

**ENFORCEMENT UPDATE REPORT  
1 August 2016 – 31 December 2016**

*To:* **Planning Committee**

*Date:* **19 January 2017**

*From:* **Head of Growth and Economy**

*Electoral division(s):* **N/A**

*Purpose:* **To consider the following report**

*Recommendation:* **The Planning Committee is requested to note the content of this report.**

***Officer contact:***

Name:	Deborah Jeakins
Post:	Principal Enforcement and Monitoring Officer, County Planning, Minerals and Waste
Email:	<a href="mailto:Deborah.Jeakins@cambridgeshire.gov.uk">Deborah.Jeakins@cambridgeshire.gov.uk</a>
Tel:	01223 715544

## **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 Growth and Economy service.
- 1.2 The requirement to produce the report is set out in section 17, Monitoring Performance, of the Local Enforcement Plan for Minerals, Waste and County Development in Cambridgeshire - Version 3 December 2014.
- 1.3 The Enforcement update report is usually prepared and presented to members quarterly. However, the presentation of this report was postponed from the December Planning Committee with the agreement of the Chairman, to allow this update to be considered at the same time as the Enforcement Plan Report where amendments are proposed to the Enforcement Plan following public consultation, subject to the approval of the Planning Committee.
- 1.4 This report covers the work of the team in the period 1 August 2016 to 31 December 2016. Paragraphs 2 to 5 of the report summarise the following information:
- Complaints received and their current status;
  - Number of ongoing investigations;
  - New enforcement cases;
  - Certificate of Lawfulness applications and appeals;
  - Ombudsman complaints received.
- 1.5 Paragraph 6 of this report details site monitoring visits undertaken in the period 1 August 2016 to 31 December 2016.
- 1.6 Paragraphs 7 to 13 of this report provide updates on a number of key ongoing Enforcement investigations.

## **2 COMPLAINTS RECEIVED**

- 2.1 Sixteen new complaints have been received between 1 August and 31 December 2016. 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	5
No breach established	3
Breach established and resolved	4
Breach established. Investigation on-going.	3
Not a county matter	1
<b>Total</b>	<b>16</b>

2.2 At the time of writing, of the 16 complaints received between August and December 2016:

- 8 cases have been investigated and closed;
- 8 cases remain open and under investigation;
- 10 pre-existing complaints (received before 1 August 2016) also remain under investigation.

### **3 NOTICES SERVED**

3.1 No new Enforcement Notices (EN), Breach of Condition Notices (BCN) or Temporary Stop Notices (TSN) have been served between August and December 2016.

3.2 Two Planning Contravention Notices (PCN) requesting further information on a possible breach of planning control at a single site have been served.

### **4 CERTIFICATE OF LAWFULNESS APPLICATIONS AND APPEALS**

#### **4.1 Application site: Long Drove, Waterbeach**

The enforcement and monitoring team are currently determining an application for a Certificate of Lawfulness for use of land at Long Drove, Waterbeach as a waste transfer station. Officers are considering whether the information submitted with the application provides sufficient evidence that, on the balance of probabilities, the site has been used as a waste transfer station for a continuous ten year period.

#### **4.2 Appeal site: Mill Road, Fen Drayton**

An appeal has been lodged with the Planning Inspectorate, against the refusal to grant a Certificate of Lawful Development for use of land at Mill Road, Fen Drayton for the processing of inert waste. The Council refused to grant the certificate in April 2016. Once the Planning Inspectorate has notified officers of the appeal start date and confirmed the method by which the appeal will be determined, officers from the enforcement and monitoring team will undertake the work associated with the appeal.

4.3 Officers intend to notify Planning Committee of the results of the Certificate of Lawfulness application and appeal in due course.

## 5 OMBUDSMAN COMPLAINTS

- 5.1 One Local Government Ombudsman (LGO) complaint was received during the period 1 August 2016 – 31 December 2016. The complaint related to officers' handling of both the mineral applications and S106 set up with Hanson at Block Fen and the motocross applications submitted to Cambridgeshire County Council and Fenland District Council at land referred to as South Lake. The complaint specifically referred to the lack of enforcement action taken by the Council against the landowner (Hanson), which the complainant viewed as being unfair, inconsistent and influenced the land not being sold to them for motocross use (by pressurising the landowner to restore the land); as well as the Council's acceptance of a restoration plan by the landowner that was based on the restoration plan the complainant submitted when their application was refused.
- 5.2 A response was sent by the Chief Executive covering the points raised against officers on 20 September 2016, which also provided the additional evidence requested by the LGO to help them form an opinion. A draft copy of the response by the LGO was provided to the Council on 16 December 2016 for our comments, which was also sent to the complainant(s) for comment. The draft response concluded that the LGO saw no evidence of fault against the Council or its officers. As such, we responded on 20 December 2016 to say that we had no further comment and we look forward to receiving the final decision on the matter. The formal response is expected to follow shortly to finalise the LGO's response.

## 6 SITE MONITORING VISITS 1 AUGUST 2016 – 31 DECEMBER 2016

- 6.1 The Authority also carries out proactive monitoring visits. The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 enable the Authority to levy specified fees for inspecting quarries and landfill sites for compliance with the conditions set out in the grant of planning permission. The fees are intended to cover the cost of conducting the visits and are set out below:
- Actives sites £331
  - Inactive or dormant sites £110
- 6.2 Other waste activities such as waste transfer stations, waste recycling sites and scrap yards are also visited to assess compliance with the conditions set out in the grant of planning permission. However, the cost is borne by the Authority. A summary of the number and type of chargeable monitoring visits carried out during the monitoring year is set out in Table 2.

**Table 2 – Chargeable Site visits by type 1 August 2016 – 31 December 2016**

Site Type	Visits
Landfill	10
Quarries	20
Non chargeable sites	14
<b>Total</b>	<b>44</b>

6.3 Chargeable site visits have priority as they generate a small but significant income stream for the Council. The estimated income from chargeable visits for the period 1 August 2016 to 31 December 2016 is £9,598.00.

6.4 The Enforcement and Monitoring team is now fully staffed and undertaking regular visits to both chargeable and non chargeable waste and landfill sites to monitor compliance with conditions.

## **7 ENFORCEMENT CASES**

7.1 There are currently 5 active enforcement cases where formal enforcement action has been taken and investigation 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.

7.3 Appendix 2 contains a list of enforcement investigations where formal action has been taken and the notices remain extant. Unless there are other issues or reports of development on these sites then no further investigation or action will be required.

## **8 OLD DAIRY YARD, MANEA**

8.1 In June 2016 officers received a complaint regarding the importation of waste onto garden land at the Old Dairy Yard in Manea. Officers visited the site to gather evidence of the use of the land and recent activity on it and to assess whether a breach of planning control was taking place.

8.2 Officers contacted the owner of the land to make further enquiries and provide advice that the possible material change of use of the land was likely to require planning permission. The land owner gave conflicting information about the activity taking place on the land and the purpose of the materials that had been imported.

8.3 In October 2016 officers served a Planning Contravention Notice on the owner of the land and other interested parties in order to obtain a formal legal record of the landowner's activities and intentions.

8.4 Following the service and return of the completed notice, the importation of waste onto the land ceased and the waste that had been imported was removed. Therefore the breach of planning control was remedied without recourse to further formal action.

## **9 WILBRAHAM LANDFILL**

9.1 The Great Wilbraham active chalk quarry has planning permission to be restored by landfilling with inert waste. The Waste Planning Authority (WPA) issued an Enforcement Notice in May 2012 to address the restoration levels exceeding the

agreed land levels. The notice required the cessation of the importation of waste and removal of a specific amount of waste each month until the approved restoration levels were achieved.

- 9.2 The site operators were prosecuted for failing to comply with the notice. Sentencing took place on 27 May 2016 the defendants were each fined £1,500.00 and were given 12 months to pay the full Council costs of £23,969.00.
- 9.3 The defendants advised the court that they fully intended to undertake the remaining work necessary to fully comply with the notice.
- 9.4 Officers continue to regularly check the works on site and have noted a significant reduction in the height of the waste mound. Officers are also continuing to work with the Environment Agency (EA) to ensure a co-ordinated approach.

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

- 10.1 In February 2015 the EA advised that approximately 20,000 bales of refuse derived fuel (RDF) waste had been deposited on the above land. A multi-agency approach produced an emergency plan which took account of the sites 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.
- 10.2 In 2015 the EA issued Environmental Protection notices requiring the operators, Winters Haulage Limited (WHL), to remove all the RDF waste and this was completed by 16 October 2015.
- 10.3 A topographic survey showed that approximately 13,952 tonnes of waste material had been deposited on the land, raising the level of the land across approximately 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 EA to minimise the risk to groundwater.
- 10.4 The operator has provided the EA with a draft remediation proposal which is under review. In respect of the criminal investigation into environmental offences, the EA's enquiries have concluded and a file is with their legal team for review. The WPA is therefore still supporting the EA with their investigations in relation to this site, and further updates will be provided once more information is known.

## **11 LAND KNOWN AS 'ASGARD'/ FIELD 6184, LITTLE DOWNHAM**

- 11.1 In July 2015 the County Council confirmed that clay was being extracted from this parcel of land and spread to raise the land levels and also that waste materials were being imported onto the land to infill the excavations.
- 11.2 Officers have been liaising with the EA and the District Authority to gather information relating to the activities on the land and to ensure a co-ordinated approach.

- 11.3 The EA has confirmed that there are exemptions in place for the importation of waste onto the land in question.
- 11.4 In April 2016 officers served a Planning Contravention Notice on those with an interest in the land to gather further information on the quantity, source, location and composition of the waste imported onto the land. The information provided by the landowner and tenant farmer in their responses to the Notice was that the importation of the waste was covered by the EA waste exemption and their permitted development rights under part 6 of the General Permitted Development Order.
- 11.5 The importation of the waste ceased during the growing season when a crop was growing on the field. Once the crop had been harvested the complainant alleged that the importation of material onto the land resumed and so officers contacted the land owner to advise that they intended to undertake a topographical survey of the land.
- 11.6 When the land owner failed to comply with a request to provide officers with suitable dates for the survey to take place, a warrant to enter the land was obtained from Cambridge Magistrates Court. In the light of a previous incident on the land and allegations made by the landowner, officers arranged for a police presence at the survey which took place on 19 December 2016.
- 11.7 Officers are now reviewing the results of the topographical survey and the other available evidence to assess whether the importation of waste onto the site constitutes a material change of the use of the land that would require planning permission.

## **12 BLOCK FEN**

- 12.1 Aggregate Industries (AI) completed work to upgrade the first half of Block Fen Drove up to the Tarmac quarry access in accordance with their approved scheme.
- 12.2 In February 2016 the mineral and waste operators at Block Fen met with officers to discuss the upgrade of the second half of Block Fen Drove. A proposed scheme for the second half of the Drove upgrade was presented on behalf of Mick George Ltd (MGL). The scheme relied on the understanding that all the operators contributed to its cost, as they felt the proposal went beyond what was required for MGL's planning permissions alone.
- 12.3 Following February's meeting, officers assessed the highway scheme submitted by MGL on behalf of the operators, and held a meeting with the Highway Authority to discuss initial thoughts. As a result of this meeting officers provided initial feedback on the proposed scheme but stated that a formal Section 278 (S278) agreement needed to be sought from the Highway Authority. On the basis of this advice MGL confirmed that the scheme was ready to submit to the Highway Authority as a formal S278 agreement application. However, as the application needed to be accompanied by 50% of the application fee (which equated to £14,025 of the full £28,050 fee) MGL asked that the Council considered waiving this whilst sign up from the other operators was obtained – especially as MGL has paid for the technical work to date with no other input from the other operators.

Officers clarified that it was not possible to waive the fee and instead sent an e-mail to all the operators asking for the fee to be split four ways equally. This commitment was sought by officers ahead of the meeting on 12 September 2016 which took place with MGL as the lead contractor.

- 12.4 This September meeting took place and was attended by both the Chairman and Vice Chair of Planning Committee, as well as the Council's legal representatives and highway officers. As a result of this meeting the sharing of the S278 and proposed costs for the scheme were agreed in principle with MGL (as the lead operator) and following circulation of the minutes from this meeting, all the operators sent in their share of the formal S278 agreement application fee.
- 12.5 Final discussions are now taking place between MGL as the lead operator and the Highway Authority, in the hope that the design can be agreed and we can move to the next stage to get sign up to deliver the works on the second half of Block Fen Drove with cooperation between all the relevant operators. At present this agreement is likely to be in the form of a Section 106 agreement with the Council, on the basis that the Council will act as the main connecting party. However, until the S278 agreement is agreed with highways colleagues, planning officers cannot look to secure the S106 agreement to deliver the road improvements to the second half of the Drove and thereafter ensure that the related planning applications can come before Planning Committee for consideration.

### **13 LAND AT WARBOYS AIRFIELD INDUSTRIAL ESTATE**

- 13.1 The land at Warboys Airfield Industrial Estate has planning permission for the storage and processing of waste electrical and electronic equipment, subject to conditions, one of which restricts the location and amount of waste stored outside the buildings. In January 2015 officers were informed that the waste operator had been put into administration and several thousand tonnes of cathode ray tube (CRT) waste needed to be removed from the land, raising concerns that the CRT waste could be abandoned.
- 13.2 The landowner took over responsibility for the removal of the waste but the rate was unacceptably slow and so a BCN was served on 2 October 2015 requiring removal of all of the remaining waste by 1 November 2015. However, the short compliance period given on the notice was not sufficient for the removal of the waste which the EA advised had been hampered by the rate that the CRT waste could be taken by the specialist permitted waste site.
- 13.3 Officers have visited the site regularly throughout 2016 and confirmed that the landowner is continuing to remove the outstanding waste stored outside of the units. Progress with the removal remains slow owing to the need to separate out specialist waste items and arrange for their separate removal. Although the site is being cleared of waste, some of the items stored outside the units are classed as machinery and equipment rather than waste and they are not covered by the terms of the County planning permission.
- 13.4 The timescale for initiating legal proceedings in relation to the failure to comply with a BCN is six months and so the deadline for pursuing a prosecution has passed. Officers are mindful that a prosecution for failure to comply with the notice



would not have resolved the breach of planning control in this case and would probably have caused further delays and complications for the landowner who continues to work to resolve the breach of planning control.

- 13.5 Officers are confident that the remaining waste will be removed from the site. However, officers intend to recommend the service a Planning Contravention Notice on all those with an interest in the land which will provide a formal record of the landowner's intentions and timescales which can be referred to in the event that further formal enforcement action needs to be initiated.

## APPENDIX 1 - ENFORCEMENT CASES WHERE ACTION HAS BEEN TAKEN 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. RED</b></p> <p>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></p> <p>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>	<p>Mepal Quarry Block Fen Drove Mepal</p>	<p>BCN 06/01/14</p>	<p>Planning permission F/02017/08/CM and E/03008/08/CM permit an extension to Mepal Quarry.</p> <p>A BCN was served on the site operator for failing to implement the approved scheme to improve the public highway</p> <p>At the July 2014 meeting Planning Committee authorised officers to employ Counsel to explore the courses of action available to the Authority to secure compliance with the planning conditions.</p> <p>Officers are working with the operators to move the implementation of the scheme forward.</p> <p>See Paragraph 12 in the main body of the report for a further update.</p>
<p><b>2. RED</b></p> <p>Failure to comply with condition 9 of planning permission F/02013/07/CW.</p> <p><b><u>Condition 9</u></b></p> <p>Within 3 months of the date of this permission 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 shall be submitted to the Waste Planning Authority for approval. The submitted scheme shall include a</p>	<p>Witcham Meadlands Quarry Block Fen Drove Mepal</p>	<p>BCN 16/12/13</p>	<p>Planning permission F/02013/07/CW permits the use of part of the land at Witcham Meadlands Quarry as a waste transfer station and a skip storage area and associated traffic. A BCN was served 16 December 2013 requiring the submission of a scheme for the phased improvement of Block Fen Drove, from its junction with the A142 to its junction with the private haul road, within 30 days.</p> <p>In April 2014 the operator submitted a scheme which was incomplete and was refused. A revised scheme was submitted in November 2014 and was accepted in part but it did not relate to all of the relevant parts of Block Fen Drove. A scheme that addressed the remaining part of Block Fen Drove was therefore requested at the time.</p>

Description of Alleged Breach	Location	Notice Issued	Comments
programme of implementation and shall be fully completed within 2 years of the date of this permission.			See Paragraph 12 in the main body of the report for a further update on the draft Section 278 road agreement produced by the operator.
<p><b>3. RED</b></p> <p>Breach of Condition 5 of planning permission S/00060/10/CW - Variation of Conditions 2, 7, 8, and 9 of planning permission S/0203/05/CW to extend the period of land filling until 30 September 2011 and be consistent with planning permission S/2073/07/CW; deletion of conditions 4 (approved drawings) and 5 (phasing); and discharge of Conditions 10 (restoration) and 13 (wheel cleaning)</p> <p><b><u>Condition 5</u></b></p> <p>Temporary stockpiles shall not exceed 2 metres in height.</p>	Wilbraham Quarry Mill Road Great Wilbraham	BCN 02/06/11	<p>Officers visited the site in May 2011 and noted that the heights of the stockpiles of waste deposited on the landfill site were well in excess of the maximum permitted height of 2 metres. The height of the deposited waste was several metres above the height of the surrounding land and was therefore visually intrusive and hindering the restoration of the landfill site.</p> <p>The landowner was given until 1 June 2011 to reduce the height of the stockpiles, this deadline was not met and the WPA served a BCN with the compliance date of 30 September 2011.</p> <p>At the time of writing, the landowner remains in breach of condition 5. However, the successful prosecution for failing to comply with the EN (see paragraph 9) supersedes this notice in addressing this issue.</p>
<p><b>4. AMBER</b></p> <p>Failure to comply with condition 8 of planning permission F/2019/02/CW</p> <p><b><u>Condition 8 – Environmental Protection</u></b></p> <p>No processing or storage of waste including plastic materials whether in a raw or processed form shall be permitted at the site unless within the confines of the approved buildings shown as Unit 1 and Unit 2 on the approved Site layout Plan Drawing Ref 261/03A.</p>	Land off Bridge Lane Wimblington March	BCN 13/02/2015	<p>A BCN was served on each of the two operators (operating under one planning permission) in response to complaints alleging that waste was being stored outside contrary to condition 8. The notices required that the storage of waste outside ceased by 27 March 2015.</p> <p>Both operators have submitted applications to address the issue of outside storage of waste and the intention is to put reports on these applications before the February Planning Committee.</p>

Description of Alleged Breach	Location	Notice Issued	Comments
<p><b>5. GREEN</b></p> <p>Breach of Condition 12 of planning permission S/00060/10/CW - Variation of Conditions 2, 7, 8, and 9 of planning permission S/0203/05/CW to extend the period of land filling until 30 September 2011 and be consistent with planning permission S/2073/07/CW; deletion of conditions 4 (approved drawings) and 5 (phasing); and discharge of Conditions 10 (restoration) and 13 (wheel cleaning)</p> <p><b><u>Condition 12</u></b></p> <p>12) Within 1 month of the date of this permission a scheme for the improvement of vehicle wheel cleaning facilities shall be submitted to and approved in writing by the Waste Planning Authority.</p>	<p>Wilbraham Quarry Mill Road Great Wilbraham</p>	<p>BCN 02/06/11</p>	<p>Officers visited the site in 2011 and noted that the wheel wash had not been installed in accordance with the planning condition.</p> <p>The landowner was given until 1 June 2011 to submit a scheme, this deadline was not met and so the WPA served a BCN. At the time of writing the landowner remains in breach of this condition. However, the steps for compliance with the EN issued on 1 May 2012 include a requirement to keep Mill Road free of mud and debris.</p> <p>During recent visits to the site, officers have not witnessed any vehicles leaving the site and noted that there was no mud or debris on the road.</p>

## APPENDIX 2 – EXTANT NOTICES

This appendix contains information on formal notices which have been served and remain in force.

Description of Breach	Location	Notice Issued	Current position
Failure to comply with condition 6 of planning permission F/02001/13/CW regarding hours of operation.	Land at Yard 1, 35 Benwick Road Whittlesey	BCN 19/08/15	<p>Since the Breach of Condition Notice (BCN) was served on 19 August 2015 in relation to Condition 6 of planning permission F/02001/13/CW we have undertaken out of hours site visits and have not found the operator to be working outside of hours.</p> <p>In December 2016 Planning Committee approved an application to vary the hours of operation at the site and therefore once the new permission is implemented, this notice will no longer be effective and references to it will be removed from future update reports.</p>
Failure to comply with condition 7 of planning permission S/01556/10/CW regarding surfacing of the site.	Long Acre Farm Fen Road Chesterton Cambridge	BCN 08/10/13	A joint visit with the EA on 26 May 2015 confirmed that the majority of the waste has now been removed. Some hardcore and soils remain on site but they do not represent a pollution risk.
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 on 17 January 2012. The EN was upheld but varied at appeal. The amended notice required the removal all the waste from land to the level of the adjoining field and to return the land to its former condition. Topographical surveys of the land confirmed that the level of the land had not been reduced and the EN had not been complied with. However, Counsel advised that the case did not meet the public interest test for a prosecution. Therefore, although the enforcement case remains open and subject to review, no further action is proposed at this time.
Without planning permission, the importation and deposit of waste materials.	Block Fen Drove Chatteris	EN 21/01/03	An EN was served on the landowner on 21 March 2003 requiring that waste ceased to be deposited on the land. Since then waste has been intermittently deposited. However, no further tipping appears to have taken place since May 2010. The site continues to be monitored on an occasional basis.