

ENFORCEMENT UPDATE REPORT: 1 JANUARY 2017 – 31 MARCH 2017

To: **Planning Committee**

Date: **20 April 2017**

From: **Head of Growth and Economy**

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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INTRODUCTION

- 1.1 The purpose of this report is to brief the Planning Committee members on the planning enforcement and monitoring work being undertaken by the County Planning, Minerals and Waste team within the Growth and Economy service.
- 1.2 The Enforcement update report is usually prepared and presented to members quarterly. This report covers the work of the team in the period 1 January 2017 to 31 March 2017.
- 1.3 Paragraphs 2 to 5 of the report summarise the following information:
- Complaints received and their current status;
 - Number of ongoing investigations;
 - New enforcement cases;
 - Certificate of Lawfulness applications and appeals;
 - Ombudsman complaints received.
- 1.4 Paragraph 6 of this report details site monitoring visits undertaken in the period 1 January 2017 to 31 March 2017.
- 1.5 Paragraphs 7 to 15 of this report provide updates on a number of key ongoing Enforcement investigations.

2 COMPLAINTS RECEIVED

- 2.1 16 new complaints have been received between 1 January 2017 and 31 March 2017. Table 1 summarises the status of these complaints at the time of writing.

Table 1 - Complaint Status

Complaint Type	Number
Breach established and resolved	5
Breach established. Investigation on-going.	9
Not a county matter	2
Total	16

- 2.2 At the time of writing, of the 16 complaints received between January and March 2017:
- 7 cases have been investigated and closed;
 - 9 cases remain open and under investigation;

- 12 pre-existing complaints (received before 1 January 2017) also remain under investigation.

3 NOTICES SERVED

- 3.1 No new Enforcement Notices (EN), Breach of Condition Notices (BCN) or Temporary Stop Notices (TSN) have been served between January and March 2017.
- 3.2 Two Planning Contravention Notices (PCN) have been served in the period 1 January 2017 to 31 March 2017 relating to breaches of planning control at two separate sites. See paragraphs 8 and 13 below for further details on the enforcement investigations relating to the PCNs served in this period.

4 CERTIFICATE OF LAWFULNESS APPLICATIONS AND APPEALS

4.1 Application site: Long Drove, Waterbeach

The enforcement and monitoring team are continuing to assess the evidence submitted in support of the application for a Certificate of Lawfulness for use of land at Long Drove, Waterbeach as a waste transfer station. Officers have met with the agent and landowner to discuss what further evidence would be required to prove that, on the balance of probabilities, the site has been used as a waste transfer station for a continuous ten year period.

4.2 Appeal site: Mill Road, Fen Drayton

An appeal has been lodged with the Planning Inspectorate, against the refusal to grant a Certificate of Lawful Development for use of land at Mill Road, Fen Drayton for the processing of inert waste. The Council refused to grant the certificate in April 2016. The appeal is set to be determined by a 1 day Public Inquiry which is due to be held at the Shire Hall offices in Cambridge on 7 November 2017.

- 4.3 Officers from the enforcement and monitoring team are assisting with the collation and submission of formal documentation to the Planning Inspectorate and will notify Planning Committee of the results of the Certificate of Lawfulness application and appeal in due course.

5 OMBUDSMAN COMPLAINTS

- 5.1 No Local Government Ombudsman (LGO) complaints were received during the period 1 January 2017 to 31 March 2017.

6 SITE MONITORING VISITS 1 JANUARY 2017 – 31 MARCH 2017

- 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, in line with the Town and Country

Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012. The fees for conducting the visits are:

- Actives sites £331
- Inactive or dormant sites £110

6.2 Other waste activities such as waste transfer stations, waste recycling sites and scrap yards are also visited to assess compliance with the conditions set out in the grant of planning permission. However, the cost is borne by the Authority. A summary of the number and type of chargeable monitoring visits, non-chargeable monitoring visits and complaint site visits carried out during the monitoring period is set out in Table 2 below.

Table 2 – Chargeable Site visits by type 1 January 2017 to 31 March 2017

Site Type	Visits
Landfill	7
Quarries	18
Non chargeable sites	13
Total	38

- 6.3 Chargeable site visits have priority as they generate a small but significant income stream for the Council. The estimated income from chargeable visits for the period 1 January 2017 to 31 March 2017 is £8,275.00.
- 6.4 The visits to non-chargeable sites in the table above includes visits to investigate complaints received regarding breaches of planning control at sites that do not have County waste planning permission but may be undertaking development that requires it.
- 6.5 The Enforcement and Monitoring team currently consists of the Principal Enforcement and Monitoring Officer and one Monitoring and Control Officer. A Senior Compliance Officer has been recruited and will join the team in the near future, subject to satisfactory references being received. This is a newly created, full time post and the monitoring and compliance duties of the post holder will be shared with the Floods and Water team.

7 ENFORCEMENT CASES

- 7.1 There are currently 5 active enforcement cases where formal enforcement action has been taken and investigation and monitoring is on-going. A summary of each 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.
- 7.3 Appendix 2 contains a list of enforcement investigations where formal action has been taken and the notices remain extant. Unless there are other issues or reports

of development on these sites then no further investigation or action will be required.

8 CONQUEST DROVE, FARCET

- 8.1 In July 2016 officers received a complaint regarding the extension of the authorised End of Life Vehicle (ELV) site at Conquest Drove, Farcet into an adjoining field which was not within the application area of the County waste planning permission for the site.
- 8.2 Officers visited the site and confirmed that there had been an unauthorised material change of use of the adjoining land to a use for waste storage and advised the operator that this was a breach of planning control.
- 8.3 During a visit to the site, officers also noted that two of the conditions attached to the planning permission for the use of the ELV site were not being complied with. The conditions required the provision of an area within the site for the turning and manoeuvring of HCV delivery vehicles so that they could leave the site in forward gear and the planting and maintenance of boundary treatment to provide a visual barrier to the site.
- 8.4 Initial attempts by officers to remedy the breaches of planning control by negotiation were not successful and so, in January 2017, officers served a Planning Contravention Notice on the site operator and on the owner of the land in order to obtain a formal legal record of their intentions in respect of the breaches of planning control.
- 8.5 Following the service and return of the completed notice, the use of the adjoining field for the storage of ELV ceased and the operator advised that the planting required for the agreed boundary treatment would take place in the growing season in March / April 2017.
- 8.6 Officers intend to visit the site, unannounced in April to check that the breaches of planning control have been remedied.

9 WILBRAHAM LANDFILL

- 9.1 The Great Wilbraham active chalk quarry has planning permission to be restored by landfilling with inert waste. The Waste Planning Authority (WPA) issued an Enforcement Notice in May 2012 to address the restoration levels of the land exceeding what had been agreed and approved.
- 9.2 In May 2016 the site operators were convicted of failing to comply with the notice and ordered to pay a fine and the Council's legal costs within 12 months. To date, the Council's costs have not been paid. Legal services are due to provide an update to this committee on the procedure for placing a charge on the land should the site operator fail to pay the costs the Council incurred in bringing the successful prosecution.

- 9.3 The site operators have continued to reduce the height of the waste mound at the site and there has been a significant reduction in the pile. The photographs in Appendix 3 show the height of the waste mound before formal enforcement action was taken and the remaining waste as of January 2017. The site operators have advised that they will continue to reduce the mound, officers continue to liaise with the Environment Agency (EA) and conduct regular visits to the site to check progress.

10 LAND ADJACENT TO ROYSTON RECYCLING CENTRE

- 10.1 In February 2015 approximately 20,000 bales of refuse derived fuel (RDF) waste was deposited on the above land. A multi-agency approach produced an emergency plan which took account of the sites proximity to the Cambridgeshire and Hertfordshire county border, the fire risk associated with the stored waste and the possible implications that the amount and type of waste had on the presence of an aquifer.
- 10.2 In 2015 the EA issued Environmental Protection notices requiring the operators of the above site to remove all the RDF waste and the required action was completed by 16 October 2015.
- 10.3 A topographic survey showed that approximately 13,952 tonnes of waste material had been deposited, raising the level of the land across approximately two thirds of the site. A condition survey, drilling of boreholes and modelling work were undertaken to inform the standard of clean up required by the EA to minimise the risk to groundwater.
- 10.4 The operator has provided the EA with a remediation proposal which they do not feel is sufficient in targeting all of the waste deposits buried across the site. The EA are reviewing what action they may now have to take and a file of evidence is with the EA's legal team awaiting a decision in respect of commencing legal proceedings. Further updates will be provided once more information is known.

11 LAND KNOWN AS 'ASGARD'/ FIELD 6184, LITTLE DOWNHAM

- 11.1 In July 2015 the County Council confirmed that clay was being extracted from this parcel of land and spread to raise the land levels and also that waste materials were being imported onto the land to infill the excavations. There are EA exemptions in place for the importation of waste onto the land in question.
- 11.2 In April 2016 officers served a Planning Contravention Notice to gather further information on the quantity, source, location and composition of the waste imported onto the land. The information provided by the landowner and tenant farmer in their responses to the Notice was that the importation of the waste was covered by the EA waste exemption and their permitted development rights under part 6 of the General Permitted Development Order.
- 11.3 A topographical survey of the land at Black Bank took place on 19 December 2016. The initial results of the survey indicated that the amount of waste imported onto the land was not significant but officers requested further clarification from the

survey company on interpreting the technical survey data before being able to assess whether the amount of waste brought onto the land constitutes a material change of use that would require County waste planning permission.

- 11.4 On 15 March 2017 officers received allegations about further importation of material onto part of the land and visited the site to gather photographic evidence.
- 11.5 Officers spoke at length to the landowner before meeting with East Cambridgeshire District Council (ECDC) to discuss the information provided that the land owner was using his permitted development rights to create hardstanding on that part of the agricultural unit. ECDC agreed that the new material, which was intended for hardstanding would benefit from permitted development rights provided that the requirement for prior approval had been met. In this case there had been no prior approval and so this is a breach of planning control that is a district matter and for ECDC to pursue.
- 11.6 On 5 April 2017 officers wrote to the owners of the land and the tenant farmer to set out that the recent waste importation was a matter for ECDC. The letter clearly set out the permitted development rights for waste that apply to the agricultural unit in question, the Council's assessment of the size of the agricultural unit and, that if the importation of waste continued or resumed on the agricultural unit, which comprises of field 6184 and First Drove, land then there was now clear evidence of the land levels. Officers need to provide a co-ordinated approach with ECDC and therefore offered the land owner and tenant farmer opportunity to meet with ECDC and the EA with the aim of providing clear and co-ordinated advice on the environmental and planning issues on the agricultural unit.
- 11.7 The letter also advised that officers will be arranging to meet with legal colleagues to consider all the evidence and get a legal steer on whether the amount of waste material brought onto the land prior to December 2016 requires planning permission from the County Council as the Waste Planning Authority and what possible courses of action are available if this is the case. The land owner and tenant farmer have been advised that this legal opinion will be based on the current situation and would definitely change if any further waste material is brought onto the land.

12 BLOCK FEN

- 12.1 Aggregate Industries (AI) completed work to upgrade the first half of Block Fen Drove up to the Tarmac quarry access in accordance with their approved scheme.
- 12.2 In February 2016 Mick George Ltd (MGL) proposed a scheme for the second half of the Drove upgrade, on the understanding that all the operators with active development sites on Block Fen contributed to its cost.
- 12.3 A formal Section 278 (S278) agreement from the Highway Authority was required for the works and the application for the agreement needed to be accompanied by 50% of the application fee. In September 2016 the sharing of the costs for the scheme was agreed and all the operators sent in their share of the formal S278 agreement application fee.

- 12.4 Final discussions are now taking place between MGL as the lead operator and the Highway Authority. MGL need to submit revised plans for this issue to move forward. Once the design is agreed, an agreement to deliver the works on the second half of Block Fen Drove can be completed. At present this is likely to be in the form of a Section 106 agreement with the Council, on the basis that the Council will act as the main connecting party. However, until the S278 agreement is agreed with highways colleagues, planning officers cannot secure the S106 agreement to deliver the road improvements to the second half of the Drove and thereafter ensure that the related planning applications can come before Planning Committee for consideration.

13 LAND AT WARBOYS AIRFIELD INDUSTRIAL ESTATE

- 13.1 The land at Warboys Airfield Industrial Estate has planning permission for the storage and processing of waste electrical and electronic equipment, subject to conditions, one of which restricts the location and amount of waste stored outside the buildings. In January 2015 officers were informed that the waste operator had been put into administration and several thousand tonnes of cathode ray tube (CRT) waste needed to be removed from the land, raising concerns that the CRT waste could be abandoned.
- 13.2 The landowner took over responsibility for the removal of the waste but the rate was unacceptably slow and so a BCN was served on 2 October 2015 requiring removal of all of the remaining waste by 1 November 2015. However, the short compliance period given on the notice was not sufficient for the removal of the CRT waste which the EA advised had been hampered by the rate that it could be taken by the specialist permitted waste site.
- 13.3 Officers visit the site regularly and have confirmed that the landowner is continuing to remove the outstanding waste stored outside of the units. Progress with the removal remains slow owing to the need to separate out specialist waste items and arrange for their separate removal. Although the site is being cleared of waste, some of the items stored outside the units are classed as machinery and equipment rather than waste and so they are not covered by the terms of the County planning permission.
- 13.4 The deadline for initiating legal proceedings in relation to the failure to comply with the BCN has passed. However, officers are mindful that a prosecution for failure to comply with the notice would not have resolved the breach of planning control in this case and would probably have caused further delays and complications for the landowner who continues to work to resolve the breach of planning control.
- 13.5 Although officers are confident that the remaining waste will be removed from the site, a Planning Contravention Notice has been served on the landowner in order to obtain a formal record of his intentions and timescales which can be referred to in the event that further formal enforcement action needs to be initiated.

14 BARRINGTON QUARRY

- 14.1 Officers are currently investigating the failure to comply with a number of planning conditions relating to noise and vibration issues at the former Quarry at Barrington which has planning permission to fill the quarry void with landfill material which is imported to the site by rail.
- 14.2 Officers have given the site operator timescales to address the noise and vibration issues caused by the light railway operations and have obtained the authorisation to serve of a Planning Contravention Notice (PCN) to gather further evidence should formal enforcement action need to be initiated.
- 14.3 The operator service of the PCN has been postponed whilst officers review information on the conditions that has been submitted by the operator.

15 EARL WOODWASTE, BENWICK ROAD, WHITTLESEY

- 15.1 In December 2016 planning permission was approved for an extension to the hours of operation at the East Anglian Resources Limited (EARL) wood waste yard in Whittlesey, reference F/2008/16/CW. In January 2017 officers received a complaint that wood waste processing had taken place at the EARL site on a Bank Holiday, which is a breach of condition 6 of the planning permission.
- 15.2 The operators initially advised that the work taking place at the site on the Bank Holiday was maintenance of machinery and not processing and that they wished to see full detail of the allegations before they would comment further. Officers visited the complainant and took a formal Section 9 statement about what they had witnessed before sending a redacted version of the statement to EARL for comment.
- 15.3 In the time that it took officers to finalise the statement, the WPA received a number of additional complaints about the hours of operation at the site and HCV movements in and out of the site throughout the night, in breach of condition 6 of F/2008/16/CW.
- 15.4 When EARL was sent the redacted version of the statement, along with the new allegations, they declined to comment and cited legal advice that they had taken.
- 15.5 EARL has submitted a further application to vary the operating hours at the site. However, the application is invalid and EARL has been advised that it does not currently provide sufficient justification of the need for HCVs to enter and leave the site throughout the night, in the light of the detrimental effect that this has on the complainant's residential amenity.
- 15.6 In October 2015 a Breach of Condition Notice (BCN) was served on EARL relating to the failure to comply with the planning condition relating to hours of operation which was attached to the previous planning permission for the site. The BCN related to the conditions attached to a permission which has now been superceded.
- 15.7 Officers have obtained the authority to serve a Planning Contravention Notice on EARL to gather further information about the alleged breaches of planning control

and confirm all those with an interest in the land, should it be considered necessary and expedient to pursue further formal enforcement action.

APPENDIX 1 - ENFORCEMENT CASES WHERE ACTION HAS BEEN TAKEN AND MONITORING IS ONGOING

KEY: RED = HIGH PRIORITY AMBER = MEDIUM PRIORITY GREEN = LOW PRIORITY

Description of Alleged Breach	Location	Notice Issued	Comments
<p>1. AMBER</p> <p>Failure to comply with condition 6 of planning permission F/02017/08/CM and E/03008/08/CM.</p> <p><u>Condition 6</u> No development shall commence until a scheme for the phased improvement of the public highway known as Block Fen Drove from its junction with the A142 to its junction with the private haul road referred to in condition 4 has been submitted to and approved in writing by the MWPA in consultation with the local highway authority. The submitted scheme shall include a programme of implementation and shall be fully completed by 5 August 2012.</p>	Mepal Quarry Block Fen Drove Mepal	BCN 06/01/14	<p>Planning permission F/02017/08/CM and E/03008/08/CM permit an extension to Mepal Quarry.</p> <p>A BCN was served on the site operator for failing to implement the approved scheme to improve the public highway</p> <p>At the July 2014 meeting Planning Committee authorised officers to employ Counsel to explore the courses of action available to the Authority to secure compliance with the planning conditions.</p> <p>Officers are working with the operators to move the implementation of the scheme forward.</p> <p>See Paragraph 12 in the main body of the report for a further update.</p>
<p>2. AMBER</p> <p>Failure to comply with condition 9 of planning permission F/02013/07/CW.</p> <p><u>Condition 9</u> Within 3 months of the date of this permission a scheme for the phased improvement of the public highway known as Block Fen Drove from its junction with the A142 to its junction with the private haul road referred to in condition 4 shall be submitted to the Waste Planning Authority for approval. The submitted scheme shall include a programme of implementation and shall be fully</p>	Witcham Meadlands Quarry Block Fen Drove Mepal	BCN 16/12/13	<p>Planning permission F/02013/07/CW permits the use of part of the land at Witcham Meadlands Quarry as a waste transfer station and a skip storage area and associated traffic. A BCN was served 16 December 2013 requiring the submission of a scheme for the phased improvement of Block Fen Drove, from its junction with the A142 to its junction with the private haul road, within 30 days.</p> <p>In April 2014 the operator submitted a scheme which was incomplete and was refused. A revised scheme was submitted in November 2014 and was accepted in part but it did not relate to all of the relevant parts of Block Fen Drove. A scheme that addressed the remaining part of Block Fen Drove was therefore requested at the time.</p>

Description of Alleged Breach	Location	Notice Issued	Comments
completed within 2 years of the date of this permission.			See Paragraph 12 in the main body of the report for a further update on the draft Section 278 road agreement produced by the operator.
3. AMBER Failure to comply with condition 7 of planning permission S/01556/10/CW regarding surfacing of the site.	Long Acre Farm Fen Road Chesterton Cambridge	BCN 08/10/13	A joint visit with the EA on 26 May 2015 confirmed that the majority of the waste had been removed, the hardcore and soils that remained on site did not represent a pollution risk. However, recent visits to the site indicate that there are some breaches of condition that need to be pursued on site and officers will take this forward with the land owner.
4. GREEN Breach of Condition 5 of planning permission S/00060/10/CW - Variation of Conditions 2, 7, 8, and 9 of planning permission S/0203/05/CW to extend the period of land filling until 30 September 2011 and be consistent with planning permission S/2073/07/CW; deletion of conditions 4 (approved drawings) and 5 (phasing); and discharge of Conditions 10 (restoration) and 13 (wheel cleaning) <u>Condition 5</u> Temporary stockpiles shall not exceed 2 metres in height.	Wilbraham Quarry Mill Road Great Wilbraham	BCN 02/06/11	<p>In May 2011 officers noted that the heights of the stockpiles of waste deposited on the landfill site were well in excess of the maximum permitted height of 2 metres and several metres above the height of the surrounding land which was visually intrusive and hindering the restoration of the landfill site.</p> <p>The landowner did not meet a deadline given to reduce the height of the stockpiles and the WPA served a BCN with the compliance date of 30 September 2011.</p> <p>The landowner technically remains in breach of condition 5. However, the height of the remaining stockpiles is now minimal, as explained in paragraph 9 above, and the court action in relation to the failure to comply with the enforcement notice supersedes this notice in addressing this issue.</p>
5. GREEN Breach of Condition 12 of planning permission S/00060/10/CW <u>Condition 12</u> 12) Within 1 month of the date of this permission	Wilbraham Quarry Mill Road Great Wilbraham	BCN 02/06/11	<p>In 2011 officers noted that the wheel wash had not been installed in accordance with the planning condition and the landowner was given until 1 June 2011 to submit a scheme. The deadline was not met and so the WPA served a BCN.</p> <p>The landowner remains in breach of this condition. However, the steps for compliance with the EN issued on 1 May 2012 include a</p>

Description of Alleged Breach	Location	Notice Issued	Comments
a scheme for the improvement of vehicle wheel cleaning facilities shall be submitted to and approved in writing by the Waste Planning Authority.			<p>requirement to keep Mill Road free of mud and debris.</p> <p>During recent visits to the site, officers have not seen any mud or debris on the road.</p>

APPENDIX 2 – EXTANT NOTICES

This appendix contains information on formal notices which have been served and remain in force.

Description of Breach	Location	Notice Issued	Current position
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 (<u>NOT</u> the same site as that referred to in paragraph 11 above, albeit it is noted that it is part of the same agricultural unit)	EN 17/01/12	An EN for unauthorised change of use was served on 17 January 2012. The EN was upheld but varied at appeal. The amended notice required the removal all the waste from land to the level of the adjoining field and to return the land to its former condition. Topographical surveys of the land confirmed that the level of the land had not been reduced and the EN had not been complied with. However, Counsel advised that the case did not meet the public interest test for a prosecution. The enforcement case remains open and subject to review, and officers have written to the land owner to advise that they intend to carry out a further topographical survey to establish the current land level.
Without planning permission, the importation and deposit of waste materials.	Block Fen Drove Chatteris	EN 21/01/03	An EN was served on the landowner on 21 March 2003 requiring that waste ceased to be deposited on the land. Since then waste has been intermittently deposited. However, no further tipping appears to have taken place since May 2010. The site continues to be monitored on an occasional basis.