

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	14 February 2018
Title:	Monitoring and Enforcement Update
Report From:	Director of Economy, Transport and Environment

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1. Recommendation

1.1. That the contents of this report are noted.

2. Executive Summary

2.1. This report is to provide information to the Regulatory Committee on the Monitoring and Enforcement work undertaken by Strategic Planning during the period October 2017 – December 2017.

2.2. Officers have been actively ensuring compliance with minerals and waste permissions granted by Hampshire County Council, investigating any complaints received as well as taking enforcement action where it is expedient to do so.

2.3. The report details the number of complaints on authorised and unauthorised sites, and the outcome of negotiations, including, when necessary, enforcement action undertaken.

2.4. The report also details the routine monitoring of chargeable and non-chargeable sites and development control work dealing with Planning Condition (Article 27) applications and Non-Material Amendments.

3. Complaints

3.1. The majority of the complaints received during the period October 2017 – December 2017 refer to unauthorised development (7 sites) and breaches of operational planning conditions on existing mineral and waste sites (2 sites). Planning applications are due on 2 of the sites and investigations are continuing on 2 others. The remainder 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.

4. Enforcement Actions

- 4.1. In the 3 month period to the end of the year there were no enforcement notices served, as all matters were either addressed through the planning system or remedied through negotiation.
- 4.2. The following provides an update on enforcement activities previously reported to the committee.

Table 2: Update on enforcement activities

Site	Update
Homestead Farm, Penton Copse, Andover	Three Enforcement Notices were served against oversized replacement waste handling building and site offices, extension to the site area, and stockpile heights in excess of permitted levels following the refusal of planning application on 23 September 2014. Appeals against all three Notices were lodged, with a Hearing held on 27 May 2015. The Appeals against the first two Notices were allowed, but the third Notice (against stockpile heights) was upheld. Consequently the enlarged waste handling replacement building and site offices and the extension to the site area now have planning permission. The required details have since been submitted and agreed and the building is in the process of being completed. As a result of subsequent site inspections an application was submitted for changes to the layout of the site, relocation of the office building and an extension to the waste handling building. The change to the layout and relocation of the office building were approved, however a further application is required to address the extension of the waste handling building and associated operational matters.
Newlands Farm, Tanners Lane, Fareham, PO14 2HT	A Planning Contravention Notice was served to investigate concerns about the importation, storage and treatment of waste. Following discussion the landowner expressed a desire to submit an application to regularize the situation, but uncertainty over the timetable for the Stubbington By-Pass (which runs through the site) complicated their plans. Therefore, whilst enquiries about the By-pass timetable were made, the operation ceased, the plant and machinery were removed and the materials started being cleared. This clearance work ceased so an Enforcement Notice was served. A planning application was subsequently submitted for a temporary permission, but Highways require the land sooner than expected, so the application was withdrawn and the EN was re-served

	with a 6 month compliance period. Compliance with the requirements of the Notice is being monitored, with site clearance to be completed by 1 March 2018.
Courtwood Farm, Fordingbridge	Following recent refusal of planning application and continued complaints, a Breach of Condition Notice was drafted. However, a further planning application was submitted to address issues on site. This was refused by Committee on 24 January 2018 and enforcement action was authorised. An EN has been drafted ready for service.
Carousel Dairy (Basingstoke AD Plant), Manor Farm, Farleigh Wallop, Basingstoke	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 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. Proactive site management and regular Liaison Panel meetings appear to be improving the situation and monitoring of the traffic movements is ongoing using the vehicle number plate recognition system. The application to make the vehicle increases permanent was considered at the September meeting of the Committee when it was resolved to grant permission for another 1 year period to allow for further monitoring which will be done through continued ANPR monitoring.
Land to the rear of Peacocks Nursery, Ewshot	Following refusal of a second planning application enforcement action was authorised by Regulatory Committee on 22 March 2017. An Enforcement Notice was served on 22 April 2017 to come into effect 24 May 2017. This EN was appealed (on the grounds that it should be granted planning permission) and the Appeal was heard on 12 December 2017. The Decision was received on 16 January 2018 and the Appeal was upheld. Consequently the operation has planning permission for a temporary period of 20 months with 4 months to complete restoration. The Inspector agreed with the County Council that the site was not previously developed land and so was still agricultural land and in the countryside. However, he put more weight on the local need for such

	developments (given that one of the nearby waste sites has since closed) and so allowed the operation to continue for a temporary period, subject to conditions applying a number of strict limitations that will require monitoring.
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Planning Contravention Notice

A Planning Contravention Notice (PCN) may be issued in order to ask specific questions in relation to an alleged breach in planning control. This enables a decision to be made regarding whether or not formal enforcement action is necessary or should be taken.

There is a legal requirement to respond to a PCN within 21 days of the date of the notice, unless a longer period of time is specified in the notice.

The issuing of a PCN is optional and does not have any bearing on other action taken by the local planning authority. It is especially useful when trying to identify all parties who have an interest in land or have been involved in a suspected breach of planning control. The PCN also provides for a formal meeting between the planning authority and the recipient of the notice, whenever appropriate. This may help to clarify any misunderstandings and assist in resolving the situation.

Non-compliance with completing the requirements of a PCN is an offence punishable on summary conviction to a fine. Knowingly providing false or misleading information in response to a PCN, is also an offence punishable on summary conviction to a fine.

Breach of Condition Notice

A breach of condition notice (BCN) may be issued where there has been a breach of condition that is attached to an extant planning permission. There is no right of appeal against the service of such a notice, although it can be challenged by way of applying to the High Court for a judicial review.

The BCN will set out the necessary remedial action to ensure compliance with the condition(s) being breached, with a minimum period of 28 days for compliance.

The penalty for non-compliance with a BCN is an offence punishable on summary conviction to a fine.

Enforcement Notice

The authority can issue an enforcement notice where there has been an identified breach of planning control and where it is considered expedient to do so. The enforcement notice will define the breach and set out prescriptive steps for compliance, with specific timescales, for remedying the breach.

A notice can be served in respect of operational development, a material change of use of land, or where there has been a breach of a condition attached to an extant planning permission. Such a notice must be served on the owners, occupiers and all other parties with an interest in the land that is affected by the notice.

An enforcement notice must come into effect not less than 28 days after its date of issue. There is a right to appeal to the Secretary of State, and such an appeal must be made before the notice comes into effect. Where an appeal is submitted, the requirements of the notice are held in abeyance until the appeal has been decided.

Failure to comply with the requirements of an enforcement notice is a criminal offence which is liable on summary conviction to a fine per offence, or on conviction on indictment to an unlimited fine.

The full enforcement powers available to the County Council as Minerals and Waste Planning Authority 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> .

4.3. 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 3: Update on joint enforcement activities with the Environment Agency, the Police and District Planning Authorities

Site	Joint working with	Update
Importation, storage and burning of waste at Mill View Farm, Old Mill Lane, Denmead	Environment Agency	Part of an investigation by the EA's Crime Investigation Team. The prosecution is continuing.
Importation, storage and burning waste at Trampers Lane, North Boarhunt	Environment Agency	Gathering of evidence complicated by existence of mobile home park on the site and lack of available witnesses. The landowner pleaded guilty to charges brought by the EA and received a £3,000 fine for the deposit of trommel fines, but investigations into the importation and burning of general skip waste continues.
Selborne Brickworks	Natural England and Police's Wildlife Crime Team	Further 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 (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. The Police and NE are investigating with a view to a further prosecution.
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5. Site Monitoring

- 5.1. Chargeable sites – under the Town and Country Planning (Fees for Applications and deemed applications) (Amendment) (England) Regulations 2006 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. Active sites were charged at £331 per visit for between four and eight visits per year. Sites in aftercare were charged at £331 for one visit per year. Inactive sites were charged £111 for one annual visit.
- 5.2. However, as from 17 January 2018 fees for planning applications were increased by central Government by 20%. Consequently, going forward, active sites and those in aftercare will be charged at £397 per visit, and inactive sites will be charged at £132.
- 5.3. There are 28 active sites, 12 in aftercare and 5 dormant sites liable for chargeable visits. The County Council also undertakes monitoring of 2 active sites for South Downs National Park Authority.
- 5.4. During this period all chargeable visits were undertaken, bringing in approximately £7,600 in fees.
- 5.5. 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 resources dictate 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.

6. Liaison Panels

- 6.1. During this period Liaison Panel meetings were held for the following sites:-
 - (a) Basingstoke AD Plant, Carousel Dairy, Farleigh Wallop.

- (b) Yokesford Industrial Estate, Michelmersh.
- (c) Bleak Hill Quarry, Somerley
- (d) Humbly Grove Oilfield.
- (e) Chineham ERF.

7. Development Management

Planning Condition (Article 27) applications:

- 7.1. 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. Following the recent planning fee increase this will now be £116 per submission.
- 7.2. During the period, Article 27 applications were received and approved or are being determined for 11 planning permissions, totalling £1,067.

Non-Material Amendments (NMAs):

- 7.3. 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.
- 7.4. Over the period the only NMAs submitted were for County Council developments.

CORPORATE OR LEGAL INFORMATION:**Links to the Strategic Plan**

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.)

DocumentLocation

None