

TO: PLANNING & REGULATORY COMMITTEE

DATE: 10 December 2014

BY: PLANNING DEVELOPMENT CONTROL TEAM MANAGER

DISTRICT(S): ALL

ELECTORAL DIVISION (S):

PURPOSE: FOR INFORMATION

GRID REF:

 TITLE: ENFORCEMENT & MONITORING UPDATE REPORT

SUMMARY

This report covers the period from 1st July 2014 to 30th November 2014

MONITORING OF AUTHORISED MINERAL & WASTE SITES

- 1.1 Site monitoring of consented sites remains on target with 100% of scheduled visits undertaken, with Officers maintaining a proactive and helpful approach in advising operators of their options as and when planning breaches are identified.
- 1.2 The chargeable visits to mineral sites bring positive benefits in identifying breaches and encouraging retrospective applications as appropriate. Whilst a similar approach is used with waste site operators, there is no requirement to supply copies of site visit reports and communications with those operators, whilst varying widely across the spectrum of those we deal with is generally less productive as a result.

ACTION AT AUTHORISED SITES

- 2.1 **Moorhouse Sandpits, Westerham Road, Westerham** – A CLOPUD and a CLEUD for a new mortar plant were refused by SCC in February 2014. While the mortar plant has been removed, an EN was issued on 30th September 2014 that required the removal of a concrete surface, fencing, storage bays and other infrastructure formerly associated with a mortar plant. Appeals have been lodged by the landowners against the EN, and the refusals of both the CLEUD and CLOPUD, with the appellant requesting written representations be considered by the Planning Inspectorate.
- 2.2 **Jury Farm Lagoon, Ripley Lane, West Horsley** – All imported waste soils have now been graded out to achieve the best restoration profile on the site, which slightly exceeds the levels approved, but which has been accepted by the CPA following a site meeting with both the Local Member and Chairman of P&R Committee. Following the sowing of seed a grass sward is now establishing. Aside from a small area close to the site access, where farm waste remains stored, the site is now restored.

- 2.3 2 Perrylands, Smallfield** – An EN appeal was upheld in 2010 with the grant of a planning permission subject to conditional requirements. In the absence of further submissions Officers took the view, which was supported by Counsel, that the planning permission issued by the Inspector had not been implemented. Whilst the operator has challenged the approach taken by Officers in the Courts, the operator has submitted another planning application to re-establish the waste processing use and associated plant, which awaits determination.

ACTION AT UNAUTHORISED SITES

- 3.1** Complaints and the investigation of unauthorised waste development and breaches of planning control are given priority and continue to be dealt with in accordance with the Division's performance targets.
- 3.2 Brookwood Cemetery, Cemetery Pales, Brookwood** – Soil testing revealed the presence of small amounts of asbestos, meaning that removal costs have increased considerably, which has further complicated matters for the owner who inherited the site following an extensive legal challenge. Another challenge to legal ownership has commenced, further complicating and delaying the chances of remediation at the current time.
- 3.3 Land north of Rydons Grange, Limecroft Road, Knaphill** – The clearance of the imported soils by the site tenant from the initially affected land has been completed, with the pond re-formed with a headwall and with extensive drainage ditches having been created to both feed the pond and prevent overfilling. Following a site meeting to discuss the required re-grading of the land, 4 x pockets of buried waste fines within the site were subsequently located by the contractor employed to undertake the restoration of the site, which as a result were dug out and removed.
- 3.4** All inert waste has subsequently been removed, plus 6 x loads of the contaminated fines (the latter cost £10K to date). A further 180 of contaminated materials remain stockpiled and are due to be removed by early summer 2015, at an estimated cost of £250K. Due to the considerable progress achieved to date, formal enforcement action has not been taken. Although EA Officers are aware of this site, they have not taken an active involvement in maintaining pressure on the tenant of the land to address the problem, despite the presence of contaminated waste on site, and progress will continue to be monitored by Enforcement Officers alone.
- 3.5 Land at Stoney Castle Ranges, Grange Road, Pirbright** - A site with a pre-2000 waste planning history was brought to the attention of the County Planning Authority again in late February 2013. Further to investigation of site history coupled with information received from both the Environment Agency and Guildford Borough Council (further to independent inspections of the land), an unannounced multi agency visit was undertaken. The visit revealed there to be two separately owned parcels of land.
- 3.6** Unauthorised waste disposal was taking place on one area, involving mixed waste disposal by unknown parties, and communication continues with an elderly landowner with investigations ongoing.

- 3.7** The other area contained a number of mixed unauthorised uses, including B8 storage use and a caravan site (subject to a Guildford Borough Council Enforcement Notice, upheld on appeal) as well as 4/5 separate areas of varying unauthorised mixed waste disposal. A Planning Contravention Notice (PCN) was served on the landowner, and a site meeting followed and thereafter the CPA set timescales to address the breaches. The land was not cleared and in late September further mixed inert waste material were found to have been imported and stored on the land. As a result, an EN will be issued.
- 3.8** **Garth Farm, Newchapel Road, Lingfield** – An EN to address the unauthorised use of the land for the import, deposit and disposal of mixed waste disposal and green waste disposal is being prepared to address this long running site, which has very complex land ownership issues.

UPDATES ON SITES WHERE ENFORCEMENT ACTION WAS PREVIOUSLY TAKEN

- 4.1** **Barnfield, War Coppice Road, Caterham** – A planning application for a bund on site that would utilise the soils previously stockpiled, is still under consideration by Ta DC. Once the application is finally determined, the remaining waste soils will either be incorporated into the bund if consented or removed as required by **English Heritage** from the area of the Ancient Monument.
- 4.2** **Land at New Pond Farm at the junction of Furze Lane & New Pond Road, Compton** – The extant County Court Injunction which was secured on 16th April 2014 against the 83 year old longstanding tenant (who claims to be the landowner), and uncle to one of the trustees, has been breached through the continued importation of waste and has not been complied with through the removal of all imported waste from the land.
- 4.3** Due to the tenant's complete disregard for the planning process and the requirements of the County Court, Officers have been left with no choice but to pursue a prosecution for both contempt of Court and non-compliance with the requirements of the injunction: which if successful could result in a short penal sentence.
- 4.4** The long-term solution remains less clear as it is likely that the deposit of waste will continue whilst the tenant remains in residence on the land, irrespective of any custodial sentence that could be imposed by the Courts in due course.
- 4.5** There are already charges on the land in favour of Guildford Borough Council in relation to previous enforcement action that exceeds £80K. Any direct action by the CPA could be secured by a further charge on the land, but the recovery of such costs is ultimately limited by the value of the land. Other options may be available if the current owners secure development value for housing on adjoining land.

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- 4.6 Ridgeways Farm, Lonesome Lane,** – Following the issue of a Planning Contravention Notice in December 2008 regarding unauthorised import, deposit, storage, processing and disposal of waste materials, a Certificate of Lawful Existing Use Development (CLEUD) application was subsequently submitted in October 2010, but refused in May 2011. An Enforcement Notice was to be issued in February 2013, however the question of unauthorised ‘mixed uses’ arose which undermined the CPA’s ability to enforce. Reigate & Banstead Borough Council invited a retrospective planning application in for the infill of the pond that was located adjacent to the land. Legal Officers from both SCC and R&B BC need to agree on the best way in which the EN may be issued in light of the current development.
- 4.7 Conway Cottage, Lonesome Lane, Reigate** – Further to discussions with the landowner concerning the use of the site for the recycling of scrap metal, a Certificate of Lawful Existing Use (CLEUD) was submitted in November 2011. The CLEUD was however refused in April 2012. An Enforcement Notice was issued on 31st October 2012 and appeals were lodged against both the refusal of the CLEUD and the EN. A Public Inquiry was programmed for March 2013, however further to Counsel visiting the site; the EN was re-issued in order to exclude the area of an authorised residential use and has subsequently been appealed.
- 4.8** A Public Inquiry started in June 2103, and after the grounds of the notice had been amended by SCC and additional evidence supplied by the appellant, this resumed in October 2013 and the appeal was quickly dismissed by the Inspector. The DETR’s appeal decision was challenged at the Royal Courts of Justice in July, but the challenge was dismissed. The landowner has now initiated a further appeal that was refused in November 2014, however a further appeal is being lodged.
- 4.9 Epsom Chalk Pit, Epsom** – Waste processing recommenced within one of the units that does not have planning permission for such a use, whilst the operator indicated a lawful use and despite Officers having explained to them that breaches were taking place which needed to be regularised, the advice was ignored. A Planning Contravention Notice was subsequently issued and their response has confirmed that a change of use has taken place, from a WTS to a MRF, as mechanised processing of the waste through use of screeners, concrete crusher and a picking station have taken place. If the operator does not quickly confirm that a planning application will be submitted within 2-months, then an EN will be issued.

WORKING WITH ENVIRONMENT AGENCY & LOCAL PLANNING AUTHORITIES

- 5.1** County Enforcement Officers continue to work closely with Environment Agency staff by advising them of new sites that we investigate. The EA continues to modernise and seek efficiency savings with a combination of changes including: issuing of waste licences; the national centralisation of their intelligence handling to Sheffield that mirrored what happened to their waste licence exemption processing; key changes in their working practices; ongoing reductions in their front line staffing. EA staff continue to prioritise their workload, but this means that we are often dealing with unauthorised waste sites without the EA applying any pressure from their perspective. Breaches of the Environment Act are criminal matters, not civil as breaches of planning control are, so the pressure the EA can bring to bear on operators is significant.

- 5.2** Officers are concerned that partnership working with the EA is under pressure given the budgetary and other pressures described above. The regulation and control of waste related development is often about prompt action and the new ways of working are not conducive to this. Failure to control unauthorised development at an early stage can give rise to greater costs to the public purse as the effects of the activity compound over time.
- 5.3** Partnership working with the 11 x LPAs within Surrey continues to be very important and in the main works very well from our perspective. One issue that has started to arise more often is that of unauthorised 'mixed uses' taking place on a site, which cannot be dealt with by the CPA as we do not have express enforcement powers to address development that is not minerals, waste or Reg 3. The LPAs however may address such development, providing that the CPA give consent for them to address CPA matters, whether wholly or on part of a site.
- 5.4** This scenario first arose following our issue of an EN on a site in Gu BC's area, which was subsequently withdrawn at Appeal following the Inspectors advice that the CPA had addressed planning uses over which it had no jurisdiction. Based on advice gained from leading Counsel, it was clear that in order that unauthorised development did not gain planning permission by default through under enforcement by the CPA, such mixed uses should be enforced against by the LPAs in the future. That said, the CPA may enforce against a non CPA matter, providing that the development in question constitutes a minority of the development and we gain the permission from the LPA to act.
- 5.5** Several instances of such unauthorised mixed use development within the same planning unit have arisen in recent months and Enforcement Officers are now having to assess whether the waste development forms a majority or minority of the unauthorised development that is taking place and where appropriate are requesting that the LPA act as necessary.

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BACKGROUND PAPERS:

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