

Enforcement Update Report 2021

To: Planning Committee

Date: 26 January 2022

From: Assistant Director, Planning, Growth and Environment

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: Principal Enforcement & Monitoring Officer, County Planning, Minerals and Waste

[Link to the email address for Deborah Jeakins](#)

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 undertaken by the County Planning, Minerals and Waste team within the Planning, Growth and Development 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 July 2021 and it covered the period 1 March 2021 to 30 June 2021.
- 1.3 The Enforcement and Monitoring team consists of the Principal Enforcement and Monitoring Officer (Deborah Jeakins), Monitoring and Control Officer (Stanley Gono) and Planning and Compliance Officer (Alex Rankine).
- 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 July 2021 and 30 November 2021. Sections 7 to 12 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 have 30 active complaints under investigation.
- 2.2 Between 1 July 2021 and 30 November 2021 the team received 19 complaints. A summary of the status of the complaints received in the period can be found in the table below.

Summary of the status of complaints received:

Status	Number
Under investigation	2
Breach established and resolved	4
Breach established. Investigation on-going	5
Not a County matter	2
No breach established, case closed	6
Total	19

2.3 At the time of writing, of the 19 complaints received between 1 July 2021 and 30 November 2021:

- 12 cases have been investigated and closed;
- 7 cases remain open and under investigation.

2.4 During the reporting period a further 6 pre-existing complaints were able to be resolved and closed.

2.5 Of the 30 complaints that are open and under investigation:

- 6 are awaiting the determination of planning applications which have been submitted;
- 3 are waiting the submission of a new planning application to regularise the breach;
- 8 are waiting for action to be undertaken by the operator within previously agreed timescales;
- 8 require a site visit to be undertaken to check the sit status; and
- 5 require further investigation by the team.

3 Notices Served

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

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 July 2021 and 30 November 2021.

5 Ombudsman Complaints

5.1 No Local Government Ombudsman complaints were received during the period 1 July 2021 and 30 November 2021.

6 Site monitoring visits 1 July 2021 – 30 November 2021

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 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 visits by type 1 July 2021 to 30 November 2021

Site type	Number of visits
Landfill	12
Quarries	19
Non chargeable sites	8
Complaint site visits	13
Total	52

- 6.5 This monitoring report covers five months within the financial year (2021-22). The total income that was estimated would be generated by chargeable monitoring visits in the financial year 2021 to 2022 was £24,000.00. However, the status of some sites has changed since the start of the financial year and this, along with some site closures that were needed in response to Covid 19, means that the number of visits to chargeable sites conducted so far this financial year has been slightly reduced.

7 Enforcement Cases

- 7.1 There is currently only 1 active 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, with fuller details relevant to that case contained in section 9 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.

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 A Delegated Enforcement Report seeking authorisation to serve an Enforcement Notice (EN) for an unauthorised material change of use of the land was drafted but before it was completed and authorised, 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 is complex and is still being considered but if it fails to prove, on the balance of probability, that the use has been an ongoing and continuous for the preceding ten years then the CLD will not be granted. If the CLD is not granted and the EN is served, the landowner may wish to lodge an Appeal to PINS against the service of the EN and the refusal to grant the CLD.

9 Field 6184 / Black Bank, Little Downham

- 9.1 An Enforcement Notice (EN) was served in relation to the unauthorised importation of waste on to land at First Drove in 2012, as detailed in Appendix 1 below. Although the Notice was not fully complied with, legal advice was that without evidence of the original land levels, a prosecution for failure to comply with the Notice was not likely to be successful. The landowner 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.
- 9.2 The Council sought advice from Counsel on how to address the unauthorised importation of waste on to the agricultural unit and then 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. At the hearing that took place at the Royal Courts of Justice in July 2018, the landowners and tenant farmer agreed to a High Court Order ('the Order') so that the Judge did not have to rule on the injunction.
- 9.3 The terms of the Order are such 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 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. Any confirmed breach of the Order could result in contempt of High Court proceedings.
- 9.4 On 19 September 2019, the landowner submitted a Prior Notification application, reference 19/01268/AGN, to East Cambridgeshire District Council (ECDC) to erect an agricultural building on the same piece of land at First Drove to which the extant EN relates. The landowner was at that time formally reminded of the potential penalties for breaching a High Court Order, that the County Council had evidence of the land levels across the site and that County Council officers would monitor the site for any breach of planning control. ECDC granted permission for the steel framed agricultural building on 10 October 2019. To date, no work has started on site to

construct the building. Officers will prioritise visiting the site if any reports of any importation of waste onto the site are received and would, if necessary, put any evidence of a breach of the High Court Order before the courts.

- 9.5 In November 2021, the Council raised the fourth and final invoice for the annual instalment relating to the payment of the costs incurred in taking this matter before the High Court. All three of the previous invoices have been paid. Appendix 1 details formal enforcement action that had been taken in respect of this matter.

10 Saxon Pit, Peterborough Road, Whittlesey

- 10.1 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 and that it was covering a wide area, down to an approximate depth of 2 metres. The EA investigation confirmed that the deposit of non-conforming waste had taken place across five phases of the development.
- 10.2 The EA requested that works on site cease to allow investigation which resulted in the stabilisation project, approved under a time limited planning permission, not being completed by the expiry date of that planning permission. A new planning application, reference F/2015/18/CW, was subsequently submitted and approved to extend the timescale for the importation of waste to stabilise and buttress the southern face of the former quarry for a further period to November 2022. The EA recommended the completion of the stabilisation works to prevent further saturation in the active tipping face and advised that this should be undertaken prior to any restoration activities. The planning permission issued restricted the operations to the use of the existing approved inert waste types and did not permit the use of the unauthorised waste type brought onto site without the necessary permission or permit.
- 10.3 In June 2020 the EA advised the operator that the removal of the non-conforming waste would not be required, provided that containment measures were put in place to control the leachate and landfill gas arising from the imported waste. As the statutory regulatory authority for leachate and landfill gas matters, the EA recommended that an environmental assessment was undertaken to determine: the chemical nature of leachate arising from the non inert waste; the likelihood of its migration; its potential impact to sensitive receptors in the long term and representative gas monitoring. The full details of the EA's correspondence in relation to planning application reference F/2015/18/CW can be found on the Council's public access webpage (<https://planning.cambridgeshire.gov.uk/online-applications/>).
- 10.4 Legal advice confirmed that the principle of development at the site had previously been found to be acceptable. It had also been accepted that the stabilisation works needed to be completed and, as there was no objection to the development from any of the statutory consultees, planning permission reference F/2015/18/CW was issued on 17 September 2020 and approves the infilling of the pit face with inert waste for its stabilisation and buttressing for two years and 2 months from the date of the decision notice.

- 10.5 Since the issuing of the planning permission in September 2020, the Council has continued to receive occasional queries about the waste uses at the Saxon Pit site and the EA's decision to allow the non inert waste to remain in situ, provided that suitable monitoring and mitigation measures are incorporated into the site restoration. The EA investigation is ongoing and is likely to continue for some considerable time. Officers from County Planning continue to work closely with the EA to ensure that enforcement officers are kept updated on the current situation and regular monitoring will be undertaken to determine the type and source of waste material brought onto the site for use in the stabilisation and the completion of the restoration.
- 10.6 In February 2021, a new planning application, reference CCC/21/024/FUL, was submitted which seeks permission for the importation, storage, processing and recycling of incinerator bottom ash and construction and demolition waste at the Saxon Pit site. Although this development is unrelated to the existing County planning and EA investigations into the waste brought into stabilise the pit, it has received a significant amount of public attention. The application, which was accompanied by the submission of an Environmental Statement, has been subject to amendments to address the concerns raised by statutory consultees. The latest formal consultation concludes at the end of December and it is anticipated that the application will be presented to the Planning Committee for a decision early in 2022.
- 10.7 In addition, the District Environmental Health Officer has recently been investigating a series of odour complaints about the Saxon Pit site that have been received from neighbouring residents. The complaints relate to the use of premises at the site, under planning permission issued by Fenland District Council for the production of wooden products which is resulting in a strong 'earthy' smell at the site. There are currently no waste matters relating to this operation and any enforcement or pollution control action required remains within the jurisdiction of the District Council.

11 Kingsland Farm, Coates

- 11.1 In January 2020 officers received a complaint regarding the breaking of vehicles for parts that was taking place in an industrial unit at Kingsland Farm, Coates. This processing of End-of-Life vehicles (ELV) is development that needs planning permission from the County Council as the Waste Planning Authority (WPA).
- 11.2 The landowner and operator were advised that as Waste Planning matters can be complex, they should seek Pre application advice from County Planning, Minerals and Waste which would provide information on whether the ELV use was consistent with the Mineral and Waste policies in the Local Plan as well as details of what supporting information would need to be submitted with any application. The pre application advice request was received on 26 March 2021 and the pre application advice response letter was issued on 3 April 2020. The advice from County Planning was that that the ELV use could be supported by officers because it broadly complied with the sustainability aims of national and local development plan policies and the vehicle dismantling activities could be undertaken without unacceptable adverse impacts on human health or amenity.
- 11.3 On 23 July 2020, a planning application, reference CCC/20/056/FUL was submitted for 'Change of use of land and buildings from storage and distribution to vehicle dismantling and parts storage (Retrospective). Matters relating to the determination

of this application have proved complex to resolve and the current determination date for the planning application is 31 January 2022.

- 11.4 Officers received a number of reports alleging that operations were taking place at the site outside of the working hours proposed in the planning statement submitted with the application and, in response, undertook out of hours monitoring to gather their own evidence. The monitoring confirmed that out of hours working was taking place at the site. However, as the development is not yet controlled by a County planning permission and no planning conditions are in place, officers were not able to take any formal action to address the matter. Officers did however advise the operator, their agent and the landowner of the need to comply with the operational details specified in the submitted planning application, that these would be imposed as conditions on the grant of any planning permission granted and the potential consequences of failing to do so.
- 11.5 It must be noted that operator performance does not constitute a material planning consideration and cannot therefore be taken into account in the determination of any planning application. If the application is approved, officers will monitor compliance with the permission and conditions and if there is evidence of breaches of condition taking place, appropriate enforcement action will be initiated.

12 Westons Yard, Pondersbridge

- 12.1 On 5 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.
- 12.2 On 16 November 2020, Enforcement Officers sent an email to the operator and agent to remind them that a number of planning conditions required action to be undertaken within three months of the date of the decision notice, the relevant conditions were:
- 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).
- 12.3 Officers corresponded with the Planning agent and operator regarding the ongoing breaches of planning control at the site and advised that each of the breaches of planning condition were detrimental to local residential amenity or were causing planning harm and needed addressing. Owing to the amount of time that it was taking to secure compliance with the conditions, officers sought the authority to serve a Planning Contravention Notice (PCN) on the site operator and the land owner.
- 12.4 The PCN was served on 31 August 2021 and it required the provision of information on land ownership and the breaches of condition in order to assist with an assessment of whether it is necessary and expedient to take formal enforcement

action. The PCN responses, and subsequent correspondence with the operator, confirmed that the majority of the breaches of planning control on site had been remedied. Officers have scheduled a site visit in early 2022 to check that all the required measures on site have been undertaken and discuss the noise monitoring that now needs to be undertaken.

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.