

TO: PLANNING & REGULATORY COMMITTEE

DATE: 11th January 2017

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 15th June to 30th November 2016

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 was refused by SCC in February 2014. While the mortar plant has been removed, an Enforcement Notice (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 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.
- 2.2 Appeals to the High Court were submitted in March and April and are still under consideration. See below for the background to this site.
- 2.3 **Alton Road Sandpit, Alton Road, Alton** – Planning permission WA/2014/0005 for sand and clay extraction and for landfill with household and inert waste contained a number of pre-commencement conditions. These addressed groundwater protection, drainage scheme, contamination, gas monitoring, protected species, maintaining highway cleanliness and footpath improvement. Whilst all of the pre-commencement schemes have been submitted, some 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 is being 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) has now been submitted to retrospectively address a material change of use on the area of lawful use (from waste transfer to materials recycling facility), including an extension of the site.
- 2.5 **Stanwell Quarry, Southern Perimeter Road, Stanwell** – The submission of a retrospective application is awaited, which 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 east of Swift Lane, Bagshot** – This land was subject to a County Court Injunction in 2007 which was not complied with as the Mr Tommy Lee Snr. became bankrupt and the injunction is no longer enforceable. Mr Lee has now purchased the land and is also using without permission land belonging to Surrey Heath Borough Council that lies between two plots of land that he does own.
- 3.3 Mr Lee is in the process of levelling the land by respreading some of the previously deposited 27,000m³ of inert waste and surfacing it with waste fines before making a large area of hardstand on which he is siting mobile homes. There is also a skip business being operated on the land, with some waste being disposed of by burning.
- 3.4 Planning, Estates, Environmental Health and Tree Officers from SH BC, Environmental Crime Officers from the EA, Surrey Police Officers and Planning, Estates and Legal Officers from SCC have visited site, had meetings and considered the possible courses of action available bearing in mind the mixed uses on site.
- 3.5 As a result SH BC have engaged the services of Ivy Legal Ltd. a consultancy dealing in planning enforcement, as they only have the benefit of a single officer. Ivy Legal intend to address a number of unauthorised uses, initially through the issue of a Temporary Stop Notice, which will be followed up by an Enforcement Notice and Stop Notice, and quite possibly a County Court Injunction in the future. SCC have agreed to assist SH BC when required in preparing any notices when they cover any waste uses.
- 3.6 **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.

- 3.7 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.
- 3.8 **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.
- 3.9 The Environment Agency have now issued a Permit for the site, that allows waste processing. Whilst separate from the planning issues, the Permit complicates matters for the CPA in dealing with planning matters, especially since the operator has installed unauthorised infrastructure to mitigate the impact of noise and dust, which although welcome in terms of reducing the impact of the unauthorised development only adds to the planning breaches.

UPDATES ON SITES WHERE ENFORCEMENT ACTION WAS PREVIOUSLY TAKEN

- 4.1 **Land at Stoney Castle Ranges, Grange Road, Pirbright** – An EN was issued on 1st 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 his adult son whom Officers have met at site being asked many times he has failed to supply an address for him, and as a result only the son was served with a copy of the EN.
- 4.2 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.
- 4.3 In the absence of an appeal, compliance with the extant EN was required by 9th January 2016, but compliance was not forthcoming. Despite difficulties faced with the registered landowner living abroad, it remains the CPA's intention to pursue a prosecution of those we believe as being responsible and an application to the Magistrates Court has recently been made for a hearing.
- 4.4 **Garth Farm, Newchapel Road, Lingfield** – An Enforcement Notice was issued on 1st 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 advised that a Public Inquiry was to be arranged for July 2016 due to the need for evidence on oath by the principal appellant.
- 4.5 The appellant failed to turn up for the Public Inquiry in July 2016, with the subsequent excuse being that she had to attend hospital, but had failed to advise PINS and the CPA. In her absence, the Inspector decided that there were inconsistencies within the EN and accompanying plan that she could not correct and as such the CPA have unfortunately had to withdraw the EN and re-issue the documents.

- 4.6 **Land at New Pond Farm at the junction of Furze Lane & New Pond Road, Compton** – An extant County Court Injunction which was secured on 16th April 2014 against the 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.
- 4.7 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.
- 4.8 On 22nd October 2015, 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 31st January 2016 to a licensed waste facility and the defendant must also pay the CPA's application costs.
- 4.9 Officers checked the site on 1st 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.
- 4.10 A hearing for committal of Mr Percy Podger for breaching the High Court Injunction on 1st 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 was set to be heard in late August 2016 at the High Court.
- 4.11 Mr Percy Podger failed to attend the High Court hearing, on claims of ill health. The Judge requested the CPA to initiate a social services check on Mr Podger, required Mr Podger's solicitors to provide copy of their quotes for waste clearance to achieve compliance and it was agreed that a rescheduling of the hearing would be set for mid-November, but at Guildford County Court to make it easier for Mr Podger to attend.
- 4.12 At Guildford County Court on 17th November 2016, Judge Raeside considered the evidence with Mr Percy Podger in attendance. Mr Podger's counsel conceded that he had breached the Court order on more than one occasion, but no penal sentence was imposed. Following slight amendments to the Court Order, a date for full compliance was set as 1st July 2017 and the Judge stated that any further proven breaches would result in imprisonment for Mr Podger.
- 4.13 **Ridgeways Farm, Lonesome Lane, Reigate** – 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.
- 4.14 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 was intended that the CPA were to issue an EN in Spring 2016.

- 4.15 The landowner had moved abroad and indicated he was having the land cleared of the unauthorised waste development, which continued to be monitored as clearance was anticipated by mid September 2016. However, clearance was not completed and the landowner appears to have returned to the UK and allowed an operator occupancy of the yard and was undertaking waste recycling on the site. The landowner has now been advised by our solicitors that unless all waste operations cease and the waste removed from site by 19th December 2016, an EN will be issued after consultation with R&B BC due to other non-waste related breaches.

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BACKGROUND PAPERS:

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