



**14 July 2020**

**Agenda Item: 10**

## **REPORT OF CORPORATE DIRECTOR - PLACE**

### **ANNUAL REPORT ON PLANNING MONITORING AND ENFORCEMENT WORK FOR THE PERIODS 1 APRIL 2018 TO 31 MARCH 2019 AND 1 APRIL 2019 TO 31 MARCH 2020**

#### **Purpose of Report**

1. To update Members on the monitoring and enforcement work carried out during the financial years 2018/2019 and 2019/2020 and to provide updates regarding notices served.

#### **Enforcement and Monitoring Work 1 April 2018 – 31 March 2020**

2. Details of the enforcement and monitoring work for the report period 2018/19 are set out in Appendix 1, the period 2019/20 in Appendix 2, and details of notices served in both report periods in Appendix 3.
3. The number of inspections carried out during 2018/19 was **458**, of which **386** related to 'County Matter' development (minerals and waste) and **72** were related to County Council Development sites. Of the County Matter development monitoring visits **170** were undertaken to mineral and waste sites and charged under the Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2012. The fees generated from these inspections was **£67,490**. This compares with figures of £49,979 for 2017/18 although it should be noted that the nationally set fee increased from £331 to £397 in December 2017.
4. The number of inspections carried out during 2019/20 was **401**, of which **394** related to 'County Matter' development (minerals and waste) and **7** were related to County Council Development sites. Of the County Matter development monitoring visits **154** were undertaken to mineral and waste sites and charged under the Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2012. The fees generated from these inspections was **£61,138**.
5. The figures are broadly similar for both years and reflect the continuity in staffing numbers within the monitoring and enforcement team in this period.

#### **Complaints**

6. The County Council's Local Enforcement Plan details the procedure undertaken by officers when complaints are received regarding alleged breaches of

planning control. The procedure includes acknowledging complaints and undertaking an initial investigation within three working days of receipt and providing the complainant with a written response within 15 working days.

7. In the year 2018/19 a total of **143** complaints were received alleging breaches of planning control. **98%** (141) of these were acknowledged within 3 working days, **99%** (142) of these complaints were the subject of a site inspection within 3 days (where necessary) and **92%** (132) of complainants were notified of progress relating to their complaints within 15 working days (this being above the local performance indicator of 80%). Of the **143** complaints received during the report period **135** related to County Matter development and **8** related to the County Council's own development. A breakdown of the distribution of complaints by District is set out in Appendix 1. The elevated number of complaints in Bassetlaw was associated with the shale gas borehole developments at Springs Road and Tinker Lane which resulted in 25 and 37 complaints respectively in this period. The unauthorised waste development at Cockett Lane, Farnsfield subject to enforcement action referenced below, resulted in 10 complaints and 7 were received about Welshcroft Close Recycling Centre in Kirkby in Ashfield.
8. In the year 2019/20 a total of **106** complaints were received alleging breaches of planning control. **99%** (105) of these were acknowledged within 3 working days, **96%** (102) of these complaints were the subject of a site inspection within 3 days (where necessary) and **86%** (92) of complainants were notified of progress relating to their complaints within 15 working days (this being above the local performance indicator of 80%). Of the **106** complaints received during the report period **99** related to County Matter development and **7** related to the County Council's own development. A breakdown of the distribution of complaints by District is set out in Appendix 2. The increased number of complaints in the Newark area relates to 9 complaints being received in relation to alleged odours from Staple Landfill site at Cotham and 6 relating to the unauthorised development at Cockett Lane, Farnsfield (see below).

### **Notices Served During Report Period 1 April 2018 – 31 March 2020**

9. Details of the various statutory notices served during the report periods are set out in the Appendices 1 and 2. In summary during the period 2018/2019 **one** temporary stop notice, **four** enforcement notices and **three** planning contravention notices were served. During the period 2019/2020 **one** temporary stop notice, **two** stop notices, **one** enforcement notice, **two** breach of condition notices and **12** planning contravention notices were served. Details of temporary stop notices, stop notices, enforcement notices and breach of condition notices are outlined below and a resumé of all enforcement notices, breach of condition notices and planning contravention notices is contained in Appendix 3.

### **Summary of Notices Served**

#### Enforcement Action – 293 Bowbridge Road, Balderton, Newark

In 2015 investigations into a separate complaint resulted in the discovery that the land at 293 Bowbridge Road was being used for waste importation and

10. storage. After discussions with the Environment Agency they asked to take the lead on the site and took enforcement action against those carrying out the activity. The use ceased but the stored waste was not removed. The Environment Agency were unable to take their prosecution case forward for failing to remove the waste. An enforcement notice was served on the landowner and interested parties in May 2018 requiring the waste to be removed.
11. An appeal was lodged against the enforcement notice but was dismissed in April 2019. The requirement to remove the waste was not met within the time limits specified in the upheld enforcement notice. After further correspondence with the landowner and the threat of prosecution the landowner arranged for the waste to be removed. The removal of waste was completed in November 2019.

Enforcement Action – Land at the Workshop, Cockett Lane, Farnsfield

12. In April 2018 complaints were made alleging that the land was being used for waste transfer operations. The matter was investigated and it was considered that waste development was taking place at the time. However, the operator claimed that the use was not waste related and involved the storage and sorting of aggregates and that in any event the activity had been going on for in excess of 10 years and was therefore lawful. As such the operator advised that they would apply for a Lawful Development Certificate for the claimed non-waste use to Newark and Sherwood District Council (NSDC).
13. Despite claims to the contrary no valid application was made to NSDC and an enforcement notice was subsequently served requiring the waste transfer use to stop in June 2018. The enforcement notice was appealed on various grounds including that the alleged breach had not taken place, that what had taken place was not in breach of planning control, that the use was lawful and that planning permission ought to be granted. There were considerable delays in the appeal being allocated to an Inspector and in the intervening period the operator made several applications for Lawful Development Certificates to NSDC to confirm that the aggregate use was lawful, all of which were refused.
14. In the early summer of 2019, the intensity of the development on the land was seen to increase and the active site was also extended further onto the adjoining agricultural land. Additionally, further complaints were received about noise and dust from the ongoing and extended activities on the land. Up until this point it had not been considered that these impacts were severe enough to warrant the service of a stop notice. However, the extended operations resulted in more adverse impact in the locality and noise data was collected which indicated that the noise levels associated with the ongoing use at the time were above acceptable limits. In response to this intensification of the activity and the adverse impacts linked to this, a stop notice was served requiring the processing activity associated with the enforcement notice to cease. Additionally, a temporary stop notice was served on the land onto which the development had extended requiring all further development on this land to cease. A stop notice and enforcement notice were subsequently served in relation to the land onto which the activity had extended requiring all further activity on this land to cease.
15. Following further negotiations with the agents representing the appellant they agreed to withdraw their appeal and comply with the terms of the enforcement notices

subject to them being allowed to continue to import and store aggregate on part of the site and apply for planning permission for this use to NSDC. If this application was unsuccessful, they would comply with the final step of the enforcement notices which was to restore the land to an agricultural use. Ahead of a planning application being made NSDC served an enforcement notice requiring the aggregate use to cease. This notice has been appealed and the appeal is due to be heard at a hearing on 25 August. In the interim the operator has removed all the waste materials and associated processing plant from the land and only imports and stores aggregate as agreed with the Council. Once the appeal against the NSDC enforcement notice is decided this will confirm whether the land will need to be returned to an agricultural use or the current use for aggregate storage can continue.

#### Enforcement Action – Land at Cotham Composting site, Cotham Lane, Hawton

16. In May 2018 at a routine inspection of the approved composting site it was discovered that the use of the site had been changed to one involving the importation of non-green waste in the form of general mixed waste timber and waste clothing, mattresses and plastics. An office and weighbridge had also been installed and works were underway to erect a building. The land lies in open countryside and was not considered to be an appropriate location for a general waste transfer facility and the operator was requested to cease the activity. Whilst further importation of waste did stop the waste already on the land and office and weighbridge were not removed.
17. In September 2018 an enforcement notice was served requiring the non-green waste materials to be removed from the land. The notice was not appealed and took effect in November 2019. The waste was not removed within the specified timescales although the office, weighbridge and partially erected building were removed. The landowner was approached and subsequently gave assurances that the waste would be removed. No further progress was made and prosecution proceedings were commenced. Following the initiation of this process the waste materials were removed from the land and the requirements of the notice met.

#### Enforcement Action – Land at The Forge, Ilkeston Road, Trowell

18. In early 2018 the use of the land for alleged unauthorised waste development was raised via complaint. The land lies in the Green Belt and investigations into these allegations confirmed that some waste development was taking place. Following the service of a planning contravention notice the operator agreed to stop the activity and this was subsequently done. In October 2018 further concerns were raised alleging that waste development was again taking place. Investigations confirmed that waste development had resumed and was now at a greater scale than that which had been seen previously and stopped. The matter was again raised with the operator but no remedial steps were taken. In light of the issue having been raised before, the resumption of the activity and the location being unsuitable in planning terms, an enforcement notice was served alleging a change of use of the land to waste transfer operations and requiring this use to cease.
19. The enforcement notice was not appealed and after discussions with the landowner's agent the waste materials and associated plant were removed from the land and the notice complied with. A quantity of topsoil which had been imported was retained and was to be used for agricultural improvement which was considered

reasonable given the condition of the land and its use would be permitted development. Some of this topsoil has been used and no further waste development has taken place.

#### Enforcement Action – Land at the former Welbeck Colliery, Meden Vale, Warsop

20. In late 2018 complaints were made alleging that HGV traffic importing waste materials to the former Welbeck Colliery tip restoration works were accessing the site via Cuckney in breach of the HGV routeing specified in the planning permission and also outside the permitted hours. The site was subject to an ongoing planning application at the time to extend the life of the site to allow the completion of the restoration works. Evidence was collected to support the alleged breaches and the matter was raised with the site operator. Despite assurances being given, further breaches were witnessed. As a result, a temporary stop notice was served requiring all HGV traffic to access the site via the agreed vehicle route and within the approved hours.
21. The requirements of the temporary stop notice were complied with. Due to the anticipated imminent decision on the new planning application and compliance following the service of the temporary stop notice no further enforcement action was taken. Planning permission was subsequently granted to extend the life of the site and this permission included additional controls on HGV movements via a Section 106 agreement. The development has continued to operate in compliance with these controls.

#### Enforcement Action – Besthorpe Quarry, Besthorpe

22. Besthorpe Quarry has been operational for many years and previously worked areas have been restored to nature conservation end uses. These areas and those included within the active quarry provide valuable habitat for wildlife and the current planning permission has controls on the time of year when vegetation can be cleared and requires steps to be taken in accordance with various method statements to ensure that works are carried out in a manner which insofar as possible safeguards wildlife and provides for suitable habitat as works progress. In spring 2019 vegetation was removed outside the permitted months and at a time when it was considered that there was considerable potential for these works to impact on nesting birds. In light of the sensitive ecological nature of the site and the breach which took place it was considered expedient to serve two breach of condition notices to ensure that these requirements of the planning permission are met. The site operator has reviewed their procedures and all further works have been carried out in accordance with the approved schemes and methods.

#### **Update on Previous Enforcement Notices**

##### Sandy Lane Waste Transfer Facility, Sandy Lane, Worksop

23. The waste transfer station at Sandy Lane Worksop was subject to enforcement action in 2013, 2015 and 2017. In late 2016 the yard and buildings were filled with waste by the then owner and operator and the operator then went into liquidation. The receivers disclaimed the land as an onerous asset and as such the land passed to the Crown Estate as owner of last resort. The Crown Estate will not manage the site and it is effectively ownerless. The Council, jointly with the Environment Agency

and Bassetlaw District Council, paid for some fridge insulation which was on the site to be removed as this presented a significant risk if a fire was to occur.

24. Since this time NCC, Bassetlaw DC and the Environment Agency have been in discussions with the Treasury and DEFRA regarding the site to try to secure a mechanism whereby the waste can be removed. DEFRA have made available monies to offset the tax for clearing orphan sites such as this but this is on the basis that the tax would need to be reclaimed following the removal of the waste. In this instance the costs of doing so are significant and to date no party has come forward with the resources to purchase the land and carry out this work. Discussions are ongoing about how to resolve this and take the site forward.

#### Land at Henning Lane, Sutton in Ashfield

25. In December 2013 an enforcement notice was served on owners and interested parties alleging that there had been an unauthorised change of use of the land to a scrapyard. After lengthy negotiations with the operator the requirements of the enforcement notice were met in 2015. In 2019 further complaints were received alleging that the land was back in use for scrap related development. This was confirmed and this matter is currently being pursued with the operator along with other issues related to the site in the locality. Some clearance works have taken place recently.

#### Land at Twitch Farm, Hollowdyke Lane, Balderton

26. The enforcement notices relating to the above land were upheld on appeal in 2009 and required the use of the land as a scrapyard to cease. The requirements of the enforcement notice were not met within the compliance period. This matter was being pursued with the company owning the land, but they went into administration in 2011. The land was subsequently bought from the liquidators by another company, Jojo Properties, in June 2012 which also went into liquidation. After this the majority of the scrap on the site was cleared, although not entirely. The land has been disclaimed and is held by the Crown Estate who, like the Sandy Lane site above, will not manage the site.
27. The site has now come back into active use and considerable difficulty has been encountered in identifying who is involved with the site. Access was gained to the site under warrant with the Environment Agency in late 2019 and the Environment Agency is also looking at separate action under waste management licensing regulations.

#### Shireoaks Road Waste Transfer Station, Worksop

28. The site was subject to enforcement action in 2013 which required the removal of externally stored non-inert waste and for the site to be laid out as approved in the planning permission. Shortly after the service of this notice there were a number of fires at the site including a major fire which destroyed a number of buildings and plant and machinery on the site. In early 2014 the operator, NRL, went into administration. The externally stored non-inert waste had not been removed as required by the enforcement notice.

29. The site was sold by the Administrators in January 2015 to a company belonging to the Associated Waste Group. Meetings have taken place with the new owners and the EA. The new company has removed some waste material from the site and created fire breaks, although there have been and continue to be further fires within the waste stored at the site. The new owner wishes to process the waste on site to allow what can be recycled to be recovered from the waste and reduce that which is taken to landfill and therefore subject to the landfill tax costs associated with this. Whilst this pre-treatment would be possible under the terms of the planning permission if carried out in an appropriate manner, this activity will require a Permit from the Environment Agency because the previous permit has been suspended. The Environment Agency have concerns about issuing a permit to the new owner and have also separately served notices requiring the waste to be removed. At present a new permit application has been submitted to the Environment Agency by a third party to operate the site and separately the Environment Agency are investigating the failure to remove waste as per their notice. If a new permit is issued this would allow the waste to be processed and hopefully start to clear the site.

### **Statutory and Policy Implications**

30. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, the safeguarding of children and adults at risk, service users, smarter working, and sustainability and the environment, and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required. There are no human resources, the NHS Constitution (public health services), public sector equality duty, safeguarding of children and adults at risk, or smarter working implications.

#### Crime and Disorder Implications

31. Enforcement and monitoring work takes into account issues relating to crime and disorder.

#### Data Protection and Information Governance

32. Personal information relating to anyone contacting the County Council regarding alleged breaches of planning control is managed in accordance with the Development Management Team's Privacy Notice.

#### Financial Implications

33. There are no direct financial implications arising from the report. However, to carry out the monitoring and enforcement service requires the retention of a Monitoring and Enforcement team.

#### Human Rights Implications

34. The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol (Protection of property), Article 6 (Right to a fair trial), Article 8

(Right to a private and family life) and Article 14 (Prohibition of discrimination) are relevant when considering enforcement action. Planning Practice Guidance advises that there is clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether to take enforcement action Nottinghamshire County Council will, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.

#### Implication for Service Users

35. It is considered that the proposed updated document will assist users by containing more current and accurate information.

#### Implications for Sustainability and the Environment

36. Monitoring and enforcement duties undertaken by the County Council seek to protect the environment and public amenity from the adverse impacts of unauthorised development and breaches of planning control.

### **RECOMMENDATION**

37. It is RECOMMENDED that Committee considers whether there are any further actions they consider necessary in relation to the contents of the report.

**ADRIAN SMITH**

**Corporate Director – PLACE**

### **Constitutional Comments [SG 15/04/2020]**

I confirm that the recommendation falls within the remit of the Planning and Licensing Committee by virtue of its terms of reference (responsibility for the regulatory functions of the Council in relation to planning and monitoring).

### **Financial Comments [RWK 14/04/2020]**

There are no specific financial implications arising directly from the report.

### **Background Papers Available for Inspection**

None

### **Electoral Division(s) and Member(s) Affected**

All

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