

**TO:** PLANNING & REGULATORY COMMITTEE

**DATE:** 6 February 2020

**BY:** PLANNING ENFORCEMENT 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<sup>st</sup> March 2019 to 1<sup>st</sup> December 2019

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

- 1.1 Following a Divisional review of our working practises, with one Monitoring Officer receiving Voluntary Redundancy and the other moving to our Development Management Team as a Planning Officer, our monitoring of consented sites and dealing with complaints regarding them is now being undertaken by our DM Planning Officers with assistance and guidance from Enforcement Officers if identified breaches are not resolved. Environment Enhancement (EE) Officers monitor sites in aftercare and undertake an annual joint inspection with DMP (DMP) Officers on sites with progressive restoration or large scale landscaping that requires expertise in assessing its maintenance.
- 1.2 This assists DMP Officers in their practical comprehension of functioning sites, whilst also giving them accelerated insight into a much broader range of operational issues than they would have previously been able to experience through only dealing with planning applications, which will assist them in working with developers in a positive and proactive way as required by the National Planning Policy Framework.
- 1.3 The change to our monitoring commenced on 1<sup>st</sup> April 2019, as the system is set up in line with the fiscal calendar. DMP Officers have been adapting to this new dual role system which has had a considerable impact on working practices and our performance levels dipped in comparison to previous years as a result which was anticipated. Unfortunately, visits to waste sites was impacted further by staffing issues that have now been addressed. Of the scheduled visits to Mineral sites, we achieved 79% in in Q1 and 88% in Q2 and scheduled visits to waste sites achieved 76% in Q1 and 46% in Q2,
- 1.4 Whilst DMP Officers have adapted quickly to the additional monitoring work they now undertake, it is anticipated that a Monitoring Officer will be appointed to work solely on this work next year, but all currently involved officers will maintain their involvement on several sites each year to broaden their knowledge of them and to develop their enforcement knowledge if such matters arise.

- 1.5 I am confident that once we are fully resourced again in terms of staff, this unusual dip in performance will soon be rectified and in 2020-2021 we will return to our previous high standards. Visits to both mineral and waste sites are a statutory requirement, but they have and will continue to be reduced in number for the waste sites that generate few breaches, as there is a regulatory safety net through the monitoring of licensed sites undertaken by the Environment Agency.
- 1.6 Enforcement Officers continue to deal with wholly unauthorised development on sites with no planning permission, working in partnership with both the Environment Agency and Local Planning Authority at all times.
- 1.7 These visits continue to bring positive benefits in checking that development accords with the extant planning permissions for each site and identifying breaches of existing conditions or unauthorised development at an early stage, with Officers building up broader relationships with site managers and those responsible for planning at all relevant companies, which may result in either cessation of certain activities or pre-application discussions and ultimately retrospective planning applications or becoming involved in enforcement work which strengthens the team as a whole.

## **ACTION AT AUTHORISED SITES**

- 2.1 **Moorhouse Sandpits, Westerham Road, Westerham** – A Certificate of Lawful Proposed Use or Development (CLOPUD) and a Certificate of Lawful Existing 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 requires the reduction in height of the storage bays 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. The Secretary of State decision was subsequently appealed to the High Court and Court of Appeal, both of which upheld the decision.
- 2.2 Unfortunately, the Appeal decision requires that the operator and the CPA agree on what areas of concrete surface 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 has since written to the landowner/operator and their agent without response. However, since the site has now been included within Tandridge District Council's draft Development Plan, compliance is not to be sought until that plan has been finalised as future development that has been outlined may be supported by policy.
- 2.4 **Epsom Skip Hire, The Chalk Pit, College Road, Epsom** - A Planning Contravention Notice has been issued in respect of the unauthorised siting installation of an area of concrete hardstanding, storage bays, a picking station, roofing over picking station and trommel and a lighting pole. Although the operational development is recognised, it has not been formalised. However, a request for the submission of a planning application or a CLEUD has been declined by the operator, and as such the CPA recognises that the development is exempt from enforcement.

- 2.5 **NJB Recycling, Epsom Chalk Pit, College Road, Epsom** - A former site operator submitted a retrospective application for a Materials Recycling Facility (MRF) 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 ceased and a new tenant is using the site in accord with an extant CLEUD, but has discussed the possible future submission of an application for a Materials Recycling Facility.
- 2.6 **2 Perrylands, Smallfield** – A Breach of Conditions Notice is to be issued in respect of the siting and several instances of the operation of a concrete crusher on the site. A planning application to address the breach is due to be made and will be considered in due course.

### **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 **Dean Oak Cottage, Deanoak Lane, Leigh, Reigate** – Unauthorised landraising took place in April 2019 and importation was stopped by the landowner after a visit from us, after which the imported waste soils were re-profiled. A retrospective planning application seeking to regularise the development is being prepared and is due to be submitted before Christmas.
- 3.3 **Hedgehog Field, Dowlands Lane, Copthorne** – The unauthorised construction of perimeter bunds and landraising on the field within took place in spring 2019 and importation for the landraising was initially stopped by the landowner after a visit from us, but resumed briefly to complete the soiling of the field and an area of hardstand within the field entrance. Pre-application advice in relation to a green waste processing site was given advising it was unlikely to be supported by the CPA and it is likely that the issue of an EN to address the bunds and landraising is likely.
- 3.4 **Courtlands, Antlands Lane, Shipley Bridge** – A Planning Contravention Notice was issued in relation to the unauthorised importation and storage of chipped wood waste, the reply to which will now be assessed and a final decision made as to the appropriate course of action. Since a retrospective planning application was encouraged but not submitted, an EN may need to be issued to ensure a recognised use does not become established.

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

- 4.1 **Land at Stoney Castle Ranges, Grange Road, Pirbright** – An EN was issued on 31<sup>st</sup> March 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. Mr Robin Hill the landowner lives in the Philippines. Despite his adult son having met Officers several times on site and asking many times, he failed to supply an address for his father. As a result, a copy of the EN was served on father via his planning agent.

- 4.2 An appeal was submitted by the landowner's son who had confirmed his interest in the land to Officers of the CPA, the Environment Agency (EA) and PINS as he had previously appealed an EN issued by Guildford BC, but further to his submission of an additional letter, PINS subsequently deemed he did not have an interest in the land and therefore declined to validate his appeal.
- 4.3 In the absence of an appeal, cessation was required by 10<sup>th</sup> July 2016 and removal of the waste by 9<sup>th</sup> January 2016, but compliance was not forthcoming. Despite difficulties faced with the registered landowner living abroad, it remained the CPA's intention to pursue a prosecution of his son who we had 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 then took place at Guildford Crown Court on 6<sup>th</sup> March, followed by an hour hearing 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 in over 20 years that Planning Enforcement has taken a case to trial at Crown Court, with the associated complexities of full evidence disclosure.
- 4.5 Mr Daniel Hill was found guilty by majority verdict for 'causing or permitting the carrying out of activity that was required to cease by the Enforcement Notice', and as a result we were granted by HH Judge Black the right to initiate confiscation proceedings under the Proceeds of Crime Act 2002 (POCA), which would assess both the financial benefit to Mr Daniel Hill over the 6-years before the case was brought to court, and an assessment of his current financial assets. This involved the CPA in hiring a specialist POCA investigator and counsel's ongoing involvement. The final hearing was scheduled for 25<sup>th</sup> – 27<sup>th</sup> November 2019, at which the sentencing for breaching the terms of the EN would also take place.
- 4.6 Both Paul Warner and Dustin Lees have done an excellent job in leading on this new phase in enforcement proceedings and worked very closely with a number of different solicitors in our legal team, as well as ensuring that all working partners and other interested parties were kept fully up to date.
- 4.7 During this time, Mr Daniel Hill appealed his conviction by the Crown Court at the Court Of Appeal (aka the High Court), the CPA responded to his grounds of appeal and to date a single Judge has refused him leave to appeal. Subsequently, he has requested it be re-heard, which involves 3 Judges considering his application. If he is given leave to appeal, a hearing will take place at the Court of Appeal, which would require Counsel and both the CPA's Legal and Enforcement Team, so further costs and resources would be involved. If he were successful in his appeal, the Court of Appeal would overturn his conviction and the associated confiscation order issued in relation to POCA would also be dismissed. The possibility of making an appeal to the Supreme Court is limited to cases involving a point of law of general public importance, and as such is rare.
- 4.8 At the hearing on 25<sup>th</sup> November, HHJ Black first passed sentence in relation to POCA and advised Mr Daniel Hill, that having accepted he had benefitted from the offence for which he had been found guilty by not less than £233K, and with assets

available to him of £26K, a confiscation order to the value of £26K was issued. In passing sentence HHJ Black told Daniel that if his personal circumstances were different or if it was an organisation that had committed the relevant offence, then the fine imposed would have amounted to hundreds of thousands of pounds, owing to the scale and seriousness of the offence.

- 4.9 Following this, Mr Daniel Hill was sentenced and having taken account of his personal circumstances and financial means, His Honour Judge Black fined him £2,500 for the offence he was convicted of in December 2018 and made a cost order to the value of £2,500, plus a nominal compensation order of £120. These are payable by June 2020 and December 2020 respectively.
- 4.10 Despite all of our work on this case, the unauthorised development at the site continues, and the ongoing offences comprising the importation, deposit, storage and disposal of waste at the site (and failure to remove previously deposited waste), will be subject to continued discussion between the County Planning Authority, Guildford Borough Council and the Environment Agency and appropriate action will be taken to resolve this difficult situation as far as possible in the absence of the landowner who still resides in the Philippines.
- 4.11 **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 Hearing 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.
- 4.12 The appellant failed to turn up for the Public Inquiry, apparently having had to attend hospital, but having 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 unfortunately had to withdraw the EN.
- 4.13 Following the Public Inquiry, mixed uses in addition to unauthorised waste development were subsequently identified as occurring on the land. Further to discussion with Ta DC the CPA were informed that they were considering making a without prejudice offer to the registered landowner, Mr Christmas (aka Smith), which would involve Ta DC implementing their direct action powers to ensure he complied with their extant enforcement notice by requiring the cessation of use and removal of a residential caravan at the landowners expense, but with the cost being underwritten by a prospective purchaser of the land. Thereafter, with there being no persons living on the land, subject to the prospective purchaser agreeing to secure the site, the unauthorised importation and disposal of waste would be brought to an end followed by the clearance of all remaining imported waste from the land. The offer would be conditional to Ta DC employing reputable contractors.
- 4.14 **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.
- 4.15 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.

- 4.16 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.
- 4.17 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.
- 4.18 The CPA have reviewed the position and a PCN was issued by R&B BC, but sharing of the information contained within the response was challenged by the planning consultant. The CPA anticipates that R&B BC will serve a further PCN next year in order that an up to date review of the site is able to be undertaken.

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

- 5.1 **Environment Agency** – The establishment of a taskforce to deal with national crime problems has quickly resulted in them, being swamped with more work than they can handle, meaning that regional Environmental Crime Teams are still having to deal with work that is above the scope of what they should be dealing with, meaning that they themselves are under resourced to deal with sites that they would have historically been involved with. As a result, they are unable to support Enforcement Officers in

dealing with most unauthorised waste development sites that arise in Surrey and beyond.

- 5.2 Added to which remains the problem caused by the issuing of many exemptions and permits to waste operators without the need for planning permission to be in place, leading to waste businesses operating sites without the benefit of planning control, but having decriminalised the criminal element of their development, leaving planners to address the civil law issued which only becomes criminal when in breach of an enforcement notice.
- 5.3 This situation is continually exploited by waste operators, with some targeting landowners to apply for exemptions in their own names and once in receipt they believe that they are authorised to undertake the activity on the land, and are very surprised when they find out from Officers that they require express planning permission.

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

- 6.1 **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 cleanup 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.
- 6.2 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.
- 6.3 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 in May 2019 to complete the clearance of the waste imported by the travellers from the land as required by our extant Enforcement Notice.
- 6.4 In May 2019, the final phase of site clearance was completed and the site has now been left secured with a roro skip laden with waste concrete to prevent unauthorised future access. Whilst the delays in compliance with the EN requirements were frustrating to neighbours of the site, the patient approach of working with the landowner in order to achieve the excellent clearance that was ultimately achieved by the waste contractor working on their behalf, was I believe proven to be worthwhile.

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**BACKGROUND PAPERS:**

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