

ENFORCEMENT UPDATE REPORT

To: **Planning Committee**

Date: **16 May 2019**

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

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:	Sandra Bucci and Deborah Jeakins
Post:	Enforcement and Monitoring, County Planning, Minerals and Waste
Email:	Sandra.Bucci@cambridgeshire.gov.uk
Tel:	01223 706758 / 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 presented in December 2018 and covered the period between 22 September 2018 and 30 November 2018. The next quarterly report was due to be presented to Planning Committee in March 2019 but was deferred until today's agenda owing to there being no agenda items for the March and April meetings. This report covers the work of the team from 1 December 2018 to 30 April 2019. The information provided is split into the 1 December to 31 March reporting, noting that the reporting on the chargeable monitoring visits only covers the 2018/19 financial year. The next update report to members will be due in July 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 Risk 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: the site monitoring visits undertaken between 1 December 2018 and 30 April 2019; the total chargeable income received in the 2018/19 financial year; and the income expected from chargeable visits during the 2019/20 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 16 new complaints were received between 1 December 2018 and 30 April 2019. Table 1 summarises the status of these complaints at the time of writing.

Table 1 - Complaint Status

Complaint Type	Number
Under investigation	6
Breach established and resolved	3
No breach established, case closed	4
Not a county matter	3
Total	16

- 2.2 At the time of writing, of the 16 complaints received between 1 December 2018 and 30 April 2019:
- 9 cases have been investigated and closed;
 - 6 cases remains open and under investigation.
- 2.3 In addition to the new complaints received 10 pre-existing complaints (received before 1 December 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 One new Planning Contravention Notice (PCN) has been served in this period, the details of the alleged breach of planning control that the PCN related to can be found in paragraph 14 below.

4 APPEALS

- 4.1 No planning or enforcement appeals have been dealt with between 1 December 2018 and 30 April 2019.

5 OMBUDSMAN COMPLAINTS

- 5.1 No Local Government Ombudsman complaints were received during the period 1 December 2018 to 30 April 2019.

6 SITE MONITORING VISITS 1 DECEMBER – 30 APRIL 2019

- 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, non-chargeable monitoring visits and complaint site visits carried out during the monitoring period is set out in Table 2 below.

Table 2 – Site visits by type 1 December to 30 April 2019

Site Type	Visits
Landfill	8
Quarries	18
Non chargeable sites	3
Complaint site visits	6
Total	35

- 6.5 Chargeable site visits have priority as they generate a small but significant income stream for the Council.
- 6.6 The total income generated by the scheduled chargeable monitoring visits in the 2018 to 2019 financial year is £23,946.00.
- 6.7 The total estimated income for the 2019 to 2020 financial year is £27,122.00. However, this is dependent on a number of mineral planning permissions that have been approved being implemented within the period.

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 21 November 2018 a Planning Contravention Notice was served on the owner of the above land in respect of unauthorised waste storage and processing land planning uses at the site. The Council had 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 had been 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 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, the Certificate application was refused on 18 April 2019.

- 8.3 Following a visit to the site to assess the current land planning uses, authorisation was sought for the service of an enforcement notice (Notice) for material change of use. The notice is due to be served in the next few weeks which should allow PINS to jointly consider any appeals lodged against the refusal of the Certificate and the service of the Notice.

9 LAND ADJACENT TO ROYSTON RECYCLING CENTRE

- 9.1 In February 2015 approximately 13,952 bales of refuse derived fuel (RDF) waste was deposited on the above land. The Environment Agency (EA) led a multi-agency approach to address the issue, taking into account the site's proximity to the Cambridgeshire and Hertfordshire county border, the fire risk associated with the stored waste and the possible implications on the presence of an aquifer.
- 9.2 In May 2017 the EA served a Notice requiring the operator to remediate the land in 16 stages, expecting full compliance to be achieved by 11 April 2018. When this deadline was not met, the EA prosecuted the Company Director for the deposition of waste. The Company Director pleaded guilty to the offence and on 14 January 2019 he was fined £510,000, ordered to carry out 180 hours of unpaid work and required to pay £8,850 in costs. Of the £510,000 fine, £450,000 was the money saved or avoided by committing the offences and in addition to this, the Company itself was also ordered to pay £30,000 in costs.
- 9.3 Full information on the case is available in the EA's press release on their website: <https://www.gov.uk/government/news/waste-firm-fined-510000-for-illegally-storing-tonnes-of-rubbish>.

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, 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. However, 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 so that the Judge did not have to rule on the injunction.

- 10.4 The terms of the Order are 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. 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. A confirmed breach of the order could result in contempt of court proceedings.
- 10.5 The defendants were ordered to pay 75% of the Council's legal costs which were agreed at £11,500.00. A four year annual payment schedule was agreed with 4% interest above the base rate, the first annual instalment was paid in December 2018.

11 COTTENHAM SKIPS, HISTON ROAD, COTTENHAM

- 11.1 From 2017 onwards, officers have been asked to investigate 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 visited the site a number of times and noted that the area outside the site is cleaned regularly, however they also 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 served a Planning Contravention Notice on Cottenham Skips in respect of their failure to complete the hardstanding on site. The Notice also covered the failure to leave a turning circle onsite, as shown on the approved plans for the site. The evidence submitted in the notice response, dated 21 December 2018, was assessed by officers and advice was sought from the Council's Flood Risk and Biodiversity Team. The assessment was that no significant planning harm would be caused by the delay in the completion of the approved phased scheme of hardstanding and, noting that the operator has advised that he does intend to complete all of the scheme in due course, the operator was informed that the Waste Planning Authority (WPA) would not take any action at this point in time.
- 11.3 In August 2018, the WPA received a complaint about the accumulation of waste material in an adjacent drainage ditch to the north east of the site and across the surrounding fields. Officers passed evidence of the environmental risk from the amount of waste escaping the site 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 continue to regularly monitor the site and surrounds and liaise with the EA to address any repeat of the spillage.

- 11.5 At the time of writing this report, the access to the site is railed off in order for the operator to repair pot holes and this has limited the area in which lorries can access and egress the site.

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 able 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 have not yet taken place but these are due to take place in the very near future. 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 Council 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 designs and submits a remediation strategy which the EA need to agree is suitable. The net result of the unauthorised activity and ongoing delay 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. The application is currently due for determination by 31 May 2019 but only seeks to continue using the existing approved waste types and not the proposed new material which is being considered by the EA.

- 13.3 The EA served an Enforcement Notice requiring the removal of the non conforming waste from phase 1 of the development by 10 February 2019. However, the Notice has been appealed to PINS and the scheduled date for the appeal hearing is 28 August 2019. The EA has notified all local residents and businesses about the hearing and County planning has provided the EA with confirmation of the planning position.
- 13.4 The EA has also now confirmed that the deposit of non conforming waste has taken place across a further five phases of the development and that there are compaction and stability issues within these areas. The EA continue to be the lead investigators in this case 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) scrapyard was operating without planning permission at Unit 6, Oldfield Lane, Wisbech. Officers visited the site three times in 2018 to make a fair and accurate assessment of whether the land planning use of the site was a hobby yard for stock car repair and storage, or a commercial ELV site.
- 14.2 After consultation with the EA a Planning Contravention Notice was served on the land owner and tenants of the site to gather as much evidence as possible on the activities taking place at the site to inform the assessment of the planning use.
- 14.3 The PCN responses confirmed that this is a site that is used to store and repair stock racing cars and therefore this is a District, not County, planning matter and Fenland District Council has been advised accordingly.

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 Council 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 were not 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. The site inspection in January 2019 confirmed that the storage and sorting of waste now only takes place in the buildings.
<p>3. 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.</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 advice received in 2017 in respect of the larger agricultural unit led to the High Court action detailed in section 10 above.