

HAMPSHIRE COUNTY COUNCIL

Information Report

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| Decision Maker: | Regulatory Committee |
| Date: | 29 July 2020 |
| Title: | Monitoring and Enforcement Update |
| Report From: | Director of Economy, Transport and Environment |

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Purpose of this Report

1. The purpose of this report is to provide information to the Regulatory Committee on the Monitoring and Enforcement work undertaken by Strategic Planning during the period February 2020 – July 2020.

Recommendation

2. That the contents of this report are noted.

Executive Summary

3. The Covid-19 pandemic has had a major impact on the work of the Monitoring & Enforcement team, with no normal site visits being possible since the end of March. Although regular monitoring has not been possible during this period, Officers have still been actively investigating any complaints received as well as working with other Authorities and Agencies via digital means.
4. The report details the number of complaints on authorised and unauthorised sites, and the outcome of negotiations, including, when necessary, enforcement action undertaken.
5. The report also details development control work dealing with the relaxation of planning conditions due to recent Covid-19 Government advice, Planning Condition (Article 27) applications and Non-Material Amendments.

Complaints

6. The majority of the complaints received during the period February 2020 – July 2020 refer to unauthorised development (14 sites) and breaches of operational planning conditions on existing mineral and waste sites (3 sites). Investigation and negotiation have had to be by phone, email and letter only and consequently 5 site investigations are still ongoing. The remainder have been resolved or were enquiries made about general site operations, fly-tipping, odour and waste related development that were dealt with in-house or referred to either the Environment Agency (EA) or Local Planning Authorities as non-County matters.

Enforcement Actions

7. In the period to the end of July 2020, there was one notice served, with all other matters either addressed through the planning system or remedied through negotiation.
8. The following provides an update on the latest Notice and enforcement activities previously reported to the committee.

Table 1: Update on enforcement activities

| Site | Update |
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| Waterbrook Industrial Estate, Alton | <p>Following repeated complaints about operations on site and working outside of permitted hours, which were categorically denied by the operator, it was decided to serve a Planning Contravention Notice (PCN) to ascertain the levels of lorry movements and measures to check all lorries are sheeted and the hours of operation, when the gates are opened and by whom and when plant and machinery actually commence work. There were also questions about working hours on the date of a specific complaint. The PCN was served on 19 June and the Operator responded fully on 30 June. The information provided is being analysed, however, initial conclusions are that the issues are related to the adjacent Aggregate Batching Plant rather than the site itself.</p> |
| Carousel Dairy (Basingstoke AD Plant), Manor Farm, Farleigh Wallop, Basingstoke | <p>Following complaints and further investigation it was determined that there were breaches of the conditions setting out the hours that lorries could access the site. A Breach of Condition Notice (BCN) was served to cease the activity and prevent future breaches. A Planning application was subsequently submitted (16/00322/CMA) to address the issue and clarify the permitted times and vehicle numbers. This was approved by the committee in July 2016 with an increase in vehicle movements permitted for an initial trial period of one year. A further application to make the vehicle increases permanent was considered at the September 2017 meeting of the Committee when it was resolved to grant permission for another 1 year period to allow for further monitoring (17/01876/CMA). Proactive site management and regular Liaison Panel meetings improved the situation and monitoring of the traffic movements continued using the vehicle number plate recognition system. An application to make the vehicle increases permanent, with other negotiated changes to conditions, was approved at the February 2019 Committee meeting (18/03001/CMA).</p> <p>The ANPR cameras have been retained and access to the database for monitoring HGV movements secured so that any issues in the future can be investigated. There have been no subsequent complaints about</p> |

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| | <p>HGVs to and from the site. There has been an issue of odour nuisance to the nearest properties, which has been reported to the Environment Agency, with increasing frequency since Summer 2019. A new biofilter was installed, but, as there had been no discernible improvement in the situation, the Environment Agency issued an Enforcement Notice requiring measures to be undertaken to improve the odour control process. This led to a number of changes to processes and installation of new equipment, including an application to amend the location and configuration of a previously approved building to contain the screening equipment. The EA were satisfied that their Notice had been complied with and the works commenced. Whilst further works are still to be completed, the incidence of odour incidents appears to have diminished, although monitoring is still ongoing with regular liaison between the Plant management and local residents.</p> |
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9. Further information on the full suite of enforcement powers available to the County Council as Minerals and Waste Planning Authority (including powers to service PCNs, BCNs and ENs) are included in the County's Enforcement and Site Monitoring Plan. This can be found on the Strategic Planning website at: <http://documents.hants.gov.uk/planning-strategic/HampshireCountyCouncilPlanningEnforcementandSiteMonitoringPlanJuly2016.pdf>.
10. The following table provides information on the joint enforcement activities which have been undertaken with the Environment Agency, the Police and District Planning Authorities.

Table 2: Update on joint enforcement activities with the Environment Agency, the Police and District Planning Authorities

| Site | Joint working with | Update |
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| Whitehouse Field, Goodworth Clatford | Test Valley Borough Council, Environment Agency, HCC Highways | In late 1990s, planning permission was granted by Test Valley Borough Council (TVBC) for construction of an extension to the existing golf course. This involved the importation and tipping of inert materials as an engineering operation. This work continued for approximately 10 years until the then operator left the site in 2010 and TVBC considered the development completed. Several years later the operator of Homestead Farm bought the land. He claimed that surveys of the site had shown that the development had not been fully completed and stated his intention to restart work. His argument was that the |

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| | | <p>levels survey agreed under the permission is so vague and contradictory that there is potentially up to 6 metres of fill required (approx. 450 000 tonnes of material).</p> <p>The authorities did not accept that this is authorised and have liaised closely to ensure that if and when work does start the appropriate enforcement action can be taken. Following legal advice from Counsel, TVBC decided to enforce against any work as a breach of the original permission, with the EA looking to prosecute for tipping without a Permit. HCC Highways were also involved as part of the site access is highway land historically used by locals as a small car park, and the landowner had been fencing and blocking it off. HCC Highways have therefore taken legal action to secure clearance of the fences and blockades and maintain access.</p> <p>TVBC served Enforcement Notices against preparatory works on site and the variation of the restoration plans showing increased levels, which was the subject of an Appeal Inquiry on 26 – 28 November. A Decision was issued on 13 January 2020. The Decision dismissed the Appeal against the change in levels, although it did allow the Appeal against the preparatory works, and costs were awarded to TVBC. The landowner is now seeking a Permit from the EA to allow the completion of the golf course as originally approved.</p> |
| Selborne Brickworks | Natural England and Police's Wildlife Crime Team | <p>Reports of digging holes and burying waste adjacent to settlement ponds on the Brickworks site. Investigation found no evidence of tipping or of removal of clay off site so this was not a County Planning matter. However, this area is a known habitat of Great Crested Newts (GCN), a protected species. The landowner was prosecuted in the past for similar destruction so knows he cannot undertake such works without approval of Natural England (NE). The Police and NE started a prosecution, in which the Enforcement Officer was involved as a witness, and the landowner pleaded</p> |

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| | | <p>guilty and was fined £1200 with a further £205 costs.</p> <p>In March 2019, further reports were received of material being imported to the land. A site inspection discovered that the landowner had commenced the infilling of the former settlement ponds associated with the Brickworks. In planning terms this would be acceptable, however, the ponds are now registered as GCN habitat, so Wildlife Protection legislation supersedes Planning legislation. Consequently, the matter has again been reported to the Police and (NE) for further investigation. Subsequent complaints about work on part of the land within South Downs National Park, have been added to the case being brought by the Police as the work is within the wider area covered by potential GCN habitat.</p> <p>The landowner has recently passed away so any case is now on hold and the Estate are considering options for the use of the former Brickworks.</p> |
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Site Monitoring

11. Chargeable sites – under the [Town and Country Planning \(Fees for Applications and deemed applications\) \(Amendment\) \(England\) Regulations 2006](#), as amended, the County Council is able to charge fees for the monitoring of quarries and landfill sites in the County. Fees are charged for a set number of monitoring visits, the number of visits being dependent on the stage of operations at each site; whether operational, in aftercare or inactive. The number of visits is agreed with each operator and is in line with an assessment of each site made by the County Council. The latest charges were set out in [The Town and Country Planning \(Fees for Applications, Deemed Applications, Requests and Site Visits\) \(England\) \(Amendment\) Regulations 2017](#). Active sites are charged at £397 per visit for between four and eight visits per year. Sites in aftercare are charged at £397 for one visit per year. Inactive sites are charged £132 for one annual visit.
12. There are now 25 active sites, 12 in aftercare and 5 dormant sites liable for chargeable visits.
13. This work was severely restricted by Covid-19 restrictions such that only half the expected inspections were undertaken during the period ending March 2020 bringing in approximately £4,000 in fees, and no visits were possible between April – June 2020.
14. Non-chargeable sites – these include waste processing sites, wastewater and treatment works and metal recyclers. These vary from the large Energy

Recovery Facilities (ERF) and Materials Recovery Facilities (MRF) to the smaller scale recycling and transfer facilities and updating existing wastewater treatment works. The larger developments attract much attention in their locality and require regular monitoring to ensure that the local amenity is not impacted, whereas the smaller, built developments require monitoring during construction and implementation, but once up and running need less regular attention and these sites only get further visits should complaints be received. Matrix working arrangements have been made with Waste & Resource Management that their officers undertaking visits to waste sites operating under the County's waste contract also look at planning issues to provide greater coverage. However, under the current restrictions, no routine monitoring has been possible, although monitoring of waste sites covered by the County's waste contract has now resumed on a reduced basis, as these sites have remained open during the pandemic as one of the essential sectors listed by Government.

Liaison Panels

15. During this period Liaison Panel meetings have, for the most part, been put on hold. Going forward, the County will be encouraging operators to set up virtual meetings to keep these avenues of communication open. This was already considered for Basingstoke AD Plant, Carousel Dairy, Farleigh Wallop and the first of the new format meetings was held in June.

Development Management

Relaxation of Planning Conditions due to Covid-19:

16. The worldwide coronavirus pandemic has led to a number of recommendations from Government including the need for Local Planning Authorities to use their discretion on the enforcement of planning conditions which hinder the effective response to COVID-19.

Minerals and Waste Sites

17. The Government stated that the waste sector is safeguarded to continue to provide waste removal services from domestic and other protected sectors. The Government's response to the pandemic may consequently require changes to the way existing minerals and waste sites operate. Often such sites have planning permissions which include conditions which restrict and/or control working. These may include hours of working and height of stockpiles for example. In some instances, sites may need more flexibility to manage their activities during this unprecedented period.
18. Recognising this, a Protocol was agreed in March 2020 by Assistant Director of Waste Planning Environment (WPE) in the Economy, Transport and Economy (ETE) department setting out arrangements to agree temporary relaxation of some conditions or other planning controls where a request has been made by a waste or minerals site operator and where this can be clearly demonstrated to be required as a result of the response to Covid-19. It also covers where operations may take place which are without the benefit of planning control currently.
19. Strategic Planning have had numerous enquiries as to our view to relaxing planning conditions during this period, but to this point have received 4 formal

requests for such relaxations, which have been addressed through the procedures put in place by the Protocol. A Report is produced in response to each request made. This outlines the history of the site, the conditions effected and the reasons for the request, as well as consideration of the impacts of any change and the provisions for any relaxation. This report is signed off by the Head of Strategic Planning under delegated powers. Local Members are informed on the relaxation.

1. A303 IBA Facility, Longparish - variation to conditions 2 (Working Hours) and 4 (Height of Stockpiles). The request was that the site be allowed to operate 24 hours a day Monday to Friday and up to 14.00 hours on Saturdays for an initial temporary period of four weeks. No change to the hours for HGV movements is requested. With stocks of IBA building and no outlet for disposal, options for storage of the IBA were being investigated and in the meantime dispensation to increase stockpile heights from 8 metres (m) to 10m was been requested for 3 months. Subject to the operator informing the local Liaison Panel about the relaxation and to review of any relaxation should complaints be received, it was agreed that condition 2 (Working Hours) and 7 (Height of Stockpiles) be varied as requested for a period of 3 months from 23 March 2020.
2. A303 IBA Facility – temporary emergency use of adjacent land (formerly subject of the ‘Wheelabrator EfW’ proposal) for storage of excess IBA. Due to the existing site being almost filled to the increased levels as agreed above, the operator discussed the use of the adjacent site for a temporary period with both ourselves and the EA. Following submission of detailed information, the Environment Agency agreed that the land could be used, subject to 12 conditions (relating to operations) and the use ceasing on the 30 September 2020. Subsequent to this approval, the County agreed the temporary use of this land subject to a further 6 conditions, including setting a maximum stockpile height of 5m and a meeting to review the situation by the end of July. The operator was also required to inform the local Liaison Panel.
3. Warren Heath Secondary Aggregate Recycling Facility, Eversley - relaxation of conditions 15 (Restriction of number of lorry movements) of planning permission (13/00755/CMA) which restricts the number of lorry movements to the site to 42 per day until the public bridleway (Eversley 11) has been permanently diverted. After this, the number of movements can increase to 136 per day. Despite agreeing the alignment, design and construction of the Bridleway diversion with the County Council, the formal process for registering the diversion has been referred to the Planning Inspectorate. This has been further delayed due to a request for a Public Inquiry by an interested third party and delays due to Covid-19. The request, which would not have been necessary had the formal diversion process been able to have been finalised, is partly due to the increase in activity since the onset of the Covid-19 pandemic whereby local independents and self-employed building contractors are using the facility for building materials within Hampshire. Additionally, a substantial quantity of material is required to complete construction of the bunds around the perimeter

of the site. The operator anticipates that these movements and tonnage levels will only increase as time progresses as they have been one of the few recycling and aggregates suppliers to remain open during the pandemic. The operator has also suggested submitting an application to vary the condition if the bridleway diversion has not been sorted out by the end of the year. The relaxation was therefore agreed until 31 December 2020 subject to notification of the Parish Council and a review of the situation in October 2020.

4. Downton Manor Farm, Milford on Sea – relaxation of condition 5 (number of HGV movements) of planning permission 17/11392. Due to business demand after lockdown the operator is struggling to get material in and out of Downton due to the restrictions on lorry movements. They have requested to increase the amount of allowed movements on a temporary basis to 75 movements in & out for 12 months. The current condition limit is 50 movements in and out. In line with the other arrangements, and subject to provisions on notifying the Parish Council and a 4 month review, a relaxation has been agreed for 6 months.

20. The relaxation of conditions, if agreed, does not impact the authority's ability to use its enforcement powers.

Regulation 3 Sites

21. The Governments published Our Plan to Rebuild: the UK Government's COVID-19 recovery strategy on 11 May 2020 which made it clear that construction work could be re-established across England providing sites are able to operate safely in line with the new COVID-19 Secure guidelines. In doing so, the Government recognised that the construction industry needs to be able to adapt its normal practices. As part of this, temporary extensions to working hours may be required on some sites to facilitate safe working and allow tasks to be completed where social distancing can be challenging. It acknowledged that longer working hours may be needed on construction sites. A subsequent Written Ministerial Statement on construction (dated 13 May 2020) made it clear that, with immediate effect, Local Planning Authorities should take a swift and positive approach to requests from developers and site operators for greater flexibility around construction site working hours. This is to ensure that, where appropriate, planning conditions are not a barrier to allowing developers the flexibility necessary to facilitate the safe operation of construction sites during the response to the COVID-19 pandemic and to proceed at pace with work otherwise delayed as a result of COVID-19. The statement sets out the following:

- Where only a short term or modest increase to working hours is required, local planning authorities should, having regard to the reason for the condition and to their legal obligations, not seek to undertake enforcement action;
- Where developers require longer term or more significant changes to working hours, they should apply to the local planning authority to temporarily amend a condition or a construction management plan in the usual way;
- Any temporary relaxation of working hours should be proportionate and should not involve working on Sundays or recognised Public Holidays;

- Local Authorities should not refuse requests to extend working hours until 9pm, Monday to Saturday without very compelling reasons for rejection;
- In all cases, sympathetic site management should be demonstrated to mitigate local impacts and local authorities should show best endeavours to facilitate such requests;
- Applications should only be refused by the Local Authority where there are very compelling reasons such as significant impact on neighbouring businesses or uses which are particularly sensitive to noise, dust or vibration, which cannot be overcome through other mitigation, or where impacts on densely populated areas would be unreasonable; and
- Any temporary changes to construction working hours conditions granted by local planning authorities should not extend beyond 13 May 2021.

22. In response to this, a Protocol was prepared setting out arrangements to agree temporary relaxation conditions relating to hours of working for Regulation 3 sites.

23. To date, one request has been received for the relaxation of hours of working conditions at Chineham Park Primary School, Shakespeare Road, Basingstoke RG24 9BP (Austen Academy).

Planning Condition (Article 27) applications:

24. Where conditions of new permissions require details to be submitted and approved for the proper implementation and control of the development, Article 27 applications are required. Under the [Town and Country Planning \(Fees for Applications and Deemed Applications, Requests and Site Visits\) \(England\) Regulations 2012](#), a fee per submission is required for the discharge of any details submitted. This is now £116 per submission.

25. During the period, Article 27 applications were received and approved or are being determined for 27 planning conditions, totalling £3132.

26. As detailed previously, following adoption of the Protocol for Dealing with Breaches in Planning Control relating to Development Undertaken by the County Council under Regulation 3 of the [Town and Country Planning General Regulations 1992](#), enforcement updates now also include information on Article 27 applications for County Council developments and any breaches of planning control.

Non-Material Amendments (NMAs):

27. Non-Material Amendments (NMAs) are minor changes to the operation of authorised sites that can be agreed by an application for non-material amendment if the change has no substantial impact on the local amenity. Such an application requires a fee but does not involve general consultation and determination by Committee.

28. Over the period three NMA applications were determined: -

- (a) Former railway land north and at Rowner Road Bridge, Gosport - Non Material Amendment to introduce new crib retaining walls to bus ramp.

- (b) Downend Transfer Station, Downend Road, Fareham, PO16 8TR - Relabelling and changes to demarcation of the current site plan.
- (c) Land off Spitfire Link (A272) Winchester - Amendments to the site layout as shown on Drawing No. LAY-02.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

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| Hampshire maintains strong and sustainable economic growth and prosperity: | yes |
| People in Hampshire live safe, healthy and independent lives: | yes |
| People in Hampshire enjoy a rich and diverse environment: | yes |
| People in Hampshire enjoy being part of strong, inclusive communities: | yes |

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

None