

## **Enforcement Update Report 2021**

To: Planning Committee

Date: 15 April 2021

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, if there are no agenda items for meetings of the Committee, the Chair can approve postponing the update report until the Committee next convenes. The last full report was presented to Committee in October 2020.
- 1.3 The Enforcement and Monitoring team consists of the Principal Enforcement and Monitoring Officer and Monitoring and Control Officer and we are currently recruiting to fill the new post of Planning and Compliance Officer whose duties will be shared with the Development Management team.
- 1.4 As a result of the new National lockdown imposed to prevent the spread of Covid 19 in January 2021, the Monitoring and Control Officer was unable to undertake site visits and was redeployed to assist with other work within the Environment and Commercial Service. At the same time, a decision was taken to temporarily suspend all monitoring visits and review the position as lockdown measures eased. It is anticipated that visits will resume in early April, depending on advice from central government and any corporate guidance issued.
- 1.5 Sections 2 to 5 of the report summarise the current complaints under investigation; number of formal Notices served; Enforcement Appeals; and Ombudsman complaints received.
- 1.6 Section 6 of this report details the site monitoring visits undertaken to chargeable sites between 1 October 2020 and 31 December 2020.
- 1.7 Sections 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 1 October 2020 and 28 February 2021. Visits to complaint sites continued after the National lockdown imposed on the first working day of January 2021, and these were undertaken only when they could be unaccompanied so that social distancing was observed and the visit was considered necessary to assess and take steps to address planning harm.
- 2.2 At the time of writing this report, the Enforcement and Monitoring team have 16 active complaints under investigation.
- 2.3 Between 1 October 2020 and 28 February 2021 the team received 14 complaints, a summary of the status of the complaints received can be found in the table below.

## Summary of the status of complaints received:

Status	Number
Under investigation	7
Breach established and resolved	3
Breach established. Investigation on-going	2
No breach established, case closed	1
Not a county matter	3
Total	14

2.4 At the time of writing, of the 17 complaints received between 1 October 2020 and 28 February 2021:

- 5 cases have been investigated and closed;
- 9 cases remain open and under investigation;

2.5 During the reporting period a further 8 pre existing complaints were able to be resolved and closed and a further 7 pre-existing complaints (received before 1 October 2020) remain under investigation.

2.6 Of the complaints that are still open and being investigated, 5 are awaiting the determination of planning applications which have been submitted, 2 are waiting the submission of a new planning application to regularise the breach and 5 are waiting for action to be undertaken by the operator within previously agreed timescales.

## 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 October 2020 and 28 February 2021.

## 5 Ombudsman Complaints

5.1 No Local Government Ombudsman complaints were received during the period 1 October 2020 and 28 February 2021.

## 6 Site monitoring visits 1 October 2020 – 28 February 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. However, as noted above, in response to the Covid 19 measures that were introduced nationally in January 2021, and the original lockdown that impacted on the first quarter of the 2020/21 period, very few chargeable site visits were undertaken in the last 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 and visits to complaint sites carried out during the monitoring period is set out in the table below.

Site visits by type 1 October 2020 to 28 February 2021

Site type	Number of visits
Landfill	4
Quarries	9
Non chargeable sites	0
Complaint site visits	2
Total	15

6.5 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, it was not possible to achieve this figure owing to the temporary closure of some sites and the social distancing measures introduced to combat Covid 19, the redeployment of key staff and delays in being able to recruit to the new post in the team. This loss of income has been taken into account in the Council's overall budget provision.

## 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 2021, the Council received the third annual instalment of the payment of the costs incurred in taking this matter before the High Court. The fourth and final payment is due in late 2021.

## 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 Mick George Limited (MGL) advised the County Council that the scheme was out for tender and once a contractor had been appointed, road space would 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.
- 10.5 In December 2020 MGL confirmed that road space was booked for work to be undertaken that month when the roads were quiet over the Christmas period. CCC Highways have confirmed that the work has commenced but has not yet been completed.

## 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 did not propose any active stability monitoring going forward and they recommended the completion of the stabilisation works to prevent further saturation in the active tipping face and that this should be 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 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 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 has been formally advised of these concerns but has failed to respond.
- 11.7 Legal advice confirmed that the principle of development at the site had 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 had already taken place at the site that was 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. Planning permission reference F/2015/15/CW was approved and the decision was issued on 17 September 2020.
- 11.8 Since the issue of the planning permission in September 2020, the Council has received a number of 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.
- 11.9 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 that has resumed and the completion of the restoration.

## 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 end of life vehicles. 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 advise that the following conditions required action that needed to be undertaken within three months of the date of the decision notice:

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.

The email also advised that 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). No response to the email was received and a chasing email was sent on 27 November 2020.

- 12.3 In response to the correspondence, the planning agent for the application and the applicant advised that conditions 5 (site layout and parking) and 8 (white noise alarms) had been complied with. The agent also advised that the acoustic barrier required by condition 3 had not been erected and the drainage and pollution controls required by condition 11 had not been implemented.
- 12.4 The Planning agent proposed the submission of a Section 73 planning application to not comply with condition 3, in relation to the acoustic fence, to alter the requirement and the applicant advised that the site had not been fully operational for some months owing to a decline in business caused by Covid 19. Officers explained that a S73 application seeking to not comply with condition 3 may not be approved as the erection of an acoustic fence was required by Fenland District Council Environmental Health team as a measure considered necessary to address concerns about noise emanating from the site.
- 12.5 Officers have continued to correspond with the Planning agent and operator regarding the ongoing breaches of planning control and have advised that each of the outstanding issues needs addressing. Officers have advised that if the ongoing breaches of planning control are detrimental to local residential amenity or could cause planning harm then the Council will consider whether formal enforcement action needs to be initiated.
- 12.6 The Planning agent and applicant have been advised that officers now intend to seek the authority to serve a Planning Contravention Notice on the site operator and the land owner to gather more information on land ownership and the breaches as part of their assessment of whether it is necessary and expedient to take formal enforcement action.

## 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>Condition 6 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>	<p>Mepal Quarry Block Fen Drove Mepal</p>	<p>BCN 06/01/14</p>	<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>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.</p>	<p>First Drove Little Downham Ely</p>	<p>EN 17/01/12</p>	<p>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.</p>