

Enforcement and Monitoring Update Report 2023

To: Planning Committee

Date: 17 May 2023

From: Head of Planning and Sustainable Growth

Electoral division(s): N/A

Purpose: To consider the following report

Recommendation: The Planning Committee is requested to note the content of this report.

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1 Introduction

- 1.1 The purpose of this report is to brief the Planning Committee members on the planning enforcement and monitoring work undertaken by the County Planning, Minerals and Waste team within the Planning, Growth and Environment service.
- 1.2 The Enforcement update report is usually prepared and presented to Planning Committee on a quarterly basis, unless there are no items on the Committee agenda in which case the Chair can approve postponing the update report until the Committee next convenes. The last full report was presented to Committee in November 2022 and it covered the period 1 June 2022 to 31 October 2022.
- 1.3 The Enforcement and Monitoring team consists of the Principal Enforcement and Monitoring Officer, Monitoring and Control Officer and Planning and Compliance Officer, who also undertakes planning work in the Development Management team. A new Principal Enforcement and Monitoring Officer joined the team in March this year and will attend Committee to introduce himself to members.
- 1.4 The report is divided into a number of sections. Sections 2 to 5 summarise: the current complaints under investigation; the number of formal Notices served; Enforcement Appeals; and Ombudsman complaints received. Section 6 of the report details the site monitoring visits undertaken to chargeable sites between 1 November 2022 and 31 March 2023. Sections 7 to 15 of the report provide updates on a number of key ongoing Enforcement Investigations.

2 Complaints received

- 2.1 At the time of writing this report, the Enforcement and Monitoring team has 25 active complaints that are under investigation.
- 2.2 Between 1 November 2022 and 31 March 2023 the team received 10 new complaints, 7 of which are remain open and under investigation, and 3 have been closed. A further 4 pre-existing complaints were closed in this reporting period.
- 2.3 Of the 7 complaints that were received in this period and remain open and under investigation:
 - 1 is awaiting the determination of a planning application which has been submitted;
 - 1 is waiting for action to be undertaken by the operator within previously agreed timescales;
 - 3 require a site visit to be undertaken to check the site status; and
 - 2 require further investigation by the team.
- 2.4 The status of the 18 complaints that were received prior to this period that are still under investigation is:
 - 1 awaiting the submission of a planning application that has been requested;
 - 1 awaiting determination of a planning application that has been submitted;
 - 1 awaiting the result of an appeal against the refusal of a certificate of lawfulness before enforcement action is considered;

- 2 waiting for action to be undertaken by the operator within previously agreed timescales;
- 5 require a further site visit to be undertaken;
- 6 further investigation or monitoring by the team; and,
- 2 awaiting action from a partner agency (such as the EA).

3 Notices Served

- 3.1 No new Enforcement Notices (EN) or Breach of Condition Notices (BCNs) have been served in this period. Two Planning Contravention Notices (PCN) have been served, details of which can be found in section 11 of this report.

4 Appeals

- 4.1 No enforcement appeals have been lodged or dealt with by the County Planning Minerals and Waste Enforcement and Monitoring team between 1 November 2022 and 31 March 2023.
- 4.2 As noted in Section 8 below, an appeal against the refusal to issue a certificate of lawfulness relating to waste uses on land at Mill Road, Fen Drayton has been submitted to the Planning Inspectorate and consideration of enforcement action will be undertaken following the determination of the appeal.

5 Ombudsman Complaints

- 5.1 No Local Government Ombudsman complaints were received during the period 1 November 2022 and 31 March 2023.

6 Site monitoring visits 1 November – 31 March 2023

- 6.1 The Authority carries out proactive monitoring visits to check compliance with the conditions set out in the grant of planning permissions for quarries and landfill sites. The Authority levies fees for these visits, which are set out in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as amended). The national fees for conducting the visits are currently:

- Active sites £397
- Inactive or dormant sites £132

- 6.2 The amount of chargeable monitoring visits scheduled to be conducted within each financial year is agreed in advance and all operators are notified of the proposed number of visits.
- 6.3 Other sites that are the subject of waste planning approvals, such as waste transfer stations, waste recycling sites and scrap yards are also visited by officers in order to assess compliance with the conditions set out in the grant of planning permission. However, the cost of these visits is borne by the Authority.

- 6.4 The table below shows the number of chargeable mineral (quarry) and waste (landfill) monitoring visits that are planned for this financial year and, noting that the number of visits to each site ranges between 1 and 4, the total number of planning visits for this financial year:

Type of site	Number of visits
Mineral / Quarries	55
Waste / Landfill sites	27
Total number of sites	40
Total number of visits	82

- 6.5 The total income that it is estimated will be generated by chargeable monitoring visits in the financial year 2023 to 2024 is £26,195. However, achieving this figure will depend on whether the status of any of the sites changes within the financial year.
- 6.6 A summary of the number and type of chargeable monitoring visits and visits to complaint sites carried out during the monitoring period is set out in the table below.

Site type	Number of visits
Landfill	12
Quarries	18
Non chargeable sites	4
Complaint site visits	4
Total	38

7 Enforcement Cases

- 7.1 There is currently only one enforcement case where formal enforcement action has been taken and monitoring is on-going. A brief summary of that case is set out in Appendix 1.
- 7.2 For the purposes of the Town and Country Planning Act 1990 the issue of an Enforcement Notice (EN) or the service of a Breach of Condition Notice (BCN) constitutes taking formal enforcement action.

8 Mill Road, Fen Drayton

- 8.1 On 21 November 2018, a Planning Contravention Notice was served on the site owner in respect of unauthorised waste storage and processing uses at the site. The Council had previously refused to grant two previous applications for a Certificate of Lawful Development for use of the land for the processing of inert waste. Although an

appeal was lodged with the Planning Inspectorate (PINS) in relation to the refusal of the second Certificate application, it was withdrawn by the Appellant before the planned Public Inquiry could go ahead.

8.2 On 11 December 2018, a new Certificate of Lawful Development application was submitted for storage of inert building site waste and occasional processing incidental thereto. Noting that the agent for the applicant had already been advised that the Council was not aware of any material change(s) in circumstances that might be likely to lead to the grant of a Certificate of Lawful Development (CLD), the application was refused on 18 April 2019. An Appeal against the refusal was lodged with the PINS and then subsequently withdrawn by the appellant.

8.3 In December 2019, a further (fourth) Certificate of Lawful Development application was submitted for an existing use for storage of inert building site waste and occasional processing incidental thereto. The evidence submitted with the application was complex and advice was sought from Pathfinder legal services. On 8 February 2023 the Council refused to issue the certificate, the reason for refusal was:

Based on the evidence provided in support of the Application, and the Council's own records to the contrary, the Council considers that there is insufficient documentary evidence to confirm, upon the balance of probability, that "the use of the land for the storage of inert building site waste and occasional processing incidental thereto" has subsisted without material interruption on the Application Site for a period of 10 years or more preceding the date of the Application, or that it continues to subsist as described.

8.4 On 23 March 2023 the Planning Inspectorate confirmed that a valid appeal had been lodged with them against the refusal to grant the Certificate and the chosen appeal procedure would be written representations.

8.5 A Delegated Enforcement Report seeking authorisation to serve an Enforcement Notice (EN) for an unauthorised material change of use of the land was drafted. However, owing to the number of certificate applications that have been submitted, and the complexity of assessing the evidence, officers intend to delay the service of such a notice until the result of the appeal.

9 Saxon Pit, Peterborough Road, Whittlesey

9.1 In January 2018, the Environment Agency (EA) received odour complaints associated with inadequate waste acceptance procedures taking place at Saxon Pit as part of the ongoing stabilisation and buttressing of a former quarry face which is authorised by a County Council waste planning permission. The EA investigation revealed that a large amount of non-conforming waste material had been accepted on the site over a long time period across five phases of the development.

9.2 Although the stabilisation works initially ceased on site, the EA later recommended the completion of the stabilisation was required to prevent further saturation in the active tipping face, provided that containment measures were put in place to control the leachate and landfill gas arising from the imported waste. The EA investigation into the non-conforming waste deposited at the site is ongoing and regular monitoring takes place.

- 9.3 A number of temporary planning permissions have been issued allowing additional time for the completion of the buttressing work using imported inert waste, the most recent being CCC/22/092/VAR which allows until 26 July 2025 for the completion of the landfilling and restoration of the site.
- 9.4 On 22 April 2022 planning application reference CCC/21/024/FUL, was approved for a different operator to import, store, process and recycle incinerator bottom ash (IBA) and construction and demolition waste at the Saxon Pit site.
- 9.5 The County Council, the Environment Agency and Fenland District Council's Environmental Health and Planning Enforcement teams continue to receive occasional complaints about the site as well as regular contact and queries about operational standards. The regulatory authorities continue to work closely together and attend meetings with Whittlesey Town Council and members of the Saxongate Group of local residents to discuss their concerns and explain each agency's remit and responsibilities.
- 9.6 One outstanding query is with regard to whether the Incinerator Bottom Ash Aggregate (IBAA) which is produced from the processing of Incinerator Bottom Ash (IBA) under planning reference CCC/21/024/FUL is considered to be waste. Owing to the varying definitions of IBAA held by partner organisations, officers are waiting for legal advice on this matter.

10 Westons Yard, Pondersbridge

- 10.1 In August 2020, retrospective planning permission was approved for the change of use of Units B & 1B of Westons Yard, Pondersbridge to allow the processing of depolluting and dismantling of ELVs. The permission was for a temporary period expiring 5 years from the date of the decision and was subject to a number of planning conditions.
- 10.2 On 16 November 2020, Enforcement Officers wrote to the operator and agent to remind them the following conditions required action to be undertaken within three months of the date of the decision notice:
- Condition 3 - Acoustic barrier fence erected;
Condition 5 - On Site parking laid out and implemented;
Condition 8 - White noise alarms fitted; and
Condition 11 - Drainage and pollution control measures implemented.
- Condition 9 of the planning permission required the submission of a noise management plan for approval within a further 2 months (i.e. by early January 2021).
- 10.3 The failure to comply with the conditions was detrimental to local residential amenity and owing to the amount of time that it was taking to secure compliance a Planning Contravention Notice (PCN) was served on the site operator and the landowner on 31 August 2021. The PCN responses, and subsequent correspondence with the operator, confirmed that the majority of the breaches of planning control on site had been remedied.
- 10.4 In March 2022 officers confirmed that the acoustic barrier fence had been completed, the on-site parking had been laid out and the storage of cars had been reduced. The

wash down sump, agreed as part of the drainage and pollution control measures, had not been installed and a noise monitoring scheme still needed to be submitted.

- 10.5 In May 2022 a Noise Management Scheme was submitted to discharge condition 9 of the planning permission and following consultation with district environmental health and revisions to the scheme, it was approved on 20 February 2023. No complaints about noise from the site have been received and the conditions have now been complied with and therefore the investigation has been closed.

11 Corkers Crisps / Willow Farm, Little Downham

- 11.1 In April 2020 officers received a complaint via East Cambridgeshire District Council (ECDC) regarding the importation of waste material onto land at the rear of the Corkers Crisps factory in Little Downham.
- 11.2 FDS Construction, whose heavy goods vehicles were seen entering the site and depositing waste and the owner of the site advised that waste material was brought onto the land to fill in an area where there had been a water body and to create an area of hardstanding which was needed to implement a prior approval application from ECDC for the construction of an agricultural building on the land.
- 11.3 The assessment of the planning situation that was made at the time, based on the information provided, was that the works were connected with the prior approval and therefore were considered to be permitted development. The land owner was sent a summary of the permitted development rights for agriculture which included the conditions and restrictions that apply, particularly in respect of the importation of waste onto agricultural land. The advice given highlighted that the importation of waste onto the site for processing and then moving off site would need planning permission and the landowner was advised, in writing, not to allow this to take place on his land.
- 11.4 In July 2020, officers visited the site with planning enforcement officers from ECDC where it was noted that land raising had taken place across the site. The landowner and the owner of FDS Construction explained that this work was site preparation for the replacement Corkers Crisps factory following the destruction of the previous factory as a result of a fire. Officers explained that land raising is development that would need to be included in planning application for the replacement factory and it was agreed that ECDC would lead the investigation going forward and ensure that the land raising was included in the planning application that was being prepared for submission.
- 11.5 In April 2021, further complaints were received regarding FDS branded HGVs entering and leaving the site. In response to enquiries, the owner of FDS advised officers that no new waste material had been brought onto site and no more would be brought on. However, the owner of FDS also stated that there was still a significant amount of site clearance associated with the ECDC planning application which would involve HGVs continuing to leave the site filled with waste. Following further complaints about activity at the site, in August 2021, ECDC served a Planning Contravention Notice on the land owner to establish the nature of the activities taking place on the land at the rear of the factory. The PCN was not formally responded to and ECDC did not pursue this.

- 11.6 In February 2022, County Planning and ECDC officers received further complaints regarding FDS HGVs continuing to enter and leave the site. ECDC were continuing to lead the investigation as there was no evidence of new waste was being imported but evidence from site visits indicated that the land was now being used as haulage and aggregate storage yard which would need district planning permission. Noting that the activities that related to waste matters had ceased, the activity taking place on the land was no longer considered to be a waste planning matter.
- 11.7 In late 2022, further complaints were received about activities at the site. During a site visit which was undertaken in November 2022 the owner of FDS continued to state to officers that no new material had been brought onto site and that the waste in situ had not been imported but was displaced from around the site. However, an FDS branded portacabin was noted on site and the fact that FDS was leaving HGVs on site and employees were using it as a base indicated that the site continued to be used by FDS Construction as a base for operations and haulage yard, which would need planning permission from ECDC.
- 11.8 Following the receipt of further complaints, on 27 March 2023 an officer from County Planning conducted an unannounced visit to the site and witnessed an HGV from a grabhire company bringing waste soils on to the land and off loading them onto a pile of stored material on site.
- 11.9 On 30 March 2023 Planning Contravention Notices (PCNs) were served on the land owner and FDS Construction to gather evidence of the activities taking place at the site. At the time of writing the report, one of the PCNs had been completed and returned and the other response is still outstanding. A letter has been sent to the owner of the land setting out that it is an offence not to complete and return the notice and giving him the opportunity to provide the required response.
- 11.10 Officers intend to take legal advice on the failure to respond to the PCN and the most appropriate course of action to address the breaches of planning control taking place at the site, based on the evidence obtained to date.

12 Use of land at Harthay Farm, Ellington for waste activities

- 12.1 In April 2022, the Environment Agency (EA) advised County planning that they were investigating the use of agricultural land at Ellington by FDS Construction (Cambridge) Limited (FDS). The EA had visited the site on 14 March and had concerns that FDS were importing and depositing inert waste materials on the land to raise the levels, as well as crushing concrete and demolition and building waste. The owner of FDS advised the EA that they had been contracted to remove some soils and old hardstanding from the site and then reinstate the land and create a new concrete pad / hardstanding for an agricultural building. A new company has been set up for this purpose, East Anglian Farming Contractors Ltd. The owners of the company are the same individuals associated with the unauthorised activities set out in paragraph 11 above.
- 12.2 Following enquiries made with Huntingdon District Council planning, they confirmed that pre-application advice had been requested by the East Anglian Farming Contractors Ltd for a change of use of the site from agriculture to provide 4 barns.

- 12.3 The EA visited the site again on 13 June 2022 and following the visit they requested that the operator provide all the Waste Transfer Notes (WTN) for HGVs going in and out of the site. The evidence from the visits by the EA confirmed that some of the waste that had been imported had been used to raise the land by approximately 2 metres over a large area. In addition, piles of inert waste and waste materials were in evidence on the site.
- 12.4 On 10 August 2022, officers undertook a joint site visit with the EA and HMRC where evidence was obtained that a significant amount of inert waste had been brought onto site, some of which had been processed, some was being stored on site and some had been deposited and compacted to raise the level of the land and to create a raised roadway to that land. The storage and processing of waste are County matters and that in addition to the waste deposit, processing and storage, the engineering operations and land raising require planning permission.
- 12.5 On 17 August 2022, officers wrote to the developer and landowner to suggest a meeting and explained that evidence indicated that the imported waste, the crushing and processing of waste and land raising were unrelated to the proposed agricultural storage buildings. The correspondence suggested that the land owner should undertake voluntary remediation works instead of waiting for formal enforcement action to be initiated by the County.
- 12.5 On 18 August 2022, the EA presented the operator with a compliance report relating to the site which required them to cease bringing waste on to the site. The EA confirmed there were no longer any waste permits or exemptions for the site. However, the EA also advised that they were not intending to take any further action in respect of the site owing to the risk of pollution from the inert waste being low.
- 12.6 Correspondence with the site owners confirmed that they consider that they are using their permitted development rights to prepare the land for the agricultural buildings and they advised that they intend to continue to working on site, and that HGVs would continue to bringing material on to the site for at least another year.
- 12.7 On 19 October 2022, officers served a Planning Contravention Notice (PCN) on the two owners of East Anglian Farming Contractors Ltd to gather further evidence about the breaches of planning control. The initial responses to the PCN were considered to be insufficient and incomplete and officers gave guidance on the legal requirement to provide a complete and accurate response and the possible consequences of failing to do so.
- 12.8 At the time of writing this report, officers are in the process of drafting a report seeking the authorisation to serve an enforcement notice in respect of the breaches of planning control at the site.

13 Willow Hall Farm, Hill Row, Haddenham

- 13.1 On 2 August 2021, planning permission was granted for the Construction of irrigation reservoirs by the extraction, processing and export of sand and gravel and associated development at Willow Hall Farm, Haddenham. Following the discharge of pre commencement conditions, the mineral extraction commenced at the site on 28 February 2022.

- 13.2 Although monitoring visits to the site took place on 28 June 2022 and 16 December 2022, issues with groundwater at the site not being able to be discharged meant that other than soil stripping and installation of the processing plant, very little development had taken place at the site. However, concerns were raised about compliance with the conditions relating to archaeology on site.
- 13.3 In February 2023, following concerns that had also been raised regarding drainage at the site, officers arranged a further visit to check compliance with the planning conditions, in particular those relating to drainage and archaeology. A representative from the County Council's Historic Environment Team (HET) attended this visit. The visit confirmed that some of the most archaeologically sensitive areas of the site had been worked without the required supervision of archaeological consultants, and sign off from HET, as required by the approved Written Scheme of Investigation. This finding was in direct conflict with information that had been provided to officers by the operator. The operator was advised that the work on site needed to stop immediately.
- 13.4 On 17 February 2023, a formal letter was sent to the operator, Mick George Limited (MGL) setting out the breaches of planning control taking place on site, detailing the total destruction/loss of archaeological deposits in two areas and the partial destruction/loss of archaeological deposits in a third area of the site. The letter advised MGL that County Planning intended to serve a breach of condition notice in respect of the breaches of planning control.
- 13.5 Notwithstanding that the operator has been working with HET to fully evaluate the damage caused to known archaeological deposits in the area and also to prepare an updated archaeological mitigation strategy, the disregard for the planning condition and the historic environment and record is such a serious breach of planning control that officers are in the process of drafting a report seeking authorisation to serve a breach of condition notice.

Appendix 1 – Enforcement cases where notices have been served and monitoring is ongoing

Key: Red = High Priority

Amber = Medium Priority

Green = Low Priority

Description of Alleged Breach	Location	Notice Issued	Comments
2. Green Without planning permission, the change of use of the land from agricultural land to a mixed use comprising of agricultural and the importation and disposal of waste material and raising the level of part of the land by the depositing of waste materials.	First Drove Little Downham Ely	EN 17/01/12	An EN for unauthorised change of use was served in 2012 and upheld but varied at appeal. The amended notice required the removal of all the waste from land to the level of the adjoining field. Topographical surveys of the land confirmed that the EN had not been fully complied with. Counsel advice received in 2017 in respect of the larger agricultural unit led to the High Court action detailed in section 9 above.