

**TO:** PLANNING & REGULATORY COMMITTEE

**DATE:** 13 JULY 2016

**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 1<sup>st</sup> January to 14<sup>th</sup> June 2016.

The recommendation is for the Committee to note the report.

### 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** – Appeals to the High Court were submitted in March and April and are still under consideration. See below for the background to this site.
- 2.2 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 was refused by SCC in February 2014. While the mortar plant has been removed, an Enforcement Notice (EN) was issued on 30<sup>th</sup> 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, but both appeals were dismissed in February 2016.
- 2.3 **Alton Road Sandpit, Alton Road, Alton** – Planning permission WA/2014/0005 for sand and clay extraction and landfill with household and inert waste contains a number of pre-commencement conditions. These addressed groundwater protection,

drainage scheme, contamination, gas monitoring, protected species, maintaining highway cleanliness and footpath improvement. Whilst most of the schemes have been submitted, they are yet to be determined, but development has commenced. Officers have considered these technical breaches and currently none of them are considered to be causing significant harm and as such enforcement action would be unreasonable at this stage. The situation will be kept under review and closely monitored.

- 2.4 **First Place Skips, Epsom Chalk Pit, College Road, Epsom** - A retrospective application for a Materials Recycling Facility (MRF) is due for imminent submission to address a material change of use, with part of the site already benefitting from a CLEUD for waste transfer with the remainder only authorised for storage.
- 2.5 **Stanwell Quarry, Southern Perimeter Road, Stanwell** – The submission of a retrospective application is awaited that will seek to regularise extension to the permitted MRF.

### **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 at Hades Farm, Cogmans Lane, Smallfield** – Joint working took place in relation to unauthorised waste development on a site where LPA planning breaches may also be taking place and where non-compliance with an extant EN issued by TA DC is already occurring. A Planning Contravention Notice (PCN) was issued in June 2016.
- 3.3 **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 was to be made in January, but this was eventually made in June 2016 and awaits determination.
- 3.4 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. If PINS do not determine in the landowner's favour then a planning application to the CPA is possible in due course.
- 3.5 **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 PCN 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 at Stoney Castle Ranges, Grange Road, Pirbright** – Compliance with the extant EN was not undertaken and further breaches were established, as such it is intended to seek prosecution of those responsible.
- 4.2 An EN was issued on 1<sup>st</sup> 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 Philippines 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.
- 4.3 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.
- 4.4 As a result of there being no appeal, compliance with the extant EN was required by 9<sup>th</sup> January 2016, but no such compliance was forthcoming. It is the CPA's intention to pursue a prosecution of those identified as being responsible, and preparation for this continues.
- 4.5 **Garth Farm, Newchapel Road, Lingfield** – A Public Inquiry is due to take place in July 2016, although at this point in time, no case documents have yet been submitted by the appellant. See below for the background to this case.
- 4.6 An Enforcement Notice was issued on 1<sup>st</sup> 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** – A hearing for committal of Mr Percy Podger for breaching the High Court Injunction on 1<sup>st</sup> April 2016 was unable to be heard as a result of cases over running. Both parties agreed that a further period of time would be given for Mr Podger to discuss the case with his legal representative who had only been appointed shortly before the hearing. As such, the case is now due to be heard in late August 2016. See below for the background to this case.
- 4.8 An extant County Court Injunction which was secured on 16<sup>th</sup> 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.
- 4.9 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.
- 4.10 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<sup>st</sup> January 2016 to a licensed waste facility and the defendant must also pay the CPA's application costs.
- 4.11 Officers checked the site on 1<sup>st</sup> February 2016 and sought a prosecution at the Royal Courts of Justice as full compliance with the extant EN had not been achieved, demonstrating Mr Percy Podger's continuing contempt of the injunctions.
- 4.12 **Conway Cottage, Lonesome Lane, Reigate** – Following a very protracted series of appeals at the High Court following a failed appeal against an EN that was originally issued in 2012, full compliance with the extant EN has been achieved. See below for the background to this case.
- 4.13 Following 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<sup>st</sup> 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.
- 4.14 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.
- 4.15 **Ridgeways Farm, Lonesome Lane, Reigate** – The landowner has moved abroad and is having the land cleared of the unauthorised waste development. The site is being monitored and clearance is anticipated by the end of the summer and the landowner has been advised that failure to do so will result in the issue of an EN. See below for the background to this case.
- 4.16 Following the issue of a PCN 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.
- 4.17 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 was intended that the CPA were to issue an EN in Spring 2016.

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**BACKGROUND PAPERS:**