09 **East Kent Recycling**, Oare Creek, Faversham.
- 10 **Borough Green Sandpits**, Borough Green.
- 11 **Wrotham Quarry (Addington Sandpit)**, Addington, West Malling.
- 12 **H&H Celcon**, Ightham
- 13 **Land to the south of Manor Way Business Park**, Swanscombe

### **Meeting Enforcement Objectives**

#### *Overview*

18. The planning enforcement team strive to provide the best service possible, against a number of challenges and pressures, responding quickly to reports of (normally) alleged waste-related contraventions. These usually involve individual sites. However, the service also extends to alleged waste criminal activity that may be committed across a range of sites in an interconnected way. This is when we typically look to join forces with enforcement partners to mount an

effective challenge to such activities.

19. The service relies upon cases being thoroughly investigated and where there is sufficient evidence, the taking of robust action against the alleged perpetrators. The list of sites under paragraph 12 above, contains the full spectrum of cases from independent County Council intervention on single sites, to multiple-site scenarios, involving multi-agency teams. The aim is to achieve the best planning enforcement coverage and where needed, the best combined array of powers across partner authorities, to match the situation. Each of the three main regulators has different regulatory powers which can be used in varying ways depending upon the circumstances of the case. For this reason, there is considerable merit in our current approach to try and resolve by negotiation wherever possible or in conjunction with a Regulatory Team.
20. The list of sites under paragraph 17 above, gives the County Council's permitted site compliance workload. These largely involve alleged breaches of planning conditions, with attendant amenity, environmental and highway impacts, according to each case profile.

#### *Internal efficiency*

21. Planning enforcement has two other dimensions. The first being, the frontline 'visible' aspects of the Authority's response to any alleged wrongful activities. An example would be an overt and high-visibility presence on site. The second, is the internal and more 'invisible' aspects of the work, including landowner and company searches, the ordering of evidence and the administration of statutory processes such as Freedom of Information (FOI) requests. The latter in particular has to be approached in a systematic way, reviewing all kept files and information. This may take a considerable amount of time when involving complex cases, especially when the integrity of live and crucial evidence has to be protected in the public interest.
22. The procedural aim is to carry out the 'invisible' duties as efficiently as possible, to allow for more 'visible' on-site attention and monitoring, especially with its potential deterrent effect and other enforcement benefits.

#### *Environment Agency (EA) Permitting*

23. Members have been previously informed of a situation where Environment Agency (EA) Waste Management Permits are being granted in advance of any planning application and therefore decision on the suitability of the site and surrounding location. Planning enforcement action may then become required to address the absence of this fundamental requirement. That is potentially detrimental to all parties, including any local communities affected by the alleged unauthorised activities.
24. This preventable situation accounts for a growing part of our planning

enforcement workload. Historically, the EA would consult KCC planning enforcement and inform permitting applicants on their website that planning permission may be required, before any waste permitted activity could commence. The EA is no longer required to consult or notify KCC planning enforcement of any application for waste permits, in this way.

25. Urgent resumption of these practises is thought to be the best and most practical means of resolving the situation. Steps have already been taken to address this with planning enforcement formally requesting to be added to the consultation list, prior to a waste permit being granted. The advantage being that KCC could advise potential waste operators when planning permission would be required for that particular waste-related use. Also, the service would be alerted to any potential pre-emptive activity, before becoming established and difficult to reverse, if that is required.
26. Discussions have begun with the EA permitting hierarchy, with an initial and favourable reaction. We are now awaiting a response to our request, which has been added to the agenda of planned internal permitting discussions at the EA. Hopefully, a workable solution can be found. The planning enforcement and environmental case is strong and the procedural adjustment modest. The change however, is potentially significant, with the time saved able to be channelled back into the service.

#### *Other Considerations*

27. Planning enforcement is an important County Council service, not least through the environmental protection that it offers. The number of site inspections needed, and monitoring frequency, will vary according to the needs of the case but would always be carried out, as required. At the same time however, we are looking for opportunities to help balance this, through a sharing of site and monitoring information, principally with our district council and EA colleagues. That should help the efficiency of all parties.

#### **Monitoring**

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

28. In addition to our general visits to sites, we also undertake monitoring visits on permitted sites. They provide useful compliance checks against each operational activity and an early warning of any alleged and developing planning contraventions. Those within the statutory monitoring charging scheme are currently restricted in favour of other work priorities, although investigation of alleged breaches that are drawn to the Council's attention have continued to be investigated.

**Resolved or mainly resolved cases requiring monitoring**

29. Alongside the above monitoring regime there is a need to maintain a watching brief on resolved or mainly resolved enforcement cases which have the potential to reoccur. Under normal circumstances, 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.

**Conclusion**

30. The County Planning Enforcement service strives to provide the best possible service with the resources available and is making good progress on cases. Since the Committee last met it has tried on a number of occasions to provide a replacement resource to investigate complaints relating to alleged breaches at permitted mineral and waste sites. In the interim, some limited capacity of the planning officers involved in processing planning applications has been diverted to this area of the service as a temporary measure. This is not a long-term solution and does not provide the capacity that is required. The team is however very conscious of the impact that any uncontrolled and largely waste-related activities will have on local environments and communities. As a result, we have geared the service to achieve a good response to reports of such activities and alleged waste crime. That includes operational and procedural ways to free more time for frontline work.

31. We continue to coordinate with and support other enforcement agencies to help tackle 'problem sites' holistically. That includes our current discussions, for example, with the Environment Agency, for them to consult with us prior to issuing waste management permits. That small procedural change, from closer working ties, should hopefully reverse the current procedural and operational disadvantages that arise.

**Recommendation**

32. I RECOMMEND that MEMBERS NOTE & ENDORSE:

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

Case Officers: KCC Planning Enforcement

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Background Documents: see heading.