



23 May 2013

Agenda Item:10

**REPORT OF CORPORATE DIRECTOR POLICY, PLANNING AND
CORPORATE SERVICES**

**ANNUAL REPORT ON PLANNING MONITORING AND ENFORCEMENT
WORK – 1 APRIL 2012 TO 31 MARCH 2013**

Purpose of Report

1. To update Members on the monitoring and enforcement work carried out during the financial year 2012/13 and to provide updates regarding notices served.

Enforcement and Monitoring Work 1 April 2012 – 31 March 2013

2. Details of the enforcement and monitoring work for the report period are set out in Appendix 1 and details of notices served in Appendix 2. The number of inspections carried out during the report period (previous years figures in brackets) was **490 (667)**, of which **459 (560)** related to County Matter development and **31 (107)** were related to County Council Development sites. Of the County Matter development monitoring visits **167 (148)** were undertaken to mineral and waste sites and charged under the Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2006. The fees generated from these inspections was £49,765, this compares with figures of £48,118 for 2011/12 and £47,328 for 2010/11. It should be noted that the nationally set fee for site inspections has been increased from £288 to £331 per inspection for active sites. The drop in the overall number of inspections reflects the loss in capacity arising from the current secondment of one member of the monitoring team.
3. In the last year a total of **67** complaints were received alleging breaches of planning control. **98%** (66) of these were acknowledged within 3 working days, in line with the local performance indicator of 95%. **97%** (65) of these complaints were the subject of a site inspection within 3 days (where necessary), in line with the local indicator of 90% and **85%** (57) of complainants were notified of progress relating to their complaints within 15 working days. Of the **67** complaints received during the report period **55** related to County Matter development and **12** related to the County Council's own development. A breakdown of the distribution of complaints by District is set out in Appendix 1.

Notices Served During Report Period 1 April 2012 – 31 March 2013

4. Details of the various statutory notices served during the report period are set out in the appendices. In summary **one** enforcement notice, **nine** breach of condition notices and **eight** Planning Contravention Notices were served during the report period. Details of the enforcement notice and breach of condition notices are detailed below and a resume of all notices is contained in Appendix 2.

Enforcement Notice

Former Rufford Landfill Site, Rufford Colliery Tipping Complex, Rainworth

5. The former Rufford Tip site was leased by the County Council from the Coal Authority and operated under a sub-lease by Mansfield Skip Limited. The importation of waste ceased at the end of 1994 and Mansfield Skip Ltd went into liquidation shortly afterwards. Various options to re-open the tip were subsequently explored. However, after a period of time and in the absence of progress an alternative restoration scheme was requested from the County Council in light of its interest in the land. After much discussion an alternative restoration scheme was submitted in 2002 and this was approved in March 2003.
6. The implementation of the alternative scheme was delayed again whilst alternative development proposals for the Rufford Colliery site generally were explored. In 2012 this land was sold on to UK Coal Mining Limited, who also owned all the surrounding land. As no progress had been made, and to ensure that the time-limited capability to enforce the restoration of the land was not lost an enforcement notice was served in February 2013 requiring the approved alternative scheme to be implemented within two years.
7. This notice has now taken effect. Further discussions have been entered into with the new landowner and their intention is to carry out these restoration works in conjunction with the restoration of the adjoining colliery tip site. A planning application has recently been submitted to revise the restoration of the former colliery tip site and this will, if granted, be run in parallel with the works required to comply with the enforcement notice. An update on progress made to comply with the steps of this notice will be reported to Members in subsequent update reports.

Breach of Condition Notices

Land at Plot 15, Wigwam Lane, Hucknall

8. Central Waste Limited operate a waste transfer site at Plot 15, Wigwam Lane, Hucknall under three planning permissions, two relating to the use of parcels of land for waste transfer and a third allowing the installation of a picking station. All three permissions have conditions attached, including ones restricting the permitted hours of operation, these having been imposed to protect the amenity of residents in the locality.

9. Complaints were received alleging that the site was operating outside the permitted hours. These matters were investigated. Some evidence was collected which appeared to support the allegations that the site had been operating outside the permitted hours. As a consequence these matters were brought to the attention of the operator both on site and in correspondence and warnings given that the development should be carried out within the permitted hours or enforcement action may be commenced. As a result steps were introduced to address this issue and matters appeared to be resolved.
10. However, subsequently further complaints were received alleging that the use of the site outside the permitted hours had resumed, particularly on a Saturday afternoon. Further investigations confirmed these allegations to be correct and that the site was operating well beyond its permitted hours. In light of the previous warnings not being heeded, it was considered expedient to serve breach of condition notices requiring the permitted hours to be complied with. Three breach of condition notices were served, one relating to each permission pertaining to the site, requiring the approved hours to be complied with.
11. The notices have taken effect. The operations have been reviewed out of hours and the hours now appear to be being complied with. Equally, no further complaints alleging out of hours operations at the site have been received. It is hoped that the above course of action has successfully addressed this issue and that further action will not be necessary.

Dorket Head Landfill Site, Dorket Head, Arnold

12. The Dorket Head Landfill site operates under two planning permissions for the extraction of clay and restoration of the site by landfilling. The permissions are subject to a suite of planning conditions which include controls on the soil handling procedures. These conditions are attached to the permission to ensure that the soil resources at the site are protected and maintained to enable the satisfactory restoration of the land on completion of the development.
13. The wet summer of 2012 resulted in ground conditions being unsuitable for soil handling for a significant period of the summer. At the time of a routine inspection of the site in the autumn of 2012 soils were being moved when surface water was ponding on them and their plastic limit had been reached. In light of the poor ground conditions at this time and the potential damage to the soils, it was considered expedient to serve breach of condition notices to require the soils to be moved in accordance with the approved soil handling scheme. The works were being carried out on behalf of the landfill operator, but it was considered expedient to serve the notices on all parties with an interest in the land.
14. The notices have taken effect. Officers have been advised that this area has and will continue to be assessed during the site's aftercare period to ensure any adverse effects on the soils arising from this episode are remedied. It is hoped that the service of the notices will ensure that future soil handling operations are undertaken in accordance with the approved details.

UPDATE ON PREVIOUS ENFORCEMENT NOTICES, APPEALS AND CHALLENGES

15. Various enforcement notices which were served prior to the current period remain active and the following outlines the current status of these notices.

Land at Twitch Farm, Hollowdyke Lane, Balderton

16. Appeals were lodged against the Council's refusal to grant two Certificate of Lawfulness of Existing Use or Development applications at the site and also against the two enforcement notices served to remove the unauthorised development.
17. The enforcement notice appeals and the appeals against the refusal of the two Certificate of Lawfulness of Existing Use or Development applications were heard at a linked inquiry which commenced on 6 January 2009. At the inquiry revisions to the wording of the Certificate of Lawfulness applications and the enforcement notices were agreed between the Council and the appellant to more accurately reflect the development taking place at the site.
18. The appellant confirmed within the inquiry that the frame building on the site was the building in its substantially completed form. In light of this clarification and the evidence to support the presence of this building on the land for a period in excess of 4 years the Council conceded that the building, in its present form, was now immune from enforcement action and that a lawful Development Certificate could be granted for its retention in the terms sought.
19. The remaining elements of the Lawful Development Certificate appeals centred on whether the land had been used as a vehicle dismantling yard for a period in excess of 10 years and had gained immunity. Various witness and documentary evidence was presented by the appellant and documentary evidence on behalf of the Council.
20. The Inspector's decision was issued on 10 March 2009 upholding the enforcement notices and only granting the Lawful Development Certificate for the frame of the building erected on site.
21. The appellant lodged appeals under Sections 288 and 289 of the Town and Country Planning Act 1990 in the High Court against the Inspector's decisions. The application was made on various grounds. The case was heard at the High Court for two days in November 2010. The Judge dismissed these appeals and the enforcement notices, as modified by the Inspector's decision notice, subsequently took effect.
22. The requirements of the enforcement notice were 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. Since this

date contact has been made with the new owner who have given a commitment to comply with the requirements of the enforcement notice. Progress has begun to clear the land which will hopefully enable this matter to be brought to conclusion. Members will be updated of progress regarding this matter in future reports.

Land at the former Bentinck Colliery, Park Lane, Bentinck, Kirkby in Ashfield

23. A report was presented to Committee in January 2011 where support was given for the withdrawal of the enforcement notices served at the Bentinck site. The notices had been served to secure the restoration of the partially completed spoil tip left following the premature closure of Bentinck Colliery. This decision was triggered from a change in circumstance at the site following the service of the enforcement notices and the subsequent appeals against these notices when Natural England designated much of the site as a Site of Special Scientific Interest (SSSI) due to its grassland and amphibian assemblage. It was considered that this change necessitated a fundamental review of the requirements of the enforcement notices.
24. The notices were subsequently withdrawn. Since this decision the owners of the Tip site have applied for and been granted planning permission for the importation of soils to restore a small section of the Tip, these works have been completed. In addition a planning application was submitted which sought to complete the restoration of the site via the import of inert materials and soils and reinstate the Tip to a mixed use of nature conservation, golf course and driving range, football pitches, camp site, small industrial units and a play area. This application was approved by Committee and subsequently planning permission was issued on 11 March 2013 following the completion of a Section 106 agreement. To date no further steps have been taken to implement this permission.
25. Separately discussions have also been ongoing with the landowners of the adjoining Bentinck Void site to secure a suitable restoration scheme for the void which is compatible with and complements the site's designation as a SSSI. Geotechnical survey information has been collated regarding the slips on the slopes of the void and some discussions have taken place between Natural England and the landowner regarding the scope of works needed to make safe the slips but protect the ecology. An alternative restoration proposal for this part of the site has recently been submitted and will be consulted on shortly. Members will be updated of progress regarding this matter in future reports.

Land at Sunnyside, Barnby Road, Balderton, Newark

26. The steps specified in the enforcement notice relating to the unauthorised use of land for waste transfer operations at Sunnyside, Barnby Road, Balderton (upheld on appeal) were not complied with within the specified timescales and an offence committed. Evidence was collected relating to these offences and the matter came to trial at Nottingham County Court on 9 January 2008. The defendant

was found guilty on 10 counts and fined £2500 and ordered to pay £7000 of the Council's costs.

27. After being found guilty the defendant continued to operate the site and sought planning permission for the development alleged in the notice. A planning application was submitted in February 2008 to the County Council for waste related activities on the rear portion of the land and an application for a skip hire business on the front part of the site to Newark and Sherwood District Council. Both applications were subsequently returned as invalid.
28. In light of the continuing activity on the site and the absence of any application the Council sought an Injunction to require the operator to comply with the terms of the enforcement notice. The Injunction was granted on 6 June 2008 in the terms requested. The terms of the Injunction were subsequently challenged by the defendant and at a further Court hearing on 4 July 2008 the defendant gave a commitment to stop further waste importation, to remove from the land the waste materials; to restrict operations to the movement of empty skips on the front part of the site, to pursue expeditiously his applications and to remove any development not granted planning permission once the applications were finally determined.
29. The application for a skip hire business lodged with Newark and Sherwood District Council was refused planning permission and a subsequent appeal was dismissed. The planning application submitted to the County Council for the waste related development on the rear of the site was refused on 5 March 2009.
30. In light of the undertaking to the Court the applicant had to decide whether to pursue an appeal against the Council's refusal of his application or not. The applicant delayed in making a decision expeditiously as required by his undertaking to the Court. However, when pressed and threatened with further proceedings in Court he confirmed he was not going to appeal and would carry out the remaining works specified in the enforcement notice. The remaining works needed to comply with the enforcement notice were completed in July 2009.
31. It recently came to light that the waste development may have recommenced. An inspection of the land was recently carried out with a warrant which confirmed that the waste development had started again. The matter is currently under discussion with Legal Services to determine how best to proceed. Progress on these developments will be reported to Members in subsequent reports.

Statutory and Policy Implications

32. This report has been compiled after consideration of implications in respect of finance, the public sector equality duty, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment, and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATIONS

33. It is RECOMMENDED that the report and accompanying appendices be noted.

JAYNE FRANCIS-WARD

Corporate Director Policy, Planning and Corporate Services

Constitutional Comments

This report is for noting only so no constitutional comments are required.

[SHB.10.05.13]

Comments of the Service Director - Finance

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

[SEM 15.05.13]

Background Papers Available for Inspection

None

Electoral Division(s) and Member(s) Affected

All

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For any enquiries about this report, please contact the report author.

9 May 2013

ENFORCEMENT AND MONITORING

SUMMARY OF STATUTORY NOTICES SERVED AND ENVIRONMENTAL COMPLAINTS RECEIVED 01/04/12 - 31/03/13

<u>Statutory Notices</u>		<u>Environmental Complaints</u> <u>received within the report period</u>	
Planning Contravention Notices served in report period	8	Bassetlaw	7
Breach of Condition Notices served in report period	9	Mansfield	3
Enforcement Notices served in report period	1	Newark and Sherwood	13
Stop Notices served in report period	0	Ashfield	17
Temporary Stop Notices served in report period	0	Broxtowe	2
		Gedling	14
		Rushcliffe	11
		Total:	67

ENFORCEMENT NOTICES SERVED 01/04/12 – 31/03/13

Site	Summary of Alleged Breach	Date of Issue	Summary of Steps
Land at the former Rufford Landfill site, Rufford Colliery Tipping Complex, South of Eakring Road, Rainworth	Non-compliance with conditions requiring the implementation of an alternative restoration scheme for the site following the premature closure of the site.	11 February 2013	The notice requires the site to be restored in accordance with the approved alternative restoration scheme by February 2015.

BREACH OF CONDITION NOTICES SERVED 01/04/12 – 31/03/13

Site	Summary of Alleged Breach	Date of Issue	Summary of Steps
Plot 15b, Wigwam Lane, Hucknall	Three separate breach of condition notices were served on the site operator requiring compliance with conditions attached to three separate planning permission in terms of the permitted hours of operation	26 April 2012	The notices require the site to be operated within the approved hours only.
Dorket Head Landfill Site, Dorket Head, Arnold	Six separate breach of condition notices were served on the operators of the site requiring compliance with conditions	11 December 2012	The site requires soil handling operations to be carried out in accordance with the approved soil handling scheme and details of when soils are in a suitable

attached to two separate planning permissions in terms of soil handling operations

condition to move.

APPENDIX 2

PLANNING CONTRAVENTION NOTICES SERVED 01/04/12 – 31/03/13

Site	Summary of Alleged Breach	Date of Issue	Summary of Steps
Scrap It Limited, 1 Riverside Scrapyard, Maltkiln Lane, Newark	Non-compliance with the permitted hours of operation	10 July 2012	The notice was returned by the recipient. Since this date of service there has been a significant drop off in complaints. The hours are subject to periodic out of hours monitoring but little evidence has been collected to date to substantiate the alleged breaches. Complaints about intermittent breaches continue on an occasional basis. If further monitoring substantiates a problem further enforcement action may be commenced.
Land at Manor Farm, Little Carlton, Newark	Unauthorised material change in the use of the land to a use for waste transfer and skip hire and erection of associated gates and fencing.	14 September 2012	The notice was returned by the recipient. Information provided about the precise nature of the activities resulted in a planning application being lodged with Newark & Sherwood for a builders compound.
Land at Rufford Landfill site, Rufford Colliery, Rainworth	Failure to restore site in accordance with approved restoration scheme	3 December 2012	The notice was returned by the recipient. An enforcement notice has now been served requiring the works to be undertaken (see enforcement notice section for further details).
Land at Rufford Colliery Coal Stocking site, Colliery Lane, Rainworth	Unauthorised use of land for the importation, deposit, storage and processing of coal and coal slurry	13 December 2012	The notice was returned by the recipient. A planning application for the reworking of the Rufford Colliery Tip has been submitted which includes proposals to

Land at Brierley Forest Golf Course, Main Street, Huthwaite, Sutton in Ashfield	Making a material change in the use of the land for the deposit of waste.	11 January 2013	regularise this activity. The notice was returned by the recipient. Works part authorised by Ashfield DC planning permission and now scaled back to meet this.
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APPENDIX 2

PLANNING CONTRAVENTION NOTICES SERVED 01/04/12 – 31/03/13

Site	Summary of Alleged Breach	Date of Issue	Summary of Steps
Land at Rufford Colliery Tipping Complex, Rufford Colliery Lane, Rainworth	Failure to restore the site in accordance with the approved restoration details	31 January 2013	The notice was returned by the recipient. A planning application for the reworking of the Rufford Colliery Tip has been submitted which will provide for an alternative restoration to this site and also facilitate restoration of the adjoining land.
Land at former Bunny Brickworks, Loughborough Road, Bunny	Making a material change in the use of the land to a use for the deposit and storage of waste materials	15 February 2013	The notice was returned by the recipient. A planning application to retain this development for a temporary period is currently under preparation and in the interim the operator has agreed to abide by the conditions imposed on the adjoining MRF.
Land adjacent to The Farthings, Henning Lane, Sutton in Ashfield	The use of land for end of life vehicle storage, dismantling and storage of vehicle parts.	27 February 2013	The notice was returned by the recipient. The operator has given a commitment to remove the vehicles and vehicle parts from the land and return this to an agricultural use by the end of summer 2013.

Appendix 2