

Report by Head of Planning Applications Group to the Regulation Committee on 9<sup>th</sup> June 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 is from the previous Regulation Committee of 27<sup>th</sup> January 2022, to date.
2. Now that COVID restrictions relating to work, seem largely behind us, planning enforcement can start to resume a more normal service. We shall build on our experiences of managing the service under the more testing times of COVID with the 'on-off' implementation of restrictions. More cases than usual have emerged during this current period, which we are working through systematically.
3. Although no longer required to work from home, we are continuing to work flexibly, rather than returning to a fixed office location.
4. We continue to work extensively with other enforcement and wider agencies, particularly the police, the Environment Agency (EA) and local authorities. This is especially true for those larger cases where multiple activities occur, spanning several authorities, where action is needed. We try continuously to develop and adapt our enforcement responses, seeking new ways to combat alleged contraveners. There are several new developments in this area which will be discussed further in this report.

### **Report Format**

5. Our reporting to the Regulation Committee on planning enforcement matters comprises of two main parts.
6. The first being this 'open' and unrestricted 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 indeed in relation to team actions with other regulatory bodies. There are also data protection responsibilities to consider.

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, by type, scale and degree of challenge, with the strategic level cases first (with a County Council interest / remit and multi-agency arrangements). These are followed by district referrals, including those where issues of jurisdiction remain and 'cross-over' work with partner bodies, and finally compliance issues at permitted sites, largely relating to alleged breaches of planning conditions.
8. This format (Item 8) provides a more in-depth analysis of alleged unauthorised sites. Its confidential nature is to protect the content and strategy of any proposed planning enforcement action that may be taken. Also, any gathered evidence, which may subsequently be relied upon to defend actions in a public inquiry setting, or in the court arena, as part of any legal proceedings.
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, including members of the public.
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, which must be formally respected). 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 between 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, multi-agency contributions and resource priority, is as follows:

**County Matter cases** (complete, potential, or forming a significant element, independently or within multi-agency teams)

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

- 13. In addition, to the above list of sites, further cases are brought to our attention on a regular basis. These in turn are triaged, researched and investigated to establish whether there is a statutory remit for the County Council. Should that be the case, they will be incorporated into our workload and appear on any subsequent list of sites.
- 14. As recognised at the last Meeting, this filtering and analysis of cases would be considerably helped by more complete and precise information being passed to us from comparable public bodies. If the information received in the first instance, is comprehensive, an initial analysis can be conducted and an early view taken on the planning status of any activity and potential jurisdiction.
- 15. The aim is a smooth transfer of information and minimal down time. A list of our requirements and their appropriate documentary form, along with related guidance, is being produced to assist in this process. Related matters are also being considered for inclusion such as data protection aspects. That would ensure for instance that any e-mail chains that are sent to this Authority, in the form of initial evidence, are data compliant at source, on privacy, balance and equality grounds. The integrity of this early evidence is crucial at the start of any potential move to formal action.
- 16. For now, we are discussing and testing these information requirements with our enforcement partners on a 'case by case' basis, using feedback to help in developing a robust transfer system, with flexibility and provision for joint-

working, as an available option.

17. A further workload area relates to compliance issues at permitted sites, mainly alleged breaches of planning conditions. These are presented in a district / borough alphabetical order.

**Permitted sites** (compliance issues)

17. **Cobbs Wood Industrial Estate**, Ashford.
18. **The Old Tilmanstone Colliery**, Pike Road, Eythorne.
19. **Flisher Energy, Fernfield Lane**, Hawkinge.
20. **Cube Metals**, Unit A, Highfield Industrial Estate, Bradley Road, Folkestone.
21. **RS Skips**, Apex Business Park, Shorne.
22. **Unit 2, Katrina Wharf**, Wharf Road, Gravesend.
23. **Mayfield Grammar School, Pelham Road, Gravesend**
24. **Maidstone Grammar School**, Barton Road, Maidstone.
25. **East Kent Recycling**, Oare Creek, Faversham.
26. **K&S Services, Cleve Hill Farm**, Cleve Hill, Graveney
27. **Borough Green Sandpits**, Borough Green.
28. **Wrotham Quarry (Addington Sandpit)**, Addington, West Malling.
29. **H&H Celcon**, Ightham
30. **Land to the south of Manor Way Business Park**, Swanscombe

### **Meeting Enforcement Objectives**

*Overview*

18. The planning enforcement team are vigilant, being aware of trends and constantly seeking new ways to stay ahead of any potential planning contraveners. Patterns are analysed, along with the potential in multi-agency

settings of any new enforcement powers becoming available to public sector regulators. This awareness also helps us to meet our own enforcement objectives.

19. Since the last Committee Meeting and as mentioned at the start of this report there have been several new developments to bring to Members attention.

*Environment Agency (EA) Permitting*

20. Historically the Environment Agency would notify KCC planning of sites that had applied for a waste permit (formally a waste management licence). The applicant would be informed at this juncture that planning permission was also required to process waste, which would then be openly known to all parties.
21. This legislative safeguard was removed a number of years ago when the EA was given greater independence by government. This has always been regarded as a retrograde step in the county planning enforcement field, as confirmed at peer group meetings across authorities. In fact, some alleged contraveners will tell us that they didn't even realise that they needed planning permission.
22. This lack of communication has contributed to a number of waste management facilities becoming established under EA legislation, ahead of a planning decision, as first required, on the suitability of any site. Regrettably, it is now a recognised part of our workload.
23. Officers have sought operational ways to address this through the EA, and for the situation to be corrected at government level. Meanwhile, an interesting twist is that whilst making enquiries into another matter it was discovered that the EA had consulted our KCC Biodiversity team on a permit application. As a result, on that case at least, we have an indication now of where a new potential waste management use might wish to be sited.
24. This and similar channels of early information will be traced to help all parties to be aware of the primacy of the planning system over the location of waste management activities. KCC Planning Enforcement will also seek direct notification / consultation from the EA, to ensure on environmental and amenity grounds (alongside similar interests) that the need for planning permission is known from the outset and followed.

*Her Majesty's Revenue & Customs (HMRC)*

25. At previous Regulation Committees, the reality of organised criminal gangs allegedly operating within the waste management field, has been discussed. The need to involve HMRC has been apparent, since they hold draconian landfill tax enforcement powers. Those usually operate in liaison with the EA but for

Members' information, KCC planning enforcement was recently able to arrange for their involvement in a strategic level case.

26. KCC requested through the Environment Agency that HMRC be invited to a corporate case review meeting. Four officers attended from the organisation, representing various facets of tax and financial interests. They have become part of a strengthened multi-agency team and will now evaluate the case from their perspective and report back to the other parties.
27. This breakthrough is significant for the County Planning Enforcement Service. It has been a long-held ambition to actively involve HMRC on serious cases, given their formidable enforcement powers in the waste field, acquired in 2018. Officers made early contact with their new specialist team but operational arrangements were reserved for the EA. The desire going forward, is to develop a constructive working relationship within the context of multi-agency teams, potentially also forging independent enforcement links.

#### *Consultation response*

28. Between Committee Meetings, Members have been briefed by officers on a set of consultation documents produced by DEFRA entitled 'reform of the waste carrier, broker, dealer registration system in England' and 'the introduction of mandatory digital waste tracking' (from origin to end-use). These represent Government's aspiration to modernise, tighten and improve the EA waste management regime, primarily focussing on upper tier commercial activity, such as construction companies and similar scaled enterprises. Hopefully, this will also help to mount a more comprehensive challenge to organised waste crime, which has become an increasing feature of this area of work.
29. DEFRA has sought responses from interested parties on the reform of waste handling procedures, which KCC has responded to in a largely positive vein, incorporating the full range of Members' views. An update will be given to Members when the findings have been processed.

## **Monitoring**

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

30. In addition to our general visits to sites, we also undertake monitoring visits on permitted sites and investigate complaints arising from alleged breaches of planning control at those sites. Monitoring provides 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. Until April 2022 investigation and

resolution of alleged planning contraventions at permitted sites were being undertaken by a consultant planning enforcement officer. We are currently out to advert to recruit a replacement officer dedicated to permitted sites.

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

31. 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 more immediate and pressing duties.

### **Conclusion**

32. The County Planning Enforcement service has continued throughout the pandemic, overcoming lockdown hurdles and achieving some good and credible results in the process. A surge of cases has occurred since restrictions were lifted, which are being progressively worked through. However, there have also been some interesting developments since the last Regulation Committee, which hopefully will be of benefit to the service over both the short and longer terms.
33. Ways are being developed, to achieve an early warning on waste management sites established under EA Permit arrangements, prior to planning permission. Also, the long-held ambition of the planning enforcement team to include HMRC in cases where organised waste crime is suspected, is starting to materialise. This chimes with the enforcement aspects of the Defra consultations, as responded to recently by this Authority. We shall continue to seek innovative ways to improve planning enforcement holistically, as part of our wider regulatory role.
34. Permitted compliance work within the wider Group and associated monitoring is another work stream being given due attention.

### **Recommendation**

35. 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.