

Enforcement Update Report 2022

To: Planning Committee

Date: 15 June 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.

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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 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 January 2022 and it covered the period 1 July to 30 November 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 December 2021 and 31 May 2022. Sections 7 to 14 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 22 active complaints under investigation.
- 2.2 Between 1 December and 31 May 2022 the team received 20 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	5
Breach established and resolved	3
Breach established. Investigation on-going	4
Not a County matter	2
No breach established, case closed	5
Breach established. Awaiting Application	1
Total	20

2.3 At the time of writing, of the 20 complaints received between 1 December and 31 May 2022:

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

2.4 During the reporting period a further 17 pre-existing complaints were able to be resolved and closed.

2.5 Of the 22 complaints that are open and under investigation:

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

3 Notices Served

3.1 No new Enforcement Notices (EN) or Breach of Condition Notices (BCNs) have been served in this period. Two Planning Contravention Notices (PCN) were served in this period and details can be found in sections 13 and 14 of this report.

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 December 2021 and 31 May 2022.

5 Ombudsman Complaints

5.1 No Local Government Ombudsman complaints were received during the period 1 December 2021 to 31 May 2022.

6 Site monitoring visits 1 December 2021 – 31 May 2022

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 December 2021 to 31 May 2022

Site type	Number of visits
Landfill	12
Quarries	21
Non chargeable sites	11
Complaint site visits	17
Total	61

- 6.5 The total income that it is estimated will be generated by chargeable monitoring visits in the financial year 2022 to 2023 is £27,000.00. However, achieving this figure will depend on whether the status of any of the sites changes within the financial year.

7 Enforcement Cases

- 7.1 There is currently only 1 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. A recent visit to the site confirmed that work has started on site to construct two agricultural buildings. If there is evidence of any

future importation of waste onto the site that is likely to be a breach of the High Court Order then the evidence will need to be put before the courts.

- 9.5 In November 2021, the landowner paid the fourth and final invoice for the annual instalment of the payment of the costs incurred in securing the High Court Order.
- 9.6 In December 2021, officers received reports that the landowner was now importing waste onto land where his farmhouse is located on Third Drove, Little Downham. The land is unconnected with the land that is the subject of the High Court Order detailed above. Officers visited the site on 19 May 2022 and are assessing whether the inert waste that has been imported onto the land is reasonably necessary for the purposes of agriculture and would therefore benefit from permitted development rights.

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 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 is 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 sought 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 received a significant amount of public attention. The application, which was accompanied by the submission of an Environmental Statement, was approved on 22 April 2022.

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 to 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 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 proved complex to resolve and prior to the decision being issued on 31 January 2022, 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. Officers undertook monitoring and confirmed that out of hours working was taking place. However, the development was not yet controlled by a County planning permission and no planning conditions were in place and therefore, officers were not able to take any formal action to address the matter.

- 11.4 One further report of out of hours working was received following the grant of permission, however, an investigation confirmed that the one-off incident did not constitute a breach of condition and so no further action was taken.

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.
- 12.5 Officers visited the site on 17 March 2022 and progress had been made towards remedying the breaches of conditions. The acoustic barrier fence had been completed, the on-site parking had been laid out and the storage of cars had been reduced. The wash down sump, agreed as part of the drainage and pollution control measures, had not been installed and a noise monitoring scheme still needed to be submitted.
- 12.6 Officers continued to correspond with the operator regarding operations at the site and compliance with the conditions which led to the installation of the wash down sump and the submission of a Noise Management Scheme to discharge condition 9 of the planning permission. At the time of writing this report, the application was awaiting validation.

13 Mitchell Hill mineral extraction site

- 13.1 On 21 December 2018, planning reference S/0088/18/CM was approved for 'Extraction of sand and gravel, restoration using inert material and inert waste recycling', subject to a number of planning conditions. Condition 19 relates to Dust Suppression and requires that the haul road to the site is given a bound and sealed surface. The details agreed to discharge the condition were that the road would be surfaced within twelve months of the completion of earthmoving works at the adjacent Gravel Diggers mineral extraction site.
- 13.2 On 15 July 2020, officers advised the operator, Mick George Ltd (MGL) that the earthworks at Gravel Diggers had been completed at the end of August 2019 and therefore the deadline for completing the road surface was imminent. Although MGL advised that the bound surface road had been established, the County Highways engineer considered that the haul road had not been bound and sealed in line with the terms of the condition.
- 13.3 In November 2020, MGL advised officers that it was proposed to progressively surface the road in sections, beginning Spring 2021 and that they would provide the exact distances and phasing of works. The works did not take place and MGL failed to provide a timescale for them, instead stating that as the haul road was a requirement to minimise dust emissions, following a review of any complaints about dust, an alternative maybe considered.
- 13.4 In September 2021, MGL advised officers that they were awaiting a report on the suitability of the ground and that once the results were available, they were hoping that haul road surfacing should be completed by the end of the year. On 7 March 2022, officers confirmed that the works to create a bound and sealed surface on the haul road had still not commenced. MGL were advised that officers intended to draft a PCN in respect of the ongoing failure to comply with condition 19 of S/0088/18/CM.
- 13.5 On 27 April the PCN was served on MGL and their response, received on 16 May 2022, stated that the bound and sealed surface of the haul road will be completed in September 2022. The PCN is a legal questionnaire and it is an offence to provide inaccurate information in the response. Therefore, officers will continue to monitor the site and if the commitment made in the PCN is not actioned then formal enforcement action is likely to be initiated.

14 Beats Lodge, Murrow

- 14.1 On 8 March 2021, the County Council received information from Fenland District Council (FDC) that the land at Beats Lodge was being used as a demolition yard, providing waste removal services, site clearance and aggregate/crushed concrete supply. There were no relevant planning permissions in force for the waste activities at the site. Officers advised the operator that the waste importation, storage and processing operations required planning permission from the Council as the Waste Planning Authority.
- 14.2 On 8 June 2021, an unannounced visit to the site confirmed that part of the land was operating as a waste transfer station and the operator was subsequently advised to cease all waste operations until planning permission had been approved. Later that

month, an application, reference CCC/21/070/FUL, was submitted for the 'Continued use of land for recycling inert waste including use of a screener; construction of an earth bund and material storage bays; and the erection of a demountable building'. After a short delay, in which further supporting information was collated and submitted, the application was validated and put forward for determination.

- 14.3 In February 2022, the Council received complaints of noise from 'mechanical activity' taking place at the site, complaints were also submitted to FDC's Environmental Health team. On 14 February 2022, officers visited the site and noted that the screener remained on site and also that a significant amount of new material had been brought on site, some of which was being used to create a raised roadway extending to the rear of the land. Officers held discussions with the operator about activities at the site and established that the waste operations had ceased.
- 14.4 On 14 April 2022, the planning application, reference CCC/21/070/FUL was refused planning permission by the Waste Planning Authority.
- 14.5 A Planning Contravention Notice (PCN) was served on the operator on 11 May 2022 in order to get confirmation in writing of the current land use and the activities taking place at the site. Following the receipt of the PCN response, a number of visits to the site and further discussion with the operator, the Waste Planning Authority is satisfied that unauthorised waste uses are no longer occurring on site.

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.