

ENFORCEMENT UPDATE REPORT 2019

To: **Planning Committee**

Date: **3 October 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.**

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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 May 2019, which was outside of the normal quarterly reporting schedule owing to there being no agenda items for the March and April meetings. The next update report would have been due for presentation in July but was deferred until this meeting with the agreement of the Chair. Therefore, this report covers the work of the team between 1 May and 31 August 2019 and to return to the quarterly reporting schedule, the next report would be due for presentation in December.
- 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 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 May 2019 and 31 August 2019, 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 would normally cover the number of complaints received by the team within the four month reporting period of May to August 2019. However, in July the County Planning and Enforcement teams implemented a new planning database and associated complaint recording system and the transfer of data between the two systems meant that there was a six week period when officers were working between the old and new systems. Therefore, it is not possible to provide accurate figures for the number of complaints received in the period until the issues with the transfer of data have been resolved.
- 2.2 The Enforcement and Monitoring team have 16 active complaints 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 dealt with between 1 May 2019 and 31 August 2019.

5 OMBUDSMAN COMPLAINTS

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

6 SITE MONITORING VISITS 1 MAY – 31 AUGUST 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 May to 31 August 2019

Site Type	Visits
Landfill	11
Quarries	21
Non chargeable sites	6
Complaint site visits	6
Total	44

- 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 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 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 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 in May 2019, officers drafted a report seeking authorisation for the service of an enforcement notice (Notice) for material change of use. However, further research on the planning history of the site is required from South Cambridgeshire District Council before the report can be finalised and this has delayed the intended action. Once the Notice is served, it is likely that an appeal will be submitted to PINS and the landowner may wish to submit an appeal against the refusal of the Certificate at the same time to allow the appeals to be determined at the same time.

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, officers were made aware that the landowner has submitted a prior notification with East Cambridgeshire District Council (ECDC) of his intention to erect an agricultural building on the same piece of land at First Drove to which the extant enforcement notice relates. Although there are no current reports of waste being brought onto this land, officers have contacted ECDC for more information and arranged to meet with Senior Management to review the situation and discuss possible actions.

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 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. The new permission was implemented without compliance with the pre commencement condition because of delays with the finalisation of the S278 agreement.

- 10.4 On 17 September 2019 the operator advised that the S278 agreement is due to be completed shortly and once signed an application will be made to book road space and works will proceed as soon as that is authorised (which is expected to be 6-8 weeks after signing).

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 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.
- 11.2 All work on site has stopped whilst the operator designs and submits a remediation strategy which the EA approves. 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 has been submitted to extend permission for the importation of waste to buttress the southern face of the former quarry but it only seeks to continue using the existing approved waste types and not the proposed new material which is being considered by the EA.
- 11.3 The EA served an Enforcement Notice requiring the removal of the non conforming waste from phase 1 of the development but withdrew it in order to gather more evidence on the medium and long term stability of the pit face. The EA has also confirmed that the deposit of non conforming waste has taken place across a further five phases of the development and there are compaction and stability issues within these areas.
- 11.4 The Council are aware that the operator has imported some waste soils onto the site whilst no planning permissions are in force and may need to serve a planning contravention notice to gather evidence of that breach. Officers are also mindful that if the current County Waste planning application is approved, the operator will continue to bring waste material onto the site for use in the stabilisation and restoration, but the extent of the non conforming waste is such that it has not stabilised the pit face, and therefore it is likely that it will need to be removed.
- 11.5 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. In addition, the EA and CCC officers are concerned 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 to the site.

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. The planning condition requiring a permanent secure division between the wood waste yard and the adjoining land which EARL refer to as a separate 'haulage yard' has not yet been

discharged. The condition was imposed to address allegations that HGVs were moving between the adjacent haulage yard and the EARL site and leaving the wood waste site overnight, contrary to a condition on a previous planning permission which applied to the site.

- 12.2 Although no suitable barrier scheme has been agreed yet, officers consider that a scheme which has recently been submitted to comply with the planning condition only needs minor revisions to make it acceptable.
- 12.3 Once a barrier design has been approved and implemented, officers will undertake out of hours monitoring of the site to investigate ongoing allegations of overnight HGV movements.

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 10 on Block Fen in the main body of the report for a further update.</p>
<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	<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>