

**ENFORCEMENT UPDATE REPORT 2020**

*To:* **Planning Committee**

*Date:* **1 October 2020**

*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.**

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## **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 Environment and Commercial Service.
- 1.2 The Enforcement update report is usually prepared and presented to members of this Committee on a quarterly basis. However, the last full report was presented in October 2019, which was outside of the normal quarterly reporting schedule owing to there being no agenda items for previous meetings of the Committee. No Planning Committees were convened between that date and this Committee and therefore, this report covers the work of the team between 1 October 2019 and 31 August 2020.
- 1.3 Prior to January 2020, the Enforcement and Monitoring team consisted of the Principal Enforcement and Monitoring Officer, a Monitoring and Control Officer and a Senior Compliance Officer whose time was shared with the Flood Risk and Biodiversity team. In January 2020, the Senior Compliance Officer post became vacant and a new Planning and Compliance Officer role was created as a replacement. Approval and establishment of the new role was delayed owing to the redeployment of the HR team in response to Covid 19 but this process is now underway. At the end of March 2020 the Monitoring and Control Officer was also redeployed to assist with the Covid 19 crisis, with the redeployment period ending on 31 August 2020.
- 1.4 Paragraphs 2 to 5 of the report summarise the current complaints under investigation; number of formal Notices served; Enforcement Appeals; and Ombudsman complaints received.
- 1.5 Paragraph 6 of this report details: the site monitoring visits undertaken between 1 October 2019 and 31 August 2020, including those that are chargeable, those that are non-chargeable and those that were undertaken to investigate complaints.
- 1.6 Paragraphs 7 to 12 of the report provide updates on a number of key ongoing Enforcement Investigations.

## **2 COMPLAINTS RECEIVED**

- 2.1 This section of the report covers the number of complaints received by the team between October 2019 and the end of August 2020. It should be noted that in early March 2020 Covid 19 social distancing measures were introduced which prevented all but essential travel and this impacted on the ability to undertake site visits. Visits to complaint sites resumed in late June 2020, with appropriate social distancing and safety measures being followed.
- 2.2 At the time of writing this report, the Enforcement and Monitoring team have 18 active complaints under investigation.
- 2.3 Between 1 October 2019 and 31 August 2020 the team received 31 complaints.

**Table 1** - summary of the status of complaints received:

Complaint Type	Number
Under investigation	5
Breach established and resolved	8
Breach established. Investigation on-going	6
No breach established, case closed	10
Not a county matter	2
<b>Total</b>	<b>31</b>

2.4 At the time of writing, of the 31 complaints received between 1 October 2019 and 31 August 2020:

- 21 cases have been investigated and closed;
- 10 cases remain open and under investigation;

There are a further 8 pre-existing complaints (received before 1 October 2019) which remain under investigation.

### **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 September 2019 and 31 August 2020.

### **5 OMBUDSMAN COMPLAINTS**

5.1 No Local Government Ombudsman complaints were received during the period 1 September 2019 and 31 August 2020.

### **6 SITE MONITORING VISITS 1 SEPTEMBER 2019 – 31 AUGUST 2020**

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. However, as noted above, in response to Covid 19 measures were introduced nationally in early March 2020 which prevented all but essential travel and this prevented chargeable site visits being undertaken in the first quarter of this financial year.
- 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 Tables 2 and 3 below. Owing to the length of time that this update report covers, the information has been split to show the visits undertaken in the second and third quarters of the last financial year (1 September 2019 to 31 March 2020) in table 2 and table 3 shows the visits undertaken in the 2020-2021 financial year up until 31 August 2020.

**Table 2 – Site visits by type 1 September to 31 March 2020**

Site Type	Visits
Landfill	13
Quarries	22
Non chargeable sites	7
Complaint site visits	10
<b>Total</b>	<b>52</b>

**Table 3 – Site visits by type 1 April 2020 to 31 August 2020**

Site Type	Visits
Landfill	3
Quarries	4
Non chargeable sites	0
Complaint site visits	9
<b>Total</b>	<b>16</b>

- 6.5 Chargeable site visits usually take priority as they generate a small but significant income stream for the Council. However, between mid March 2020 and 1 July 2020 officers were unable to undertake these visits and only attended complaint sites where the breach had the potential to cause serious environmental or planning harm.
- 6.6 The total income generated by the scheduled chargeable monitoring visits in the 2019 to 2020 financial year was £24,974.00, this amount was slightly down from the estimated figure of £27,122.00 owing to a number of previously approved mineral planning permissions that were not implemented in the period.

- 6.7 The total income that it was estimated would be generated by chargeable monitoring visits in the financial year 2020 to 2021 was £23,285.00. However, achieving this figure will not be possible owing to the temporary closure of some sites and the social distancing measures introduced to combat Covid 19 as well as redeployment of key staff and delays in being able to recruit to the new post in the team.

## **7 ENFORCEMENT CASES**

- 7.1 There are currently 2 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 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 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. An appeal against the refusal was lodged with the PINS and then withdrawn on 12 December 2019.
- 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 lawfulness 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 being considered and if it is unable to overcome the evidence that the Council has on file relating to the use of the land over the preceding ten years then the certificate will not be issued. If the Certificate 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 issue the Certificate.

## **9 FIELD 6184 / BLACK BANK, LITTLE DOWNHAM**

- 9.1 An Enforcement Notice 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 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.

- 9.2 The Council sought advice from Counsel on how to address the ongoing 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. 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.
- 9.3 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.
- 9.4 On 19 September 2019, the landowner submitted a prior notification Ref. 19/01268/AGN with East Cambridgeshire District Council (ECDC) to erect an agricultural building on the same piece of land at First Drove to which the extant enforcement notice relates. A letter was sent to the landowner advising them of the potential penalties that they could face should the High Court Order be breached; reminded the landowner that the County Council already has evidence of the land levels across the site; and that officers will be monitoring the site for any breach of planning control. ECDC granted permission for the steel framed agricultural building on 10 October 2019. Officers are not aware that any work has started on site to construct the building and would prioritise visiting the site in response to any reports of any importation of waste onto the site and, if necessary, put any evidence of a breach of the High Court Order before the courts.
- 9.5 In January 2020, the Council received the second annual instalment of the payment of the costs incurred in taking this matter before the High Court. The third and final payment is due in late 2020.

## **10 BLOCK FEN**

- 10.1 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.

- 10.2 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.
- 10.3 On 20 February 2019 planning permission reference F/2011/18/CW was approved for a Section 73 planning application to develop land without complying with conditions 9 & 10 of planning permission F/2000/17/CW (Continuation and extension of mineral extraction and waste disposal & management activities granted 21 May 2018) to allow 80,000 cubic metres of clay to be extracted for unspecified engineering projects. Condition 8 is a pre-commencement condition which was imposed on the permission relating to the Highway improvements, but the new permission was implemented without compliance with this condition due to delays with the finalisation of the S278 agreement.
- 10.4 On 21 January 2020 LGSS Law advised the County Council that the S278 agreement for the highway improvement works had been signed. On 27 February 2020 MGL advised the County Council that the scheme was out for tender and once a contractor is appointed, road space will be booked with CCC Highways Engineers. The travel restrictions and social distancing measures introduced to prevent the spread of Covid 19 delayed the works further and now that these have been relaxed, officers are awaiting the commencement date will be forwarded to the County Council.

## **11 SAXON PIT, PETERBOROUGH ROAD, WHITTLESEY**

- 11.1 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 the filling of the former quarry face 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 non-conforming waste material covering a wide area of the site, down to an approximate depth of 2 metres.
- 11.2 All work on site ceased whilst the EA investigated the scale of the problem and assessed what remediation the operator would be required to undertake. As a result, the stabilisation project was not completed by November 2018 as originally intended and the previous planning permission expired. A S73A planning application, reference F/2015/18/CW, was submitted to extend the timescale for the importation of waste to buttress the southern face of the former quarry. The application only sought to continue using the existing approved waste types and did not cover the waste type brought onto site without the necessary permission or permit.
- 11.3 The EA served an Enforcement Notice requiring the removal of the non-conforming waste from phase 1 of the development but subsequently withdrew it in order to gather more evidence on the medium and long term stability of the pit face. The EA confirmed that the deposit of non-conforming waste had also taken place across a further five phases of the development.

- 11.4 In February 2020 the EA advised the County Council that they do not propose any active stability monitoring going forward and they recommend the completion of the stabilisation works to prevent further saturation in the active tipping face and that this is undertaken prior to any restoration activities.
- 11.5 In June 2020 the EA advised the operator that they would not require the removal of the non-conforming waste, provided that containment measures are 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 is undertaken to determine the chemical nature of generated leachate, the likelihood of its migration and its potential impact to sensitive receptors in the long term, along with representative gas monitoring. The full details of the EA's consultation responses in respect of this planning application can be found on the Council's public access webpage (<https://planning.cambridgeshire.gov.uk/online-applications/>), under planning reference F/2015/18/CW.
- 11.6 The EA has also expressed concerns about the stability of the pit and water ingress from Kings Dyke which has the potential to affect a Network Rail train line which passes along the boundary of the site. Network Rail have been formally advised of these concerns but have failed to respond.
- 11.7 Legal advice confirmed that the principle of development at the site has previously been found to be acceptable. Therefore, in the absence of any objection from any of the consultees, it was accepted that there was a need for the stabilisation works to be completed. The deposit of waste that has already taken place at the site that is not inert, which was outside the remit of the extant planning permission, constituted one material consideration to be considered when determining the planning application submitted. The submitted planning application sought an extension of time to complete the importation of waste to stabilise the pit face, and did not constitute a justifiable reason for the refusal of the application as there were no other identified valid planning reasons to refuse to grant planning permission.
- 11.8 The EA investigation is ongoing and is likely to continue for some considerable time. Officers from County Planning will continue to work closely with the EA to ensure that enforcement officers are kept updated on the current situation and joint monitoring will be undertaken to determine the type and source of waste material brought onto the site for use in the stabilisation and restoration.

## **12 EAST ANGLIAN RESOURCES (EARL) WOOD WASTE, WHITTLESEY**

- 12.1 In December 2018 planning approval was granted for the continued use of the EARL wood waste yard at Whittlesey, subject to conditions. A planning condition required a permanent secure division between the wood waste yard and the adjoining land which EARL refer to as a separate 'haulage yard' in order to address allegations that HGVs were moving between the adjacent haulage yard and the EARL site and leaving the wood waste site overnight.
- 12.2 Following a significant delay in the submission of a suitable scheme, on 19 February 2020 the details of the permanent barrier which will be erected between the two sites were agreed by the Waste Planning Authority and the condition required that the barrier be installed by 18 March 2020.



- 12.3 On 17 March 2020, EARL advised that their chosen contractor could not obtain the fencing owing to a breakdown in the supply chain from China. Noting the circumstances, officers gave an extension to the deadline until 8 April 2020 to source an alternate supplier.
- 12.4 On 15 July 2020 officers confirmed that the required barrier has been installed, thereby creating a division between the wood waste yard and the adjacent land. Fenland District Council (FDC) planning enforcement are now investigating the operation of the haulage yard on the adjoining land which is a new planning unit and an unauthorised change of use of that land. As the overnight HGV movements that have been the subject of complaints to County planning all stem from the land adjoining the wood waste yard, and this is now a separate haulage yard operating as East Anglian Recycling Ltd, any further complaints about overnight HGV movements will be referred to FDC to investigate and pursue.

## 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><b>1. GREEN</b> Failure to comply with condition 6 of planning permission F/02017/08/CM and E/03008/08/CM.</p> <p><b><u>Condition 6</u></b> 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 10 on Block Fen in the main body of the report for a further update.</p>
<p><b>2. GREEN</b> 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	<p>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 9 above.</p>