

ENFORCEMENT UPDATE REPORT

To: **Planning Committee**

Date: **13 December 2018**

From: **Joint Interim Assistant Director, Environment & Commercial Services**

Electoral division(s): **N/A**

Purpose: **To consider the following report**

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

Officer contact:

Name:	Deborah Jeakins
Post:	Enforcement and Monitoring, 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 Environment and Commercial service.
- 1.2 The Enforcement update report is usually prepared and presented to members quarterly. The last full report was due to be presented in September 2018, but owing to a very full committee agenda the presentation of the report was delayed until October 2018 and consequently the report covered period 1 May 2018 to 21 September 2018. This report covers the work of the team in the next monitoring period which runs from 22 September to 30 November 2018. The next report will be due in April 2019.
- 1.3 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 Biodiversity team.
- 1.4 Paragraphs 2 to 5 of the report summarise the following information:
- Complaints received and their current status;
 - Notices served;
 - Appeals;
 - Number of ongoing investigations;
 - Ombudsman complaints received.
- 1.5 Paragraph 6 of this report details site monitoring visits undertaken between 22 September 2018 and 30 November along with the chargeable income expected from chargeable visits during this financial year.
- 1.6 Paragraphs 7 to 14 of the report provide updates on a number of key ongoing Enforcement investigations.

2 COMPLAINTS RECEIVED

- 2.1 11 new complaints were received between 22 September 2018 and 30 November 2018. Table 1 summarises the status of these complaints at the time of writing.

Table 1 - Complaint Status

Complaint Type	Number
Under investigation	1
Breach established and resolved	5
No breach established, case closed	3
Not a county matter	2
Total	11

- 2.2 At the time of writing, of the 11 complaints received between 22 September and 30 November 2018:

- 10 cases have been investigated and closed;
- 1 case remains open and under investigation.

2.3 In addition to the new complaints received 21 pre-existing complaints (received before 22 September 2018) also remain under investigation.

3 NOTICES SERVED

3.1 No new Enforcement Notices (EN) or Breach of Condition Notices (BCNs) have been served in this period.

3.2 Two new Planning Contravention Notices (PCN) have been served in this period, the details of the alleged breaches of planning control that the PCN's relate to can be found in paragraphs 8 and 14 below.

4 APPEALS

4.1 No planning or enforcement appeals have been dealt with in the period 22 September to 30 November 2018.

5 OMBUDSMAN COMPLAINTS

5.1 No Local Government Ombudsman (LGO) complaints were received during the period 22 September to 30 November 2018.

6 SITE MONITORING VISITS 22 SEPTEMBER - 30 NOVEMBER 2018

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:

- | | |
|-----------------------------|------|
| • Actives 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 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 22 September to 30 November 2018

Site Type	Visits
Landfill	7
Quarries	10
Non chargeable sites	4
Complaint site visits	10
Total	31

- 6.5 Chargeable site visits have priority as they generate a small but significant income stream for the Council.
- 6.6 The total income for the scheduled chargeable monitoring visits for the 2018 to 2019 financial year is £23,946.00.

7 ENFORCEMENT CASES

- 7.1 There are currently 3 active enforcement cases where formal enforcement action has been taken 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.

8 MILL ROAD, FEN DRAYTON

- 8.1 On 5 October 2017 the appeal to the Planning Inspectorate against the Council's refusal to grant a Certificate of Lawful Development for use of the above land for the processing of inert waste was withdrawn. The Council had refused to grant a previous Certificate application for a similar waste planning use on the land in 2015.
- 8.2 The enforcement team made contact with the agent acting for the landowner about the ongoing breach of planning control. In March 2018 the agent submitted an enquiry about the possibility of obtaining pre application advice relating to a new Certificate application in respect of the ongoing waste use on the land. Officers advised that although it would be possible to deal with such an application, two previous Certificate applications had been refused and they were not aware of any material change(s) in circumstances that might be likely to lead to a different opinion.
- 8.3 Notwithstanding the above, the agent for the application has advised that a new Certificate application is being prepared. Noting the Council's refusal to grant the two previous Certificates, on 21 November 2018 a Planning Contravention Notice was served on the landowner in preparation for initiating enforcement action in respect of the unauthorised waste uses that continue to take place on the land.

9 LAND ADJACENT TO ROYSTON RECYCLING CENTRE

- 9.1 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 site's 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.
- 9.2 A topographic survey showed that approximately 13,952 tonnes of waste material had been deposited, raising the level of the land across roughly 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 Environment Agency (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.
- 9.3 On 25 May 2017 the EA served a Section 161A Works Notice under the Water Resources Act 1991 (the Notice) requiring the operator to remediate the land in 16 stages, with full compliance to be achieved by 11 April 2018. This deadline was not met and the EA submitted a prosecution case file to their legal team in respect of the non compliance. However the EA took expert advice on the evidence and decided not to pursue this charge.
- 9.4 However, the prosecution case regarding deposition of waste in or on land proceeded with guilty pleas being entered and a date for sentencing has been set for 14 January 2019.
- 9.5 In addition, the EA are currently deciding what measures to take, if appropriate, in respect of more intrusive sampling and groundwater monitoring.

10 FIELD 6184 / BLACK BANK, LITTLE DOWNHAM

- 10.1 The Enforcement and Monitoring team had investigated the alleged importation of waste onto agricultural fields at First Drove and Black Bank, little Downham for a number of years.
- 10.2 An Enforcement Notice was served in relation to the unauthorised importation of waste on to land at First Drove in 2012, the details of which can be found in Appendix 1 below. The Notice was not fully complied with but legal advice was that without evidence of the original land levels a prosecution for failure to comply with the Notice was unlikely to be successful. The land owner ceased the importation of waste on to that piece of land. However, in 2015 concerns were raised that the importation of waste had now transferred onto land at Black Bank, Little Downham which is within the same agricultural unit and ownership as First Drove.
- 10.3 Noting that the service of the Enforcement Notice had not remedied the breach of planning control at First Drove, the Council sought advice from Counsel on how to address the ongoing unauthorised importation of waste on to the agricultural unit. Following legal advice, in February 2018 the County Council submitted an application to the High Court for a prohibitory injunction which would make it a criminal offence to import any further waste material onto any part of the agricultural unit.

- 10.4 A two day hearing took place at the Royal Courts of Justice on 23 and 24 July 2018. The Judge did not rule on the application for an Injunction at the hearing because the Defendants (the landowners and tenant farmer) agreed to a High Court Order instead. The Order states that the defendants must not import any waste onto the land or undertake any engineering operations (such as the creation of bunds) without fresh planning permission or the written consent of the County Council. The Order is drafted in the same terms as an Injunction and a confirmed breach could result in contempt of court proceedings just as if it were an Injunction.
- 10.5 The Order states that landowner must notify the Council if they wish to import waste or undertake engineering operations on the land and detail the anticipated volume of waste required. Once notified, the Council has six weeks to agree or object to the proposed importation and if the Council fails to respond then the works can take place without being in breach of the Order. However, if the Council refuses consent and the landowner wants to dispute this then he will need to apply to the County Court for them to rule on whether the waste is legitimately required for permitted development works on the land.
- 10.6 The defendants were ordered to pay 75% of the Council's legal costs which the Judge commented reflects the fact that the Council was successful in bringing the proceedings before the Court.
- 10.7 The final agreed Costs amount that the defendants need to pay to the Council is £11,500.00. The Executive Director has agreed that this amount can be paid in four annual instalments with interest charged at 4% above the base rate, which is in line with how the Council calculates late payments under its Section 106 agreements. The first annual invoice has been sent to the defendants and payment is due by 1 December 2018 and so a verbal update on whether the payment has been made can be provided to members at Committee.

11 COTTENHAM SKIPS, HISTON ROAD, COTTENHAM

- 11.1 Throughout 2017 and 2018 officers investigated a number of allegations that material and debris from the Cottenham Skips waste transfer station was escaping from the site and detrimentally affecting the condition of the Cottenham to Histon cycle path. Officers confirmed that Condition 14 of S/00795/11/CW which required the phased implementation of hard standing across the site had not been fully implemented and that this could be contributing to the problem with the debris escaping on to the highway.
- 11.2 Officers have served a Planning Contravention Notice on Cottenham Skips in respect of their failure to complete the hardstanding on site and the evidence obtained from the completed notice will allow officers to assess whether this has any impact on the condition of the highway. The Notice also covers the breach of Condition 2 of the same permission which relates to the failure to leave a turning circle onsite as shown on the approved plans.
- 11.3 In August 2018, a local Councillor reported a concern to the Minerals and Waste Planning Authority (MWPA) about the accumulation of waste material in an adjacent drainage ditch to the north east of the site. Officers passed evidence of the

environmental risk from the amount of waste escaping the site and landing in adjacent fields on to the Environment Agency to investigate.

- 11.4 On 19 November 2018 officers inspected the drainage ditch and confirmed that the waste had been cleared and that the repairs had been made to the site boundary which had resulted in a significant improvement in the condition of the adjacent land. Officers will continue to monitor the site and surrounds and liaise with the EA to address any repeat of the spillage.

12 BLOCK FEN

- 12.1 The upgrading of Block Fen Drove to make it suitable to accommodate all the mineral and waste traffic associated with sites in the area has been an ongoing issue for a number of years. Appendix 1 details formal enforcement action that had been taken previously to try to resolve this issue.
- 12.2 A formal Section 278 (S278) agreement from the Highway Authority was required for the works to improve the highway 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.
- 12.3 In May 2018 planning permission reference F/2000/17/CW was approved for the continuation of landfill and a number of other waste uses at the Witcham Meadlands quarry within Block Fen, operated by Mick George Limited. The S278 designs for the improvements were at an advanced stage and, as a consequence, a pre commencement condition was imposed on the permission relating to the Highway improvements. The condition requires that no development shall take place until the improvements have been made to Block Fen Drove.
- 12.4 The new permission has been implemented, however the S278 agreement has yet to be finalised and the operator has not yet been unable to undertake the required upgrade because the power company won't permit works near their cable in wet weather. This means that the improvement works are not likely to take place until early next year. The operator has been advised that, provided that the delay in undertaking the highway improvements is only because of the agreement and the weather conditions, then the planning harm caused by the breach may not need addressing immediately. However, if the timescale slips and there is a longer delay then the MWPA will reassess the position in respect of enforcement.

13 SAXON PIT, PETERBOROUGH ROAD, WHITTLESEY

- 13.1 In January 2018 the Environment Agency (EA) received a number of odour complaints associated with inadequate waste acceptance procedures taking place at Saxon Pit as part of filling the excavation void which is covered by a County Council waste planning permission. Investigations undertaken by the EA revealed a large scale problem regarding the acceptance and depositing of nonconforming waste material covering a large area down to an approximate depth of 2 metres.
- 13.2 All work on site has stopped whilst the operator voluntarily comes up with a remediation strategy to be agreed by the EA. The net result of the unauthorised

activity is that the stabilisation project was not completed by November 2018 as originally intended and the previous planning permission has now expired. However, a S73A planning application has been submitted to extend permission for the importation of waste to buttress the southern face of the former quarry.

- 13.3 The EA has served an Enforcement Notice requiring the removal of the non conforming waste from phase 1 of the development by 10 February 2019. However, at the time of writing this report, the period in which the Notice could be appealed had not expired and further updates on this can be provided at Committee, if they are available.
- 13.4 The EA is continuing to investigate the deposit of non conforming waste across a further five phases of the development and are the lead investigators because there are multiple breaches of the operator's environmental permit and no planning permission is currently in place to enforce against.
- 13.5 Officers from County Planning will continue to work closely with the EA to ensure that enforcement officers are aware of the current situation and whether this would affect the determination of the S73A planning application or subsequent enforcement investigations.

14 OLDFIELD LANE, WISBECH

- 14.1 In January 2018 the enforcement team received an allegation that an end of life (ELV) scrapyards was operating without planning permission at Unit 6, Oldfield Lane, Wisbech. Officers visited the site to assess the planning use and noted a large number of vehicles and vehicle parts stored across the site in various states of assembly and repair. The tenant of the site advised that all the vehicles and parts related to his hobby of banger racing, that he shared the site with 4 or 5 others and that most of the vehicles were registered with the DVLA as SORN (Statutory Off Road Notification). Officers advised that because the use of the site appeared to be for ELV a Planning Contravention Notice (PCN) might need to be served to get a formal written record of activities and operations at the site but that, prior to service, a further visit could establish whether there had been any turnover of vehicles and parts to ascertain whether this is a hobby yard or a commercial ELV site.
- 14.2 Evidence obtained at a second site visit, which took place in April 2018, was that there did not appear to have been any noticeable turnover of the vehicles and parts on the site and a banger / stock racing car was seen being worked on within a workshop at the site. However, it was still not clear from the level of activity at the site whether this was an ELV scrapyards or a yard used for storage and repair of stock cars, which would be a matter for Fenland District Council planning rather than a County Waste matter.
- 14.3 On 19 October 2018 a third site visit was undertaken with an Officer from the EA who is also investigating the activities at the site and assessing whether the tenants require a permit or exemption from the EA for the handling of waste. The tenants present at the visit advised that there are still four regular users of the site for banger car mechanics / repair / assembling and each person takes a section of the site for storage of vehicles and parts. One of the tenants gave details about a number of the vehicles that were seen and photographed at this visit, such as at which race they will be taken to, in what timescale and that they will be destroyed

during the races. The fixtures and fittings within the vehicles are stripped before races and engines and parts are replaced on site. Once destroyed, the vehicles are returned to the site and then taken to the authorised ELV site that operates on Oldfield Lane to be dealt with as scrap. One lorry on the site contained a large number of panels for vehicles which the tenant advised were being stored for the nearby ELV site.

- 14.4 On 22 November 2018 a PCN was served on the tenants of the site and the land owners to gather more information about the land planning use of the site to confirm whether this is a waste site or a site to repair stock racing cars which would be a District planning matter.
- 14.5 Officers continue to liaise closely with the EA about the use of the site and have also had discussions with Fenland District Council planning enforcement so that they are aware of the activity at the site should the evidence from the PCN confirm that this is not a matter for County Waste Planning.

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
<p>1. GREEN 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>A BCN was served on the site operator for failing to implement the approved scheme to improve the public highway</p> <p>See section 12 on Block Fen in the main body of the report for a further update.</p>
<p>2. GREEN Failure to comply with condition 7 of planning permission S/01556/10/CW regarding surfacing of the site.</p>	Long Acre Farm Fen Road Chesterton Cambridge	BCN 08/10/13	A joint visit with the EA in 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. The site was not operational for most of 2017 and but in 2018 it was taken over by Ely Skips who cleared the site and resumed the sorting of waste, but only within the buildings.
<p>3. AMBER 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.</p>	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 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 has advised that the case did not meet the public interest test for a prosecution. But advice received in 2017 in respect of the larger agricultural unit led to the High Court action detailed in section 10 above.