

**TO:** PLANNING & REGULATORY COMMITTEE

**DATE:** 20 March 2019

**BY:** PLANNING DEVELOPMENT CONTROL TEAM MANAGER

**DISTRICT(S):** ALL

**REPORT AUTHOR:**

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**PURPOSE:** FOR INFORMATION

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**TITLE: ENFORCEMENT & MONITORING UPDATE REPORT**

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## **SUMMARY**

This report covers the period from 1<sup>st</sup> March 2018 to 1<sup>st</sup> March 2019.

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### **1.0 MONITORING OF AUTHORISED MINERAL & WASTE SITES**

- 1.1 Site monitoring of consented sites is ongoing and our target of completing 100% of scheduled visits by Officers is being achieved, whilst continuing to maintain a proactive and helpful approach when advising operators of their options as and when planning breaches are identified.
- 1.2 The chargeable visits to mineral sites continue to 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.

### **2.0 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 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.
- 2.2 Correction to former report on this site: Compliance had not been achieved as previously reported. Unfortunately, the Appeal decision requires that the operator and the CPA agree on what areas of hardstand are to be removed, which we could not do before, which was the very reason why an EN was issued in the first place. An EN has to be specific in what steps are required, with no ambiguity, but in this instance the Inspector's appeal decision created just that.

2.3 The CPA have written to the landowner/operator and their agent without response. This outstanding matter will continue to be pursued.

2.4 **First Place Skips, Epsom Chalk Pit, College Road, Epsom** - A retrospective application for a Materials Recycling Facility (MRF) was submitted retrospectively to address a material change of use on the area of lawful use, from waste transfer to materials recycling facility. The application was refused, no appeal made and for a while the use continued so enforcement action looked likely, but the unauthorised use has now ceased so the site will simply be regularly monitored as before.

### 3.0 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** – Land east of Swift Lane, Bagshot – A County Court Injunction from 2007 bought an aforementioned deposit of waste to a close but the removal of some 26,000m<sup>3</sup> of imported inert waste could not be secured as the operator was declared bankrupt. The same person has more recently purchased the land, felled a large number of mature trees, levelled the previously imported waste soils, created a hard surface and pitched a number of mobile homes on the land for private rental. In addition to this re-engineering of the land, a skip company used the site as its operational base and was undertaking some recovery of metals as well as burning wood waste. Furthermore, a timber building, brick walls with metal gates and a large metal open ended barn structure were erected.

3.3 Officers have advised and worked with both Surrey Heath Borough Council Officers, and Ivy Legal their appointed consultant, who is co-ordinating the taking of enforcement action. This resulted in three ENs with Stop Notices being issued, all of which were appealed. Further to Officers supplying statements to Ivy Legal, a High Court Injunction was obtained in June 2017 that reinforced the extant notices, meaning that a penal notice was possible if a breach was proven. Surrey Estates Department are also involved as a number of pitches at the traveller site have unauthorised extensions that need to be addressed. A Public Inquiry took place at Surrey Heath Borough Council's offices in mid-April 2018 and the appeals were dismissed.

3.4 SuH BC's Corporate Enforcement team have pursued PNM Skips and Tommy Lee Snr. for various breaches of the extant EN and will maintain pursuit of compliance into the future.

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

4.1 **Land at Stoney Castle Ranges, Grange Road, Pirbright** – 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. Despite his adult son having met Officers several times on site and asking many times, he has failed to supply an address for him. 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 & Environment Agency (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 9<sup>th</sup> 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 his son who we have evidence of as being responsible for managing the site. An application to the Magistrates Court was made in December 2017 and an initial hearing at Guildford Magistrates Court was set for 7<sup>th</sup> February 2018 at which the defendant elected to be heard at the Crown Court. A case review took place at Guildford Crown Court on 6<sup>th</sup> March and a 1-hour hearing took place on 24<sup>th</sup> May 2018, to adjudicate as to whether or not the defendant was in fact in control of the site.
- 4.4 HHJ Black concluded that there was a case to be answered by Mr Daniel Hill against the charge of continuing the deposit of waste at the site in breach of the extant EN and a 5-day trial was scheduled to begin on 3<sup>rd</sup> December 2018. Additional evidence was submitted to the Court by 14<sup>th</sup> June 2018, with further evidence in respect of Mr Daniel Hill managing the site submitted as well. This is the first time the CPA has been involved in a crown court trial with the associated complexities of full evidence disclosure due to it being a criminal case.
- 4.5 Mr Daniel Hill was found guilty by majority verdict for non-compliance with the Enforcement Notice. We requested confiscation proceedings under POCA (Proceeds of Crime Act), the final hearing for which would take place alongside sentencing. We sought proceedings under POCA to allow an investigation of profits made as a result of the planning breaches and that was agreed to by HH Judge Black. As a result, investigations are being carried out by a specialist financial investigator and Mr Daniel Hill is required to disclose information to us in relation to this.
- 4.6 Mr Daniel Hill has appealed the decision of the Crown Court. We have responded to his grounds of appeal and that appeal will be considered by a different single Judge.
- 4.7 As such, a further update on the progress with this case will be given in the next report.
- 4.8 **Garth Farm, Newchapel Road, Lingfield** – 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 advised that a Public Inquiry was to be arranged for July 2016 due to the need for evidence on oath by the principal appellant.
- 4.9 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. Difficulties with mixed uses at the site, comprising both District and County planning matters, have resulted in delays to the notice being re-issued and we are still awaiting a response from Officers at Tandridge District Council. The land continues to be pursued by a developer and if successful, this should result in clearance and future development of the site, but ongoing waste import and burning also mean that a further EN may be issued.

- 4.10 **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.
- 4.11 An Enforcement Notice was to be issued in February 2013, however the question of unauthorised ‘mixed uses’ arose which we believed undermined the CPA’s ability to enforce, due to the establishment of racking for storage of materials in relation to an authorised pre-existing use and the use of steel containers, scaffold and roofing sheets to create an additional covered storage area, screening of soils and partial infill of a pond. Following a meeting between Legal and Enforcement Officers from both SCC and R&B BC, it was initially agreed that R&B BC would address the unauthorised development due to the unauthorised uses being mixed. Unbeknown to the CPA, R&B BC had received an application to regularise the unauthorised racking which appeared to address that which caused the mixed use concerns. As a result it was intended that the CPA would issue an EN to address the remaining unauthorised waste related development in spring 2016.
- 4.12 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 appeared to have returned to the UK and allowed occupancy of the yard by a tenant who was undertaking waste recycling on the site. The landowner was advised by our solicitors that unless all waste operations ceased and the waste removed from site by 19<sup>th</sup> December 2016, an EN would be issued after consultation with R&B BC due to other non-waste related breaches. The landowners planning consultant advised that an appeal would be made in respect of any such enforcement action. Due to ongoing concerns about mixed uses at the site, which would have undermined the service of an Enforcement Notice, considerable delays arose for a number of reasons. Having reviewed the matter with Officers from Reigate & Banstead Borough Council, it was been agreed that since R&B BC Officers have confirmed their view that there are no breaches of district planning matters taking place, Surrey County Council would issue the Enforcement Notice and deal with the subsequent appeal. An Enforcement Notice was issued on 3<sup>rd</sup> January 2018 on both the landowner at his registered UK address and his planning consultant, as the landowner now lives in Thailand. An appeal was made and a Public Inquiry took place in February 2019.
- 4.13 The Public inquiry commenced on 12<sup>th</sup> February 2019. Unfortunately, following concerns raised by the Inspector and the appellant’s counsel in terms of both under enforcement relating to two uses that were LPA planning matters and ambiguity in terms of the Enforcement Notice that we issued, the County Planning Authority were advised by our counsel to withdraw the Enforcement Notice. Rather than risk the notice being quashed, or the Appeal being lost, the decision was subsequently made to withdraw the notice, obtain further counsel advice and then review the remaining enforcement options available with Reigate & Banstead Borough Council. Despite submissions against this, the Inspector has made an award of costs against the CPA. Evidence of costs produced by the appellant’s representative as a result of this will be carefully scrutinised for reasonableness prior to being agreed.

## 5.0 **Examples of successful negotiation and ongoing challenges include:**

5.1 **Highlands Farm, Portsmouth Road, Ripley -** : This agricultural land holding was reported as having been used by a former tenant for the importation and deposit of mixed inert waste materials (comprising soils, brick and hardcore) over areas of the site coupled with the periodic burning of imported mixed waste. The breach of planning control was addressed with the landowner and following protracted discussion and negotiations, the clearance of all deposited waste materials together with the tidying of the site was achieved without the need for formal action. The land has now been sold and it is understood the new landowner is in the processes of improving the general overall appearance of the land.

5.2 **Former Chalk Pit off Wanborough Hill, Wanborough -** A local waste contractor was found to be using this former small chalk quarry for the importation, deposit, stockpiling and processing of hard-core and chalk based materials with the permission of the landowner. It was subsequently documented by the contractor that the importation and processing activity was to screen out suitable materials for use in the repair of internal road and trackways around the land holding with the unusable material taken back off site. Officers advised that the land could not be used for this activity and that only materials fit for purpose (not requiring any treatment on site), could be used for such engineering repair works: subject to agreement with the local Planning Authority. Following discussions with the contractor this unauthorised activity ceased with all imported waste materials and machinery removed from the former chalk quarry.

5.3 **Land rear of 299 Connaught Road, Brookwood -** Complaints to the Local Environmental Health Department concerning regular fires on the land led to officers visiting the site to establish what was being burnt. It was found that the land was owned and in use by a building contracting company. Their main business was outlined as relating to emergency call out works to dwellings passed to them by insurance companies. This works occasionally generated varying waste materials that were brought back to the site. Such waste was either burnt on the land or bulked up and taken away by a local waste operator. Officers afforded the landowner a small window of time to clear and tidy the land without further recourse on the understanding that no repeat of the unauthorised waste development reoccurred. Subsequent site visits have not revealed any further unauthorised waste development.

## 6.0 **PRIVATELY OWNED LAND SUBJECT TO TRAVELER INCURSION AND WASTE DISPOSAL ON THE LAND**

6.1 **Land at Penton Hook, Chertsey Lane, Staines upon Thames –** A large volume of mixed non-inert waste was deposited by travellers in December 2017. This led to their eviction before Christmas and was followed by improved securement of the site access. The removal of 250T of waste by late July 2018 at a cost of £50K from the formerly restored inert waste landfill was undertaken by the Environment Agency, the landowner's tenant, and the land is now once again being allowed to regenerate naturally.

6.2 **Land at former San Domenico, Cobham A3 –** The land has been cleared of imported waste and the site has subsequently been developed.

6.3 **Land north of Tesco, Leatherhead –** The unauthorised occupation and accompanying import, deposit and disposal of a considerable quantity of mixed waste took place in mid-December 2017 by an identified group of travellers has left a clean up operation of between £20 - £40K for the landowner to address. Mr Simon

Claridge, the son of the other two landowners ignored advice to improve the security of the site access, and the land was subsequently subject to a second traveler incursion of 2 days duration in late February. This resulted in further controlled waste being deposited with fires resulting in some of the waste on site being burnt.

- 6.4 An Enforcement Notice was issued requiring the land to be cleared of all imported waste by 1<sup>st</sup> August 2018. The Enforcement Notice was not complied with and having been advised that a successful prosecution for non-compliance at this stage was unlikely, an extended compliance period by 31<sup>st</sup> May 2019 has been given by the County Planning Authority and if not complied with by 1<sup>st</sup> June 2019, prosecution will be reconsidered.
- 6.5 In January and March, waste removal was started and progressed, with hardcore being removed, other waste being sorted and put into skips on site. Two or three additional visits will be scheduled in late March, April and possibly May 2019 to complete the clearance of the waste imported by the travellers from the land as required by our extant Enforcement Notice.

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**BACKGROUND PAPERS:** None

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