

**TO:** PLANNING & REGULATORY COMMITTEE

**DATE:** 6 January 2016

**BY:** PLANNING DEVELOPMENT CONTROL TEAM MANAGER

**DISTRICT(S):** ALL

**ELECTORAL DIVISION (S):**

**PURPOSE:** FOR INFORMATION

**GRID REF:**

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**TITLE:** ENFORCEMENT & MONITORING UPDATE REPORT

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## SUMMARY

This report covers the period from 1 June 2015 to 31 December 2015

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## 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 Certificate of Lawful or Proposed Use of Development (CLOPUD) and a Certificate of Lawful Established Use or Development (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 30 September 2014 that required the removal of a concrete surface, fencing, storage bays and other infrastructure formerly associated with a mortar plant. Appeals were lodged by the landowners against the EN, and the refusals of both the CLEUD and CLOPUD, and the cases were heard at a Public Inquiry at County Hall in November 2015: decision awaited.

## 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 **Land adjacent at Stubpond Land Fisheries, off Stubpond Lane, Newchapel –** The unauthorised and illegal import, deposit, storage, crushing and export of waste concrete on land where such is precluded by an extant EN issued in 1989 was found to be taking place in 2008 and more recently in 2014. A CLEUD was submitted to Ta DC, seeking to demonstrate that the concrete crushing activities had a lawful use, but whilst Ta DC agreed with the CPA that the use was not lawful, a decision was not issued. As a result, the landowner's solicitors have advised us that an appeal against non-determination is to be made in January 2016. The CPA will submit representations in support of Ta DC that the use is illegal as it falls under the extant EN issued by the CPA in 1989. An appeal is very likely if PINS do not determine in the landowner's favour and if that too fails, a planning application to the CPA is possible in due course, with a new EN likely to be issued if that fails, with both subject to the right of appeal.
- 3.3 **Ellerton, Peeks Brook Lane, Horley –** A CLEUD was issued by Ta DC in 1997 which allows the storage of waste and other non-waste uses, but the CLEUD does not cover the processing of waste. Further to extensive site discussions with the landowner and operator at the site, to address the unauthorised processing of waste soils and erection of site infrastructure, a Planning Contravention Notice was issued in October 2015. The issue of an EN in 2016 is likely, as the CPA do not agree with the landowner's planning consultant that the processing is ancillary to the uses that are covered by the CLEUD.

#### UPDATES ON SITES WHERE ENFORCEMENT ACTION WAS PREVIOUSLY TAKEN

- 4.1 **Land south of Church Lane, Chelsham –** A Temporary Stop Notice was issued on 13<sup>th</sup> May 2015 in relation to land on which an unauthorised tenant, who grazes horses and has secured the only site access, would appear to have allowed the tipping of both inert waste to infill a small quarry and non-inert waste for disposal by burning. Seven different landowners are affected and the wider land holding is split between an additional 34 landowners and the entire site is subject to an Article 4 directive, as well as an Enforcement Notice by Ta DC.
- 4.2 An Enforcement Notice and Stop Notice were issued in August 2015. Consequently, the waste was removed and the land fully restored, with the fields ploughed with the intention of restoring agricultural use in the future.
- 4.3 **Land at Stoney Castle Ranges, Grange Road, Pirbright –** An Enforcement Notice was issued on 1 April 2015 requiring the cessation of waste import, deposit, storage and disposal by spreading or burning of inert and non-inert waste respectively and the removal of all imported waste from the land. The landowner lives in the Phillipines and despite being asked many times his son failed to supply an address for him, and as a result only the son was served with a copy of the EN.
- 4.4 An appeal was submitted by the landowner's son who had confirmed his interest in the land to both Officers of the CPA & EA, but further to his submission of an additional letter, PINS subsequently deemed he did not have an interest in the land and the appeal was therefore rejected.
- 4.5 As a result of this, compliance with the extant EN is required by 9 January 2016, and non-compliance will result in the CPA pursuing prosecution of the landowner's son. It will therefore be for the Courts to decide whether the landowner's son has complied with the EN, however key to this decision will be whether they consider that he has

an interest in the land: which is where PINS and the CPA have a different point of view.

- 4.6 **Garth Farm, Newchapel Road, Lingfield** – An Enforcement Notice was issued on 1 April 2015 requiring the unauthorised use of the land for the import, deposit and disposal of mixed waste disposal and green waste disposal cease, with all imported waste to be removed. An appeal was lodged and a Local Inquiry was anticipated, but PINS have advised a Public Inquiry will be arranged for July 2016 due to the need for evidence on oath by the principal appellant.
- 4.7 **Land at New Pond Farm at the junction of Furze Lane & New Pond Road, Compton** – An extant County Court Injunction which was secured on 16 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.
- 4.8 The continuing actions of the tenant have left the CPA with little choice but to seek 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.
- 4.9 On 22nd October 2015, 83 year old Mr Percy Podger of Pond Farm, Furze Lane, Compton, Surrey was given a 6-month suspended prison sentence at the Royal Courts of Justice made after Her Honour Judge May found Mr Podger guilty of being in contempt of injunctions prohibiting importation of waste onto Green Belt land. Judge May advised Mr Podger that unauthorised waste disposal activity must cease and the waste materials must be removed by 31 January 2016 to a licensed waste facility and the defendant must also pay the CPA's application costs.
- 4.10 As a result, Officers will check the site on 1 February 2016 and seek a prosecution at the Royal Courts of Justice should full compliance with the extant EN not be achieved and further contempt of the injunctions be demonstrated.
- 4.11 **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 31 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.
- 4.12 A Public Inquiry started in June 2013, 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 initiated a further appeal that was refused in November 2014, and a final appeal was lodged and was due to be heard in mid-October. The appeal was withdrawn at the last minute and the CPA will now have to re-set the clock for compliance with the extant EN to November 2016.
- 4.13 **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.

- 4.14 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. Following a meeting between Legal and Enforcement Officers from both SCC and R&B BC, it was agreed that R&B BC would address the unauthorised development involving mixed uses taking place at the site. Unbeknown to the CPA, R&B BC had received an application to regularise the unauthorised development that triggered the mixed use issue, and as a result it is likely that the CPA will be issuing an EN in Spring 2016.

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**CONTACT: Ian Gray or Alan Stones**

**TEL. NO: 020 8541 9423 or 020 8541 9426**

**BACKGROUND PAPERS:**

None

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