

**ENFORCEMENT UPDATE REPORT 2018**

*To:* **Planning Committee**

*Date:* **4 October 2018**

*From:* **Assistant Director of Environment & Commercial Services**

*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 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 May and a short update on two key enforcement cases, which did not cover the wider work of the team, was presented to members on 17 July. The September 2018 Planning Committee had a very full agenda and so the Chairman agreed to postpone the preparation and presentation of the regular update report until this Committee. Therefore, this report covers the work of the team in the period 1 May 2018 to 21 September 2018 (to account for the date of publication of the report), which is a four month reporting period.
- 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 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 site monitoring visits undertaken between 1 May 2018 and 21 September 2018 along with the chargeable income expected from chargeable visits during this 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 23 new complaints were received between 1 May 2018 and 21 September 2018. Table 1 summarises the status of these complaints at the time of writing.

**Table 1 - Complaint Status**

<b>Complaint Type</b>	<b>Number</b>
Under investigation	6
Breach established and resolved	2
Breach established. Investigation on-going	3
No breach established, case closed	8
Not a county matter	4
<b>Total</b>	<b>23</b>

- 2.2 At the time of writing, of the 23 complaints received between 1 May 2018 and 21 September 2018:
- 14 cases have been investigated and closed;
  - 9 cases remain open and under investigation;
  - 21 pre-existing complaints (received before 1 May 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 No new Planning Contravention Notice (PCN) have been served in this period.

### **4 APPEALS**

- 4.1 **Appeal site: East Anglian Resources Limited (EARL), Whittlesey**  
On 7 November 2017 and 4 May 2018, Enforcement Notices were served on East Anglian Resources Limited (EARL) wood waste processing yard at Benwick Road, Whittlesey for the breach of planning conditions restricting hours of operation at the site. The breach that was the subject of the Notices was the overnight movement of HGVs to and from the site, which was having a detrimental effect on residential amenity.
- 4.2 EARL and the owner of the land appealed the service of the Notices to the Planning Inspectorate (PINS) on a number of grounds and a Public Inquiry was scheduled for 10 July 2018 to hear the evidence relating to the Appeal.
- 4.3 The planning permissions that the Notices related to expired on 30 June 2018 and on 23 May 2018, EARL submitted new planning applications to extend the life of the wood waste development for a further 5 years until June 2023 which are under consideration.
- 4.4 The Inspector, having taken into account the fact that the planning permissions to which the Notices relate expired before the date set for the Public Inquiry (and therefore the recipients could not be made to comply with the conditions), decided to cancel the Inquiry and proceed to a written decision.
- 4.5 On 29 August 2018 PINS issued the written appeal decision. The Inspector declined to take any further action in respect of the appeals against service of Enforcement Notices because the relevant permissions and conditions had expired and therefore the Notices were no longer in force. However, PINS fully rejected the appellants' claim for costs and confirmed that the Council had acted reasonably in bringing the enforcement action. A copy of the Inspector's decision on costs is attached as Appendix 2 to this report.
- 4.6 The principle of wood waste development being an acceptable land planning use of the site has been established and therefore the site is being allowed to continue to operate without an active permission whilst the new applications are being considered. Officers continue to receive complaints about the overnight HGV

movements associated with the site as well as issues with working hours in general, dust and stockpile heights and these will be investigated and, if necessary pursued, once the applications have been determined.

- 4.7 The Environment Agency have been investigating breaches of the permit at the site and have suspended any further wood waste being brought on until the other issues at the site have been resolved.
- 4.8 The Council's Emergency Planning team have also been made aware of the height of the stockpiles and possible risk to the surrounding properties in the event of a fire.

## 5 OMBUDSMAN COMPLAINTS

- 5.1 No Local Government Ombudsman (LGO) complaints were received during the period 1 May 2018 and 21 September 2018.

## 6 SITE MONITORING VISITS 1 MAY 2018 – 21 SEPTEMBER 2018

- 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:

- Actives 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 waste activities 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 – Chargeable Site visits by type 1 May 2018 and 21 September 2018**

Site Type	Visits
Landfill	8
Quarries	17
Non chargeable sites	6
Complaint site visits	10
<b>Total</b>	<b>41</b>

- 6.5 Chargeable site visits have priority as they generate a small but significant income stream for the Council.
- 6.6 The total income for the scheduled chargeable monitoring visits for the 2018 to 2019 financial year is £23,946.00.

## **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 5 October 2017 the appeal to the Planning Inspectorate against the Council's refusal to grant a Certificate of Lawful Development for use of the above land for the processing of inert waste was withdrawn. The Council had refused to grant a previous Certificate application for a similar waste planning use on the land in 2015.
- 8.2 The enforcement team made contact with the agent for the site about the ongoing breach of planning control. In March 2018 the agent acting for the landowner submitted an enquiry about the possibility of obtaining pre application advice relating to a new Certificate application in respect of the ongoing waste use on the land. Officers advised that although it would be possible to deal with such an application, two previous Certificate applications had been refused and they were not aware of any material change(s) in circumstances that might be likely to lead to a different opinion.
- 8.3 Notwithstanding the above, the agent for the application has advised that a new Certificate application is being prepared. Noting the Council's refusal to grant the two previous Certificates, officers have advised that they now intend to serve a Planning Contravention Notice in preparation for initiating enforcement action in respect of the unauthorised waste uses that continue to take place on the land.

## **9 LAND ADJACENT TO ROYSTON RECYCLING CENTRE**

- 9.1 In February 2015 approximately 20,000 bales of refuse derived fuel (RDF) waste was deposited on the above land. A multi-agency approach produced an emergency plan taking into account of the site's proximity to the Cambridgeshire and Hertfordshire county border, the fire risk associated with the stored waste and the possible implications that the amount and type of waste had on the presence of an aquifer.
- 9.2 A topographic survey showed that approximately 13,952 tonnes of waste material had been deposited, raising the level of the land across roughly two thirds of the site. A condition survey, drilling of boreholes and modelling work were undertaken

to inform the standard of clean up required by the Environment Agency (EA) to minimise the risk to groundwater. The operator provided the EA with a remediation proposal which did not target all of the waste deposits buried across the site.

- 9.3 On 25 May 2017 the EA served a Section 161A Works Notice under the Water Resources Act 1991 (the Notice) requiring the operator to remediate the land in 16 stages, with full compliance to be achieved by 11 April 2018. This deadline was not met.
- 9.4 At the time of writing this report, officers are waiting for an update from the EA on what action they intend to take in respect of the failure to comply with the Notice as well as an update on their prosecution of the land owner, Winters Haulage Limited, and one of its Directors for the alleged deposition and storage of controlled waste in or on land.

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

- 10.1 The Enforcement and Monitoring team has been investigating 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, in February 2018 the County Council submitted an application to the High Court for a prohibitory injunction which, if granted, would make it a criminal offence to import any further waste material onto any part of the agricultural unit.
- 10.4 A two day hearing took place at the Royal Courts of Justice on 23 and 24 July 2018. The Judge did not rule on the County Council's application for an Injunction at the hearing because the Defendants (the landowners and tenant farmer) agreed to a High Court Order instead. The Order states 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 Order is drafted in the same terms as an Injunction and a confirmed breach could result in contempt of court proceedings just as if it were an Injunction.
- 10.5 The Order states that 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.

- 10.6 The defendants were ordered to pay 75% of the Council's legal costs which the Judge commented reflects the fact that the Council was successful in bringing the proceedings before the Court. The Council is in final negotiations with the defendants to agree the costs issue and hope that the final amount will be agreed and paid without the need for any further action.

## **11 COTTENHAM SKIPS, HISTON ROAD, COTTENHAM**

- 11.1 Throughout 2017 and 2018 officers investigated a number of 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.
- 11.2 As a result of the complaints, officers visited the site to monitor compliance with the planning permissions and noted that Condition 14 of S/00795/11/CW which required the phased implementation of hard standing across the site had not been fully implemented which could be contributing to the problem with the debris escaping on to the highway.
- 11.3 Officers now intend to serve a Planning Contravention Notice on Cottenham Skips to gather formal evidence in relation to their failure to complete the hardstanding on site and will consider whether this has any impact on the condition of the highway.
- 11.4 Prior to 2018, the Waste Planning Authority (WPA) had also received regular complaints about dust emanating from the site and had worked closely with the EA to try to get this resolved. The EA recently requested that a sprinkler system was installed on the site as a dust suppression measure and the WPA has not received any complaints regarding dust since this measure was implemented.
- 11.5 In August 2018, a local Councillor reported a concern to the WPA about the accumulation of waste material in an adjacent drainage ditch to the north east of the site and the environmental risk from the amount of waste escaping the site and landing in adjacent fields. Officers passed evidence of these issues on to the Environment Agency and will liaise closely with them to address the issue.

## **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.

### **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.
- 13.2 Investigations undertaken by the EA have revealed a large scale problem regarding the acceptance and depositing of nonconforming material containing shredder residue and trommel fines mixed with clay and lime covering a large area down to an approximate depth of 2 metres.
- 13.3 The EA are leading on this investigation because there are multiple breaches of the operator's environmental permit including the mixing and blending of waste. All work on site has stopped whilst the operator voluntarily comes up with a remediation strategy to be agreed by EA. The EA are keeping County Planning updated on progress with their investigation and the remediation.
- 13.4 The net result of the unauthorised activity is that the stabilisation project will not be completed by November 2018 as originally intended. Therefore, it is likely that a S73 application will be submitted to extend permission for the development by one year and the operator is still preparing a planning application to buttress the southern face of the old quarry.

### **14 RECYPLAS, WIMBLINGTON**

- 14.1 In July 2017 officers received an allegation that work was taking place at the Recyplas site on a Sunday, outside of hours of operation restricted by condition 7 of planning permission reference F/2010/16/CW. The operator confirmed that work to clean machinery did sometimes take place on a Sunday and so officers advised, in writing, that if machinery was turned on to undertake this task then they considered that this was a breach of the condition.
- 14.2 In August and September 2017 the complainant submitted further allegations regarding a breach of condition 7 of F/2010/16/CW at Recyplas, this time relating to work taking place after 7pm. On 11 October 2017 officers undertook unannounced out of hours monitoring of the site and found no work taking place on site. The complainant was advised accordingly.



- 14.3 The complainant has continued to allege that work is regularly taking place in the evenings and overnight at the site and on 22 March 2018 officers undertook further unannounced out of hours monitoring of the site which confirmed that machinery was being operated outside of the permitted working hours and that a breach of condition was taking place.
- 14.4 A Planning Contravention Notice (PCN) was served on 25 April 2018 to gather further evidence in relation to land ownership and the breaches of planning control.
- 14.5 Officers have undertaken further out of hours monitoring of the site since the service of the PCN and there has not been any evidence that further breaches of condition have taken place at the site.
- 14.6 Recyplas have submitted a Section 73 planning application which seeks to vary the condition on operating hours to allow for 24/7 working which is being considered by the WPA.

## 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 MWPA 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>A new application has been approved for the continuation of the waste uses at the site and it contains a pre commencement condition requiring the highway improvements to take place before the development can proceed. Once implemented, the new permission, reference F/2000/17/CW will replace the permission and the BCN will fall away.</p> <p>See section 12 on Block Fen in the main body of the report for a further update.</p>
<p><b>2. GREEN</b> 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 did not represent a pollution risk. The site was not operational for most of 2017 and has recently been taken over by Ely Skips who have cleared the site and resumed the sorting of waste but only within the buildings.
<p><b>3. AMBER</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	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 has advised that the case did not meet the public interest test for a prosecution. But advice received in 2017 in respect of the larger agricultural unit led to the High Court action detailed in section 10 above.