

ENFORCEMENT UPDATE REPORT 2017

To: **Planning Committee**

Date: **14 December 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.**

<i>Officer contact:</i>
Name: Deborah Jeakins
Post: Principal Enforcement and Monitoring Officer, County Planning, Minerals and Waste
Email: Deborah.Jeakins@cambridgeshire.gov.uk
Tel: 01223 715544

1 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 and this report covers the work of the team in the period 1 August to 30 November 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;
 - Appeals;
 - Ombudsman complaints received.
- 1.4 Paragraph 6 of this report details site monitoring visits undertaken in the period 1 August 2017 to 30 November 2017.
- 1.5 Paragraphs 7 to 16 of this report provide updates on a number of key ongoing Enforcement investigations.

2 COMPLAINTS RECEIVED

- 2.1 18 new complaints were received between 1 August 2017 and 30 November 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	6
Breach established. Investigation on-going	7
No breach established, case closed	3
Not a county matter	2
Total	18

- 2.2 At the time of writing, of the 18 complaints received between August and November 2017:
- 6 cases have been investigated and closed;
 - 12 cases remain open and under investigation;
 - 15 pre-existing complaints (received before 1 August 2017) also remain under investigation.

3 NOTICES SERVED

- 3.1 Two new Enforcement Notices (EN) and two Breach of Condition Notices (BCN) have been served in this period. All four notices relate to breaches of planning control at a single site at Benwick Road Industrial Estate, Whittlesey and details of the enforcement investigation, the notices and the appeal process can be found in section 15 below.
- 3.2 No new Planning Contravention Notices (PCN) have been served in the period 1 August 2017 to 30 November 2017.

4 APPEALS

4.1 **Appeal site: Mill Road, Fen Drayton**

An appeal was 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 in April 2016. The appeal was formally withdrawn on 5 October 2017. However, now that the appeal is no longer proceeding, officers from the enforcement and monitoring team are in discussions with the agent for the application about the unauthorised waste uses that continue to take place on the land.

5 OMBUDSMAN COMPLAINTS

- 5.1 No Local Government Ombudsman (LGO) complaints were received during the period 1 August 2017 to 30 November 2017.

6 SITE MONITORING VISITS 1 AUGUST 2017 – 30 NOVEMBER 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, which are set out in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012. The national fees for conducting the visits are:

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

- 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. The enforcement and monitoring team are on target to complete all the agreed monitoring visits for this financial year.
- 6.3 Other waste activities 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 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 August 2017 to 30 November 2017

Site Type	Visits
Landfill	8
Quarries	14
Non chargeable sites	13
Complaint site visits	8
Total	43

- 6.5 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 August 2017 to 30 November 2017 is £6,178.00.
- 6.6 The Enforcement and Monitoring team consists of the Principal Enforcement and Monitoring Officer, a Monitoring and Control Officer and a Senior Compliance Officer whose time is shared with the Flood and Water team.

7 ENFORCEMENT CASES

- 7.1 There are currently 4 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. However, Appendix 1 does not include the notices served in this period that are referred to in paragraph 3.1 above and detailed in section 15 below, because the Enforcement Notices are subject to the appeal process, further details of this can be found below.
- 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 WILBRAHAM LANDFILL

- 8.1 The Great Wilbraham active chalk quarry has planning permission to be restored by landfilling the void with inert waste. The Waste Planning Authority (WPA) issued an Enforcement Notice in May 2012 to address the restoration levels of the land which exceeded what had been agreed and approved.
- 8.2 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, totalling £23,969.00, within

12 months. Since the publication of the last Enforcement and Monitoring update report, the Council's legal costs have been paid in full.

- 8.3 Officers undertake regular chargeable monitoring visits to the site. At the most recent visit on 16 November 2017, the height of the waste pile is now much less visible from the surrounding area and the operator is continuing to work towards achieving the agreed restoration contours for the site.

9 PLASGRAN, MANEA ROAD, WIMBLINGTON

- 9.1 In November 2016 the County Waste Planning Authority provided pre application advice in relation to a number of planning matters at Plasgran plastic Waste recycling facility at Manea Road, Wimblington. The advice covered both retrospective and prospective development at the site. Officers are currently determining a retrospective application to vary the hours of operation at the site but there are a number of other non compliances on site that have yet to be addressed by way of an application or through remedying the breaches of planning control.
- 9.2 Officers have advised the developer that applications to remedy all of the remaining breaches of planning control on site should be submitted in order to avoid formal enforcement action being initiated.

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 taking into 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 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. The operator provided the EA with a remediation proposal which did not target all of the waste deposits buried across the site.
- 10.3 On 25 May 2017 the EA served a Section 161A Works Notice under the Water Resources Act 1991 requiring the operator to remediate the land in 16 stages, with full compliance to be achieved by 11 April 2018.
- 10.4 On 12 July 2017 the EA visited the land and confirmed that Step 1 of the notice had not been complied with. The EA wrote to the operators and their solicitor in respect of this non-compliance.
- 10.5 On 9 August 2017 the EA visited the land again and determined that the next substantive step of the notice had not been completed. The EA will continue to inspect the land and the next substantive step in the notice is 20 December 2017.

- 10.6 To date, no remedial work has been carried out on the land and so the EA intend to seek further legal advice on pursuing enforcement action for failing to comply with the notice. Officers will provide further updates to members as they become available.

11 FIELD 6184 / BLACK BANK, LITTLE DOWNHAM

- 11.1 In July 2015 the County Council confirmed that clay extraction was taking place on a parcel of land at Little Downham, that the clay was being spread to raise the land levels and that imported waste materials were being used 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 a Planning Contravention Notice was served in order to gather information on the quantity, source, location and composition of the waste imported onto the land.
- 11.3 In December 2016 a topographical survey of the land was undertaken and the initial assessment of the survey result was that the amount of waste imported did not constitute a material change of use that would require County waste planning permission. However, on 15 March 2017 officers received allegations about further importation of waste material onto part of the land and visited the site to gather evidence. The land owner advised that he was using his permitted development (PD) rights to import waste to create hardstanding on that part of the agricultural unit. The conditions and prior notification requirement for these PD rights had not been met and so the activity on site was considered to be a breach of planning control that was within the jurisdiction of East Cambridgeshire District Council (ECDC), as the relevant district planning authority.
- 11.4 On 5 April 2017 officers wrote to the owners of the land and the tenant farmer to set out the PD rights for waste that apply to the agricultural unit and to advise that if the importation of waste continued or resumed on the agricultural unit, which comprises of field 6184 and a piece of land at First Drove (which is the subject of an extant enforcement notice and in the same ownership), then the County Council now had clear evidence of the land levels should enforcement action become necessary.
- 11.5 Advice was sought from Counsel regarding whether there was evidence of a breach of County planning control on the land, taking into account the waste brought onto field 6184, the PD rights for agriculture, ECDC's involvement in the assessment of PD, the previous importation of waste onto land at First Drove and at what point the cumulative importation of waste onto different areas of the agricultural unit would constitute a change of use that would require County Waste Planning permission.
- 11.6 On 16 October 2017 officers received Counsel's legal view that the County Council should seek a prohibitory injunction from the court with a penal notice attached which, if granted, would make it a criminal offence to import any further waste material onto the agricultural unit. The land owner has been advised of the

Council's intention to follow Counsel's advice and the legal procedure for seeking an injunction has commenced.

- 11.7 If the Court agrees to grant the prohibitory injunction, and there is then clear evidence that it has not been complied with, then the County Council will need to consider whether the evidential and public interest tests for initiating prosecution proceedings are met.

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 Discussions are still taking place between MGL as the lead operator and the Highway Authority on the final design. 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. The council has a planning application before it from MGL for continued and new waste management uses. The developer has been advised that should permission be granted it would be dependent on the road improvements being secured.

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.
- 13.2 In January 2015 the waste operator was put into administration, leaving several thousand tonnes of cathode ray tube (CRT) waste on the land. The landowner took over responsibility for the removal of the waste but the rate of removal was unacceptably slow and so a BCN was served in October 2015. The 28 day compliance period on the notice was not sufficient to allow for the removal of the CRT waste to permitted specialist waste sites. Therefore, the deadline for initiating legal proceedings in relation to the failure to comply with the BCN passed without the removal work being completed. However, officers noted that a prosecution for

failure to comply with the notice would not have resolved the breach of planning control and would probably have caused further delays and complications for the landowner who continues to work to resolve the breach of planning control.

- 13.3 Officers have visited the site regularly throughout 2016 and 2017 to monitor progress towards completion of the removal of the specialist waste. Although the most recent site visit took place in 10 August 2017, reports from the local district Council member confirm that the clearance of the site is nearly complete.
- 13.4 Officers will continue to visit the site until all the remaining waste has been removed and hope to be able to confirm to this Committee that this process has been completed in the near future.

14 BARRINGTON QUARRY

- 14.1 Officers are continuing to investigate the alleged breach of a condition attached to the planning permission allowing the importation of waste by rail into the former Cemex Quarry site at Barrington. The condition in question relates to the noise from rail movements at Foxton Sidings between 11pm and 7am and disturbance to local residents caused by engines idling on the track.
- 14.2 A PCN was served on Cemex on 11 May 2017 to gather further evidence relating to the breach and legal advice has been obtained in relation to the noise limit set in the condition.
- 14.3 In August 2017 Cemex changed the rail operator used to bring waste into the site which initially appeared to resolve the issue with noise from the rail operations at Foxton Sidings before 7am. However, recent reports from the complainant allege that the rail movements are again taking place before 7am and that the noise levels are being exceeded. In addition, the Rail Management Scheme approved as part of the S106 legal agreement for the site specifies that the maximum idling time for rail engines is 15 minutes and the operator has confirmed that there have been a number of occasions when this has been exceeded. Officers continue to monitor the situation and may need to address these non compliances formally if they cannot be resolved by Cemex and the rail operator.

15 EARL WOODWASTE, BENWICK ROAD, WHITTLESEY

- 15.1 In January 2017 officers received a complaint that wood waste processing had taken place at the East Anglian Resources Ltd (EARL) site on a Bank Holiday, contrary to condition 6 of planning permission F/2008/16/CW and condition 5 of F/2009/16/CW.
- 15.2 In the course of the investigation by the WPA, officers also received additional allegations regarding regular HGV movements in and out of the site throughout the night, also contrary to condition 6 of F/2008/16/CW.
- 15.3 On 13 April 2017 officers served a PCN on EARL to gather further information about the alleged breaches of planning control and confirm all those with an interest in the land. The operator confirmed in their completed PCN response that

they HGVs were entering and leaving the site throughout the night in breach of the condition.

- 15.4 The complainant continued to allege that HGVs were entering and leaving the wood waste yard throughout the night and raised concerns about the stockpile heights and dust suppression measures on site. On 13 July 2017 officers undertook a joint site visit to the site with the EA. During the visit EARL confirmed that they were allowing HCVs to enter and leave the site outside of the hours restricted by condition.
- 15.5 On 7 November 2017 officers served the following formal notices on EARL:
- Enforcement Notice for breach of condition 6 of F/2008/16/CW
 - Enforcement Notice for breach of condition 5 of F/2009/16/CW (for the same breach but within the extension to the site area)
 - Breach of Condition Notice for breach of condition 6 of F/2008/16/CW
 - Breach of Condition Notice for breach of condition 5 of F/2009/16/CW (for the same breach but within the extension to the site area).
- 15.6 The operator has lodged an appeal against the service of the Enforcement Notices with the Planning Inspectorate on the ground that there is no breach of planning control to pursue. The appeal has not yet been validated by the Inspectorate and at the time of writing this report officers are seeking legal advice on the operator's grounds for appeal.

16 FORMER QUARRY AT LONG DROVE, SOMERSHAM

- 16.1 In June 2005 planning approval, reference H/05040/03/CM, was given for 'Variation of Planning Condition 3 of Planning Permission H/0641/89 to extend the duration of the permission period from 2005 to 2013 for the completion of extraction and restoration at Somersham quarry, Long Drove, Somersham. Condition 3 of the amended permission required that the land be reinstated to a condition suitable for informal recreation and agricultural use by 31 December 2013. The details of the restoration of the land to provide farm land and a Pocket Park were set out in approved plans and the terms of a S106 agreement (and subsequent variation).
- 16.2 The Pocket Park has not yet been completed and made accessible for the public owing to issues with flooding on the land. On 27 November 2017 officers met with the former mineral operator and current land owner to discuss the outstanding requirements from the Section 106 legal agreement that detail the specifics of the Pocket Park and associated footpaths and bridleways. At the meeting, agreement on a number of outstanding issues was reached and, subject to legal confirmation on some minor conflict between the S106 requirements and the agreed restoration plans, officers hope to be able to update members on the opening date for the Pocket Park in 2018.

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 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 section 12 in the main body of the report for a further update.</p>
<p>2. AMBER 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 completed within 2 years of the date of this permission.</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 with 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 an incomplete scheme which was refused. A revised scheme, submitted in November 2014, was accepted in part but did not relate to all of the relevant parts of Block Fen Drove. A scheme that addressed the remaining part of the Drove was therefore requested. See section 12 of this report for a further update.</p>

Description of Alleged Breach	Location	Notice Issued	Comments
<p>3. AMBER Failure to comply with condition 7 of planning permission S/01556/10/CW regarding surfacing of the site.</p>	<p>Long Acre Farm Fen Road Chesterton Cambridge</p>	<p>BCN 08/10/13</p>	<p>A joint visit with the EA on 26 May 2015 confirmed that the majority of the waste had been removed from the site, the hardcore and soils that remained on site did not represent a pollution risk. Recent visits to the site indicted that the site was no longer a waste transfer station and that the site was being cleared. On 10 August 2017 the land owner advised that all remaining waste had been cleared from the site in advance of a South Cambs (SCDC) planning application being granted. However, on 19 October 2017 SCDC refused planning application reference S/0831/17/FL for the change of use of the land to a site for mobile homes. Officers intend to visit and monitor activity at the site and check whether the waste use has resumed in the near future.</p>
<p>4. GREEN Breach of Condition 12 of planning permission S/00060/10/CW</p> <p><u>Condition 12</u> Within 1 month of the date of this permission a scheme for the improvement of vehicle wheel cleaning facilities shall be submitted to and approved in writing by the WPA</p>	<p>Wilbraham Quarry Mill Road Great Wilbraham</p>	<p>BCN 02/06/11</p>	<p>In June 2011 the WPA served a BCN in respect of the failure to install the wheel wash in accordance with the planning condition.</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 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 (This is <u>NOT</u> the site referred to in section 11 above, although it is part of the same agricultural unit)	EN 17/01/12	<p>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 has advised that the case did not meet the public interest test for a prosecution.</p> <p>The enforcement case remains subject to review and, as detailed in section 11 above, officers are waiting for Counsel to confirm a court date for the County Council to seek a prohibitory injunction to prevent any further importation of waste onto the land.</p>
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. No further tipping appears to have taken place since May 2010.