

Report by Head of Planning Applications Group to the Regulation Committee on 30th January 2024.

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 into events, operational matters and activities of the County Planning Enforcement service, since the 17th October 2023 Regulation Committee.
2. KCC planning enforcement remains under both resourcing and operational pressures, with an increasing caseload and complexity, especially at the priority strategic end of the spectrum. An increase in alleged waste criminal activity to this level, is continuing across the county, often in the context of a mix of planning uses.
3. The County Council regularly works with allied bodies and the police and is actively seeking to incorporate government bodies such as Natural England (NE) and His Majesty's Revenue and Customs (HMRC) into local enforcement work.
4. Collaboration and sharing of resources are key, particularly given current economic and spending pressures within the public sector and the range of planning uses involved. Joint operational working has shown to be effective in cost and enforcement terms.

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 without prejudicing any action that the Council may wish to take, or in relation to team actions with other regulatory bodies. Data security in this field of work is inherently important.
7. The second is the 'closed' or 'exempt' report (within Item 9 of these papers) containing restricted details on cases. These report the work conducted, in

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

8. In this way, a more in-depth analysis of alleged unauthorised activities becomes possible, with cross-comparisons between sites and the search for patterns of alleged contravening behaviour. It also enables the confidentiality of the content and strategy of any proposed planning enforcement action to be protected, along with any sensitive gathered evidence.
9. Hearing the details of cases in closed session further allows for uninhibited discussion, in seeking Member endorsement, on our own or joint enforcement strategies with other regulatory authorities (with their own need for confidentiality).
10. As a counter-balance to security restrictions, a list is provided, under paragraph 11 below, of the cases that will be covered 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. Notwithstanding that, forward momentum still continues in the background, on the restoration of affected sites.
11. Our current and immediate operational workload, qualified by remit and with resource priority (with other cases on a 'holding' database) is as follows:

County Matter cases (complete, potential, forming a significant element or as a regulatory group contribution)

- 01 **Hoads Wood**, Bethersden, Ashford
- 02 **Swanton Lane**, Littlebourne, Canterbury
- 03 **Ancient Woodland Adjacent to Knoxfield Caravan Site**, Darent Wood Road, Dartford
- 04 **Oaktree Farm**, Halstead, Sevenoaks
- 05 **Warden Point and Third Avenue**, Eastchurch, Isle of Sheppey
- 06 **Raspberry Hill Park Farm**, Raspberry Hill Lane, Iwade, Sittingbourne

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

- 07 **Manor Farm, Willow Lane**, Paddock Wood
- 08 **Knowle Farm**, Malling Road, Teston, Maidstone
- 09 **Court Paddock Farm**, Ightham (Member: Harry Rayner)
- 10 **Former Travel Lodge / Brother Hood Woods**, Boughton Bypass Dunkirk

12. All alleged unauthorised cases received are triaged, researched and investigated to establish whether there is a statutory remit for the County Council, unless it is clearly not for KCC planning enforcement. Among the cases are those that may ultimately be handled by other authorities and agencies or where we contribute within multi-agency settings.

13. A further workload area relates to alleged compliance issues at permitted sites. These mainly relate to alleged breaches of planning conditions, arising from site management issues.

Permitted sites (compliance issues)

- 01 **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 **Teston Bridge Country Park**, Teston Lane, Maidstone
- 06 **East Kent Recycling**, Oare Creek, Faversham
- 07 **Borough Green Sandpits**, Platt, Borough Green
- 08 **Wrotham Quarry (Addington Sandpit)**, Addington, West Malling
- 09 **H&H Celcon**, Ightham

Meeting Enforcement Objectives*Alleged strategic waste crime*

14. There are now six strategic planning enforcement cases spread across the county, requiring priority attention in a group regulatory context. Each site has attracted a dedicated task force, drawn from specialised staff with police involvement from all operational perspectives.
15. Government bodies with bespoke enforcement powers against alleged serious waste crime are part of the teams, notably the Environment Agency (EA). KCC Planning Enforcement has long been forging links with a range of government organisations and results are starting to tell. Two EA Restriction Orders have been secured on strategic sites at Third Avenue, Eastchurch on the Isle of Sheppey and Hoads Wood, Bethersden, Ashford. Others are under consideration. The measure allows for sites to be sealed, preventing alleged waste importation and related contravening activities and damage, both on and off site. Any interference with these enforced site closures is a criminal offence in its own right.
16. KCC Planning Enforcement has sought to bring both organisations and their enforcement powers into a collective effort to overcome the limitations of single authority actions. Momentum towards that overall aim is building, designed in particular to combat the current surge in alleged organised waste crime with apparent interconnecting sites across the county. Some of these techniques are also being applied to smaller sites with effect, ensuring as far as possible timely attention and access to a wider range of powers, at all scales of alleged unauthorised waste activities.

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

17. In addition to 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. Alleged planning contraventions at permitted sites are currently being addressed with additional support from agency staff.

Resolved or mainly resolved cases requiring monitoring

18. 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. For the moment, this initiative has also been reduced to allow a diversion of resources to the priority strategic enforcement cases mentioned within this report but remains on a reactive basis.

Levelling up and Regeneration Act 2023

19. The Levelling up and Regeneration Act came into force on 26th October 2023. It includes a number of new provisions which impact upon planning enforcement, although further enabling legislation is required before the provisions come into force. In summary the changes are:

- The power to issue Temporary Stop Notices (TSN) in respect of works to Listed Buildings – in force for up to 56 days;
- New Development Commencement Notices’ and ‘Completion Notices’; and
- A number of revised enforcement planning controls.

20. A new provision for Commencement Notices will apply where a planning permission has been granted for development. Before the development has begun, the person proposing to carry it out must give notice (a ‘Commencement Notice’) to the Local Planning Authority (LPA), stating when they propose to commence the work. If work does not commence on that date, the Notice must be varied. Where the LPA considers that a person has failed to comply with the requirements, they may serve a notice on any relevant person, requiring the relevant information to be submitted to the LPA. Failure to provide the information within 21 days is an offence.

21. There are also new provisions for Completion Notices, where a planning permission has been granted for development and is subject to the ‘commence within 3 years’ condition, and this condition was complied with, but the development has not been completed. Should the LPA consider that the development will not be completed within a reasonable time period, then they may serve a notice (‘Completion Notice’) stating that the planning permission will cease to have effect at a specified time. The Notice is served on the owner of the land, the occupier of the land and any person with an interest in the land. There are new provisions to appeal against a Completion Notice; on the grounds that it will be completed within a reasonable time, the Notice deadline is unreasonable or it was wrongly served.

22. Changes to the time limits for enforcement by removal of the 4-year rule are proposed. Once in force, all breaches of planning control can only become immune from enforcement action after 10 years. The Act also amends the

duration of Temporary Stop Notices from 28 days to a maximum of 56 days.

23. The legislation introduces a new Enforcement Warning Notice (EWN) where it appears to the LPA that there has been a breach of planning control and that there is a reasonable prospect that, if an application is made, permission would be granted. The EWN must state that unless an application for planning permission is made within a period specified in the notice, further enforcement action may be taken. The driver behind this provision is to reduce the number of appeals for 'acceptable' developments when an Enforcement Notice has been served.
24. There are two changes in relation to appeals. The first places new restrictions on appeals against enforcement notices which removes the possibility of an applicant applying for planning permission, appealing a refusal, then appealing through the enforcement notice route (ground (a)), with this last stage to be prohibited. The Secretary of State is to have the authority to dismiss appeals where it appears to them that the appellant is responsible for undue delays in the progress of the appeal. This will apply to enforcement appeals and certificate of lawfulness appeals.
25. Finally, the penalties for non-compliance have been increased for a Breach of Condition Notice (BCN) with the removal of the words in s187A of the Town and Country Planning Act 'not exceeding level 3 on the standard scale'. In effect this means that on conviction in theory, the fine for breaching a breach of condition notice would be unlimited. Whilst the County Council does not have the authority to serve s215 (Site Clearance Notices), they are a potentially very useful tool for the Borough and District Councils. Once in force, the fine for breaching a S215 notice can now be higher than previously.

Conclusion

26. The operating context for county planning enforcement is continually challenging and complex, especially at the strategic and priority end of the spectrum. The joining of forces is a natural response, with a considerable investment of time and effort to that end, from the KCC planning enforcement team. That has culminated in several direct actions involving Environment Agency Restriction Orders, to physically prevent serious alleged and active waste contraventions from occurring. The strength of collegiate working is very evident and is fast becoming a standard operational approach.

Recommendation

27. I RECOMMEND that MEMBERS NOTE & ENDORSE:

- (i) the actions taken or contemplated in this report and the proposed legislative changes for planning enforcement arising from the Levelling Up

and Regeneration Act 2023.

Case Officers: KCC Planning Enforcement
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Background Documents: see heading.