
REPORT TO THE MEETING OF THE EXECUTIVE 6 APRIL 2016

PORTFOLIO: PLANNING

**REPORT OF THE REVIEW COMMITTEE ON PLANNING
ENFORCEMENT**

1 SUMMARY

- 1.1 At its meeting on 1 March 2016 the Review Committee approved a final report on its review of Planning Enforcement, which included recommendations for consideration by the Executive.
- 1.2 A copy of the final report, as approved by the Review Committee, is appended as appendix A.

2 RECOMMENDATION

- 2.1 It is proposed that the Executive considers the final report and its recommendations, as follows:-
- (1) That Members should receive a quarterly report on outstanding enforcement cases and that this report should include the following information:-
- Details of the breach of planning
 - The Ward to which the breach relates
 - The date the breach was added to the list, and the date that it will expire if no enforcement notice has been issued
 - The action that is planned
 - The current stage of the enforcement process relating to the breach
 - Closed cases and how resolution was achieved for each case.
- (2) That the performance indicators for Planning Enforcement are revisited to ensure they reflect current circumstances and practice.

**REPORT OF THE REVIEW COMMITTEE ON THE COUNCIL'S
ACTIONS PRIOR TO THE FIRE AT MICHELINS FARM ON 10 MARCH
2015**

3 SUMMARY

- 3.1 At its meeting on 1 March 2016 the Review Committee approved a final report on its review of the Council's actions prior to the fire at Michelins Farm on 10 March 2015, which included recommendations for consideration by the Executive.
- 3.2 A copy of the final report, as approved by the Review Committee, is appended as appendix B.

3.3 RECOMMENDATION

- (1) That a joint enforcement protocol is agreed with Essex County Council and the Environment Agency.
- (2) That a quarterly update on enforcement cases is presented to Full Council.

REVIEW OF PLANNING ENFORCEMENT

1 SUMMARY

- 1.1 This report contains the Review Committee project teams' observations and the information provided to them during their review of Planning Enforcement at Rochford District Council.

2 INTRODUCTION

- 2.1 It had been agreed during the previous Municipal Year that a project team would be established to look at this. Planning Enforcement had been the subject of a previous review by the Committee in 2006/07 and it was felt that it would be a useful exercise to revisit this topic.
- 2.2 A number of team meetings were held with the Assistant Director, Planning Services, and the Team Leader for Planning Enforcement.
- 2.3 The following report notes the thoughts of the Committee on what they have heard and also includes their recommendations.

3 GENERAL

- 3.1 It was unfortunate that the review coincided with the Authority going through a redesign of the way it worked as an organisation. In the course of a normal review, the project team would look at an existing service and make recommendations around areas that it thought could be improved upon for the benefit of the residents.
- 3.2 An effect of the redesign is that there is a new Assistant Director for Planning Services with a smaller planning team and, therefore, there has been a need to refocus the efforts of the team to ensure that the goals of the business can still be achieved.
- 3.3 The project team have, therefore, had to study the proposals for the way the team will work going forward rather than how the team had worked historically.
- 3.4 It has to be borne in mind that, other than in very specific situations, it is not a criminal offence to carry out work without planning permission or not in accordance with the approved plans. The authority has discretion to deal with breaches of planning control based on expediency.
- 3.5 The enforcement team have the following aim:-
- “To protect the character of the District from harm and ensure proposals for development are implemented in accordance with the approved scheme.”

- 3.6 There are currently 252 enforcement cases outstanding and whilst the team have performed well against the existing performance indicators there is a feeling that there may have been a tendency to focus on casework that would be quick to resolve. The more complex cases, which were often in the Metropolitan Green Belt, were not progressed.
- 3.7 Whilst one of the roles of the Planning Enforcement Officers is to deal with reported breaches of planning control they also have to monitor the compliance with planning conditions on new development sites and undertake project work related to the Council's business plan. Below are the details of the new more focussed approach.

Reported Breaches of Planning Control

- 3.8 New inquiries will be triaged and the more significant breaches will be aligned with a clear priority route. As such, on a monthly basis each officer will identify 30 cases (as a guide) which are considered to be priority cases. During the month there will be an aim to review each case progressing forward to resolution. It should be noted that the complexity of cases is a key determinant on how quickly they can be resolved and many cases will be carried forward to the following month. By adopting this new working practice; those more complex cases will be progressed. This inevitably will mean that there will be some minor, less harmful, alleged breaches that will not be dealt with as a priority and complainants will be advised that the matter will be investigated but there may be a delay.
- 3.9 There will at times be reported breaches that are causing serious harm; unauthorised works to a listed building or those causing harm to neighbouring amenity or the environment. These cases will be added to the officer's monthly case load and dealt with accordingly.
- 3.10 If a planning breach is identified, the landowner and/or operator will be provided with the opportunity to rectify the breach or apply for planning permission if this is considered to be the most appropriate route. Some minor breaches, for example, neighbouring fences over 2 metres or minor domestic development will be considered against set criteria and in most cases no action taken. The landowner/operator and complainant will be advised that planning permission is required but no further action will be taken by the team.
- 3.11 Serious breaches, however, will not be tolerated and there will not be protracted periods of negotiation. The team will consider the issuing of an enforcement notice to protect the character of the District with a degree of urgency.

Monitoring of new development

- 3.12 The role of development monitoring has become more important owing to the number of new housing developments that have either been approved or are

coming forward within the next couple of years. Conditions are imposed on new developments to minimize the impact of the development on the surrounding area and the public have the right to expect that planning permissions should be implemented as approved.

- 3.13 The enforcement team will work to ensure that approved schemes are implemented in accordance with the approved scheme and conditions. Where conditions have not been discharged and development commences the enforcement team will consider whether formal action will be taken in order to achieve compliance.

Project work

- 3.14 To align the work undertaken by planning to the key objectives of the business plan there will be an assimilation of the work flowing from this that can be progressed using planning enforcement. The business plan supports a project that seeks to reuse empty buildings and remedy untidy sites.
- 3.15 During the next 12 months this will form a part of the key service delivery and account for 20% of officer time.
- 3.16 In other cases planning breaches can be dealt with more effectively if a generic approach is adopted. For example rather than targeting one or two unauthorised adverts in the town centres, a survey of all the advertisements in the town centre will be conducted and all those identified as unauthorised will be contacted and requested to resolve the breach. This blanket approach to breaches removes complaints from transgressors of an imbalanced approach to investigating breaches and sends a strong message through the district of what level of compliance with the regulations is expected.

Other Changes

- 3.17 It is the intention that the enforcement officers will adopt a strategy for working collaboratively with other stakeholders. It is often the case that reported planning breaches will involve matters that fall under the jurisdiction of other governing bodies e.g. Essex County Council, the Environment Agency and neighbouring authorities. Working together and sharing information enables a more focused approach to resolving breaches. The coordination of any formal action is more effective if all parties work in a collaborative manner.

4 CONCLUSION

- 4.1 The changes in the size of the Planning Enforcement team has meant that there has needed to be a change in the way the team deal with the Planning Breaches that are reported to it and the other duties that the team need to fulfil. It is difficult for the project team to review something when it is only just being implemented and for that reason the project team feel that it would be

useful to look at the situation in 3months time to assess the changes that have been made.

- 4.2 In the meantime the performance indicators need to be revisited due to the change in man power and functions.
- 4.3 There is still the concern that Members do not know about what cases are outstanding or are being dealt with and, therefore, the report contains a similar recommendation to that made in the Review Committees report on Michelins Farm around some form of quarterly reporting.

5 RECOMMENDATION

- 5.1 It is proposed that the Committee **RECOMMENDS** to the Executive that:-
- (1) That Members should receive a quarterly report on outstanding enforcement cases and that this report should include the following information:-
- Details of the breach of planning
 - The Ward to which the breach relates
 - The date the breach was added to the list, and the date that it will expire if no enforcement notice has been issued
 - The action that is planned
 - The current stage of the enforcement process relating to the breach
 - Closed cases and how resolution was achieved for each case.
- (2) The performance indicators for Planning Enforcement are revisited to ensure they reflect current circumstances and practice.
- 5.2 It is proposed that the Committee **RESOLVES** to receive an update on Planning Enforcement in three months time to examine what effect the new approach has had on the number of outstanding Planning Enforcement cases.

REVIEW OF THE COUNCIL'S ACTIONS PRIOR TO THE FIRE AT MICHELINS FARM ON 10 MARCH 2015

1 SUMMARY

- 1.1 This report contains Review Committee Members' observations on the information provided to them during their review of the Council's actions prior to the fire at Michelins Farm on 10 March 2015.

2 INTRODUCTION

- 2.1 This topic was suggested for review at a training session for Review Committee Members and subsequently agreed at its meeting on 9 June 2015. Whilst the Committee was undertaking a review of the Planning Enforcement process, it was felt that this case warranted being examined as a separate topic.
- 2.2 A timeline was supplied listing the actions that had been taken against the site and from this; questions were prepared for the various agencies involved. A public meeting was held with representatives from both Rochford District Council (RDC) and Essex County Council (ECC) who were present to answer questions. The minutes of this meeting can be found online and a fuller transcript is attached as Appendix A. A recording of the meeting is also available from the Council's website.
- 2.3 The following report notes the thoughts of the Committee on what they have heard and also includes their recommendations regarding what needs to be done to avoid a similar incident happening in the District again.

3 GENERAL

- 3.1 The site at Michelins Farm has a history of enforcement action stretching back to 1997 when enforcement and stop notices were served against the use for car boot sales. In 1999 enforcement notices were served as the site was being used for the storage of motor vehicles, siting of mobile buildings, construction of a road and the storage of waste. At this time the breaches were limited on the site but these spread over time and further breaches of planning control were identified.
- 3.2 The Environment Agency (EA) became involved around June 2005 following a fire at the site. The Planning Enforcement Department at ECC became involved around 2009/10.
- 3.3 In January 2013 the land owner, Roger Phipps, was successfully prosecuted by the EA and RDC. He was sentenced to eight months imprisonment and ordered to carry out 180 hours unpaid work for allowing an illegal waste site to be run on his farm. He was also fined £15,000 for breaching two planning enforcement notices.

- 3.4 The prison sentence was suspended for two years and Mr Phipps was ordered to remove the waste from the farm in four stages by 30 January 2014. He was also told to pay a contribution of £20,000 towards prosecution costs.
- 3.5 On Friday, 11 July 2014, Mr Phipps was sent to prison for six months. Chelmsford Crown Court activated part of the suspended sentence given in 2013 after he was convicted of a further offence of breaching planning laws. Whilst he had carried out the unpaid work he had yet to pay the court costs and fines. He also failed to remove the majority of the waste from the farm by 30 June 2014.
- 3.6 On the evening of 9 March 2015 a fire started at Michelins Farm and involved a 160ft (50 Metre) long stack of tyres. The fire was still burning on 11 March and the A1245 road was not fully open until 12 March. Trains were unable to run until 4.10 pm on 10 March and residents were warned to stay indoors to avoid breathing in the smoke. The incident involved some 80 firefighters and 19 fire engines plus the cost alone in foam that was used on the fire was reported to be in excess of £50,000.

Findings from 3 November 2015 meeting

- 3.7 The reason for the review was not to apportion blame to individuals or departments but to try to learn a lesson from what has been a difficult situation and to try to ensure that a similar incident does not occur again at Michelins Farm or elsewhere in the District. To that end, the Committee would like to express its thanks to those officers who attended its meeting on 3 November 2015 and for their openness and candour.
- 3.8 It was clear from the timeline of events that had been supplied that the landowner was determined to be obstructive and push boundaries. The judge, when sentencing him, had said that he had flouted environmental and planning law to a significant degree and for a considerable time and the pre-sentence report showed a lack of real acceptance of the situation. "He took an entrenched position and was a cantankerous individual."
- 3.9 Council officers had great difficulty in accessing the site and this was evidenced when they referred to the need of a police escort whenever they wished to visit the site (page 9, Appendix A).
- 3.10 During the time that the Council has been taking enforcement action on the site, there has been an increase in the level of offending and this has lead to other agencies becoming involved as multiple enforcement issues were identified.
- 3.11 Each agency issued their own enforcement notices and these were dealt with by different planning inspectors and judges, therefore, different dates were agreed for compliance (page 8-9, Appendix A). This has caused difficulties, which have been recognised by various enforcement officers and this issue is

now being addressed so that future actions at this site and others work more smoothly.

- 3.12 The definition of 'what actually was waste' also caused issues (pages 6-7, Appendix A) in that the tyres, when originally deposited on the land, were not considered waste as they were in bales. If bales are manufactured to an appropriate standard, as defined in British Standard PAS 108, then they are not classed as waste and can be used as any other construction item without the waste label. PAS 108, however, also has a shelf life stipulation so that bales not used after one year become time expired and are then waste. This is to ensure that bales are only made where there is a demand and not stockpiled indefinitely.
- 3.13 Whilst there was a turnover of these tyre bales originally; they then started to accumulate and became waste due to the length of time they were on the site.
- 3.14 Until changes to the legislation in 2015 the EA did not have the power to force the removal of waste, which was stored illegally, only waste that was deposited illegally.
- 3.15 The Planning Enforcement team at RDC has always been small and their caseload has been difficult to manage due to the number of other cases. During the meeting in November this was evidenced when mention was made that the two officers involved with Michelins Farm were also involved in two public enquiries and four court cases between August 2007 and April 2008 (page 12, Appendix A).

4 CONCLUSION

- 4.1 Since the fire in March 2015 there has been a further incident when waste at the site has caught fire and, although this incident did not cause the level of problems seen in March, it demonstrates that there are ongoing issues with the site.
- 4.2 The EA have indicated in their correspondence to the Committee that, at the current time, they have no further enforcement role with the site. The officers from RDC and ECC are currently discussing whether their Enforcement Notices are still valid (page 14, Appendix A).

The Committee found it disappointing that, despite fifteen or more years of enforcement action by various agencies and the fact that the landowner has been jailed over offences at the site, there is still significant amounts of waste there and planning breaches are still taking place.

Whilst the review was about the Council's actions prior to the fire of 10 March 2015, it was clear during the meeting that the situation has not been resolved and there is still a continuing possibility of further fires taking place. Although officers were keen to stress that it was unlikely that they would be of the same magnitude as seen in March 2015. Nevertheless, the Committee feel that

they would like to know what the current position is in relation to the site and what actions are being proposed to regulate the ongoing breaches and the clearance of the site.

Officers from RDC and ECC that were present at the meeting were keen to advise the Committee that they were working together informally on cases where there was a joint interest. Whilst the Committee were happy to note this collaboration they would like to see it taken a stage further. It was clear that, until the EA and RDC agreed to mount a joint prosecution over the breaches at Michelins Farm, the individual actions were not achieving any significant affect. During the Committee's research they have come across a copy of a joint enforcement protocol between Lincolnshire County Council and the Environment Agency which details how the two parties will work together over joint enforcement issues (Appendix B). The Committee would hope that a similar joint agreement between RDC, ECC and the EA could be agreed to formalise the current understanding between staff at the various agencies.

During the meeting, officers mentioned that they were working jointly on another case within the District. Members were concerned that they had no knowledge of another site requiring joint working and that there could be potential for a similar situation to happen again.

During the Committee's research it was noted that other authorities report the current position in relation to enforcement cases to a committee. In the case of Michelins Farm, Members at ECC have received updates on a regular basis. Therefore, it was felt by the Committee that it would be useful to adopt this practice at RDC to ensure that Members were aware of enforcement action being taken. This would also provide the public with the assurance that something is being done and to make any people that are thinking of breaching planning control think about the potential consequences of their actions.

5 RECOMMENDATION

5.1 It is proposed that the Committee **RECOMMENDS** to the Executive that:-

- (1) A joint enforcement protocol is agreed with Essex County Council and the Environment Agency.
- (2) A quarterly update on enforcement cases is presented to Full Council.

5.2 It is proposed that the Committee **RESOLVES** to:-

- (1) Request a report on the joint enforcement cases in the District including the one mentioned at the Review Committee meeting of 3 November 2015.

- (2) Request an update on the current situation in respect of Michelins Farm and whether any enforcement notices are still current.
- (3) Request a further update in three months to establish if the tyres and other waste are being cleared from the site.

Appendix A

Notes of meeting 3 November 2015

Yvonne Dunn – YD - Team Leader, Planning Enforcement

Suzanne Armstrong – SA - Essex County Council Enforcement Officer

Martin Howlett – MH - Principal Environmental Health Officer

Shaun Scrutton – SS - Director

Angela Law – AL - Assistant Director – Legal Services

Question - What role does the department you represent have in relation to Michelins Farm?

Answer – YD – The Planning Enforcement team is responsible for investigating planning breaches and negotiating any compliance with the transgressor to remedy that breach and if that does not result in the desired outcome we have the option to considered whether it is expedient to take formal action by serving an Enforcement Notice. If there is non compliance with that notice then we have the option to go to prosecution.

SA – I do exactly the same as Yvonne but I work for ECC as a Waste and Minerals Enforcement Officer, I deal with anything relating to waste.

Question - Could I ask both of you if you were involved at the very start of this matter?

YD – No I did not have any involvement in this case at all prior to my appointment.

SA – I started at ECC in 2012 so I became involved in the case from 2012.

MH – With regard to Environmental Health some of the things we can deal with are statutory nuisances. That would be were something that happens on the site affects another party. It might be that where smoke arises from the site might affect someone else. As the site is commercial in nature there is specific legislation, dark smoke and the emission of dark smoke, so that would be an area we could be involved in. With an eye to current/ future legislation re land contamination we would have a regulatory role as well. I have been employed in the Environmental Health Department since 2001 and we have had very little involvement with this site overtime, indeed my first visit to the site was this calendar year. The Environment

Agency are a national body and they are closely associated with the waste and there is quite a bit of overlap with the County side and they would regulate the movement of waste and the storage of waste as well.

Question – Was the situation more weighted to one of the bodies in terms of the situation and lead? Is it predominately an enforcement issue or predominately an Environment issue?

YD – Initially in 1999 when the case was first opened we were looking at whether there had been a material change of use of the land. When you look back at site photos of that time, there was not necessarily an import of waste on the scale that we have since witnessed. It was more that the site was being used to store a number of vehicles and there was some car repairs happening at the site. As the site was quite large there were horses grazing on the land as well at this time. So it was not in the condition that it got to in 2010 when it was probably at its worse. Initially it was about the material change of use of the land. Then the importation of waste got to the scale that there was concern and County became involved.

Question - In terms of the timeline at what point did it become an environmental issue rather than enforcement?

YD - There was a fire that occurred in June 2005 and from that point the Environment Agency started to look at it in more detail.

MH – May 2005 was my department's first awareness of the site.

YD – So there were enforcement notices in place on the land prior to the Environment Agency becoming involved which Rochford had served

Question - Who took the lead and how did you collaborate through this time (2002 - 2003)?

YD - At this time the storage of the tyres was not considered to be waste. The storage of waste material was probably the cars because when we look back at the photographs they were not actually roadworthy so they were not there to be repaired and were in poor condition with parts missing etc. so that could have been what was being referred to, but when you look at the photographs there are pockets of waste material and I do not know if ECC was involved at that time or not.

Question - Do you know what that waste material was?

YD - When you look at the photographs from 2001 and 2002 that were taken to serve the notices it was not of the significant scale that we have looked at since then. It was predominantly green fields with some areas where he had cars stored and tyres stored.

Question - There were a number of issues on the enforcement notice sufficient for you to take action but not enough to warrant interest from the other agencies?

SA - There is no real definition of waste a District can deal with some things such as Cars but waste is something that you intend to discard or are required to discard, so it means you are disposing of it. It may not be a definition of waste that falls within the remit of ECC as waste authority we would have to prove that it is a change of use of the land for disposal purposes. Now even though it may refer to waste that could still become a District matter so it is not something that the waste authority could be involved in. And I believe it was something that was being dealt with by the District and the Notice was served by the District.

MH – At the time that material is deposited on the land it might not be waste but it could become waste without anything happening to it over the passage of time.

Question - At some point in legislation tyres do become waste because there is a need to follow certain procedures for their disposal. The question is at what point and under what legislation did the tyres become regulated in terms of conditions, circumstances and procedures for their disposal as at that point they represented a risk that has been covered by legislation.

YD – That is something for the Environment Agency, when I spoke to Tim Sheppard he said that when the tyres were first brought to the site they were going to be used for another purpose. There was a company that was going to be using those and some of the tyres were actually leaving the site when the EA were dealing with it but I do not know about legislation.

YD – We can go back to the EA and get clarity on it.

Question - Do you feel that the lack of definition in waste for example caused a delay in the investigations?

YD – I don't feel it caused a delay in the investigation because as they served an enforcement notice in 2002 Rochford were quite clear what the breach of planning control was that they were dealing with. As time went on the conditions of the site changed and the situation evolved.

Question - What powers do you have?

- To visit the site
- To ensure that identified requests for remedial work is complied with

YD – It is the same for both Suzanne and myself, we both work under the Town and Country planning act Section 196a. This permits us to enter sites to carry out

investigations to assess whether there has been a breach of planning control and to monitor that breach. The regulations actually state that we can do that without obstruction. If someone does actually obstruct us from carrying out our investigation on site then we can take further steps. Non compliance with enforcement notices means that we have the power to prosecute in the courts.

MH – In terms of Environmental Health, The Environmental Protection Act 1990 powers of entry to site to investigate nuisances, the Clean Air Act 1993 which is in relation to any dark smoke offences, and in relation to land contamination the Environmental Protection Act 1990 and the Environment Act 1995.

Question - What reason do you need to gain entry to a site?

YD - A planning officer dealing with a planning application has the power to go onto a site. The relevant part of the Act is printed on the back of my pass card which states that I am able to go onto a site to investigate breaches of planning control.

Question - What caused you to make the visit and what did that complaint say?

YD – I believe the complainant was a member of the public but I would have to check that and come back to you.

Q - Looking at the timeline page 5, there are two entries, May 2013 Site Visit and November 2013 Site visit with no details at all

SA – The reason being, RDC & EEC both had different Enforcement Notices on the site, ECC compliance date was due 22 May 2013. So therefore a visit was undertaken to check compliance with the ECC enforcement Notice. The visit would be recorded under ECC information, due to the site it would have to be all officers EA, ECC and RDC together and photographs would have been taken of what was seen that day.

I have records for the visit.

Question - And the same for November 2013?

YD - Every site visit would have a record.

Could you give us copies following this meeting?

Yes they will be hand written notes taken at the time.

That's fine.

Question - Do you have an agreed strategy that you follow?

YD – We do have a guide to enforcement that details how we will deal with enforcement cases which is a Council document. With regards to this specific site, we all have our own areas that we deal with and initially it was planning enforcement at a district level. We did then start to collaborate with ECC when we realised there was an infiltration of waste and from 2005 environmental health were also in correspondence with the Environment Agency. From the mid 2000s there was a more collaborative strategy, at the same time we all have our own fields when we are dealing with a case.

SA – The reason I was able to answer about the site visit in May 2013 was Rochford started many years before, ECC came in in 2009 -2010 so we also served a notice, unfortunately the notices are appealed and the inspector on our particular notice gave an extra year for compliance so then our dates did not tie up with Rochford. So we have two different dates for compliance and different timescales.

YD – Going back to June 2006, this is not on the timeline this is additional information I found in the file. We had an e mail from the EA as there had been a complaint about some dark smoke coming from the site. From that point the EA were involved and when they would do a site visit they would e mail RDC with the result of their site visit and provide photos and when we did a site visit if we came across information that we thought was pertinent to the EA, then that information was shared.

Unfortunately when we are looking at prosecutions the timelines stretch in to months and sometimes years.

Question - What geographical area do you cover?

SA – I cover the whole of Essex and we have a planning protocol the same as Rochford which can be found on our web site.

Question - Did you get together round the table to talk about it and if you didn't, why didn't you?

YD – I cannot answer why it was not done, you are right there was exchange of e mails and photographs and some joint site visits due to the difficulty of getting on site as we needed a police escort . I am not aware of any strategy meetings. Certainly once the EA decided that they were going to be the lead on the prosecution there was a lot more of an exchange.

Question - Was there a joint strategy involving Environmental Health, EA, Planning Enforcement and ECC planning enforcement on this case.

MH – Simply by including Environmental Health in that list I can say no. There were very limited complaints of smoke during that time and all the time while the EA were

pro actively involved with the site. But we would share information pertinent to each other, formally or otherwise.

YD – We certainly work more closely together now. Whenever we are planning a site visit we contact each other to plan the visit together and it stems from lessons learnt from this and other cases.

Question - What other agencies and/or authorities have been involved in this case?

MH – Following the fire that occurred in March there were a number of organisations/regulatory bodies that came together. We had the Police, Fire and rescue service, Network Rail, and there were a number of conference calls as they tried to establish the facts etc. There has been very limited contact from any neighbouring sites albeit north of the railway line the neighbour which is the electricity company have been in contact in the distant past regarding the site but not in recent times so it is quite a limited number of agencies.

Question - We ended up with different inspectors to hear the different cases and it seems to be that it confused the issue more, in that you have one giving one view and giving a year and the other giving 6 months you have almost got 6 different cases depending on which inspector is picking it up and from my very limited assessment of the situation this does not help the resolving of the issue one iota. It actually gives Mr Phipps, who seems quite adept at playing the system, plenty of scope to operate within the legal parameters because of volume there doesn't seem to be any further thinking to outside agencies and with the best will in the world you could be working together while those working above you are not. Is that a fair assessment of what was going on at times?

YD – I think it would be wrong for us to speculate on how the Planning Inspectorate allocates its inspectors to certain cases. But it does depend on inspector availability when these dates are set. If RDC & ECC go to court it is handy if we get the same judge

Question - I am pleased to hear you say that you now have strategic meetings between all the agencies and that is a lesson learnt from this. But do you think if you had had strategic meetings between all the agencies in this case it would have been resolved quicker or would have been easier for the agencies to do things in a better way?

YD – It would certainly helped to develop some sort of strategy but whether or not it would have had any effect is speculation because a lot of the time it is the fact that there has been difficulty in getting on site, that is not just us it is the other agencies as well. We have to make sure that we have up to date evidence before we go to prosecution so we do need to get onto site to get that evidence, then you have

setting the court dates etc. So all those delays are unfortunately out of our hands to some degree. So I think a strategy where all the agencies sit together to decide and plan is certainly the best way forward but whether or not that would have speeded up where we are today I can only speculate.

Question - What do you class as a serious issue, was there any legal cooperation with regard to statements, was there a common legal framework for this case and if not why not?

Question - By the time you were getting to the rough end of the deal who had the lead role in this scenario?

YD – The Environment Agency took the lead role in the prosecution and we had to forward all our witness statements and evidence to the Environment Agencies legal team. So we shared the cost but they took the lead. The EA issued their summons in July 2010. The EA were dealing with the tyres but they also dealt with the non compliance with the outstanding enforcement notices.

Question - So we have established that until the EA took over the lead all the different agencies were working independently because of the different enforcement aspects, is that a correct reflection?

YD – I think from 2006 we were definitely sharing information, the EA had to conduct their own investigation but they did advise us that their investigation would be quite lengthy as they wanted to do periods of covert surveillance because they were interested in actually having evidence of as many people as possible visiting the site. So they set up covert surveillance to gather that evidence.

Question - Did they liaise with you as well as you appear to be liaising with them?

YD – Yes, whenever they had activity on their case they would liaise with us. We were still chasing compliance with our own notices and they were regularly advising us of what evidence they had found when they went on site and vice versa.

Question - Has contamination of the water table ever been an issue at Michelins Farm?

MH - Post the fire in March this year yes the EA certainly confirmed that the water course and aquatic life were affected by the result of having the fire so a combination of leach and retardants used to control the fire. Prior to that I do not have any knowledge as I have not been involved in the case.

Question - From the very beginning do you feel that you were misled by the man down there? Did he promise to clear up his actions and did he not comply and misled you from the very beginning?

YD - From my own view of looking at the records of the case we had periods of compliance and then non compliance. Mr Phipps had various planning agents that were advising him at various stages and those agents would change for what ever reason. It does appear on the case that when he had a planning agent there was periods of compliance and he was, and it is only my view, probably being advised that he needed to comply with the various notices. Then there were periods when no agent was involved and that seems to be when we see increases, as I say periods of compliance and then periods of defiance.

Question - Have you gone back and modified your processes so you can work more effectively and if you have, can you share those changes with the Committee?

YD – I have been in post since June and since then myself and Suzanne have done two site visits. There has not been any formal modification of any written processes but is certainly my approach that the two bodies work in conjunction with one another. We have also been in contact with the EA to get an update on their position etc. so the answer to your question is, no formal procedures have been written but we are in the early stages of producing an actual enforcement plan which will set out how we can work together.

Question - Is this plan relating to this particular site or in general?

YD – The whole approach of the enforcement team will be set down so it is clear to the public, parish Councils etc. how we will deal with breaches and how enforcement operates and what is considered a serious breach.

Q - Was any action taken between August 2007 and April 2008?

YD – There is some additional information I have found in the files, in February 2008 we had contact from Essex Police to say that they were carrying out their own investigation on the site. I am not quite sure what the details of that were, but they advised that they would be going down to the site and would we like to visit which we did do with the EA. So there was a further visit in February 2008 but what is more relevant, during this period the enforcement team was dealing with another case in the District, which again was a waste related matter and that was causing considerable harm. We had two public enquiries and four court cases and that took up a considerable amount of time of the two officers who were dealing with Michelins Farm.

Question - I am trying to read the timeline for a particular word. “Burning” it only gets picked up in 2008. It starts April 2008, July 2008 and then December 2008/January 2009. Given those circumstances where the risk assessment had increased so dramatically to include burning could this event in 2015 have been foreseen?

MH – In the timeline that I have managed to establish from the records we have, the first involvement we had which is relevant to the discussions today was in May 2005. I have 8 separate records of incidents relating to the site, the eighth being the fire in March this year. There is a big gap between September 2006 and April 2010 where there is no record of any complaint or reference to additional observations of smoke from the site. Most of the observations made are from motorists that observed the smoke and called. Some were local residents and some weren't but they were generally motorists. We have one incidence in January 2014 when police reported smoke across the carriageway and we had an incident in 2012 when police and fire services attended two simultaneous fires, one wood and one rubbish was how it was described at the time. The EA being the lead agency for waste matters, the inappropriate treatment of waste i.e. burning it, would have been one of the offences that they were investigating around this time. Yes it is fair to say that there were instances of burning on the site prior to March 2015 but not anything of great volume that came through our team. We were aware of the prosecution and the EA were very open about their investigations as well with information sharing, but it is very limited with reports of burning that we received directly.

Question - So summing up what you are saying it could not have been foreseen?

MH – The very specific nature of the incident in March, I think burning would have continued on occasion but in terms of the scale of the incident, I could not speak for whether the EA thought that was likely, but I think we could assume that burning would continue but not necessarily on the scale that came to be.

YD – I know that we did receive a report from the Fire Service in 2008, at the time they had attended 3 fires in one week. Obviously those details were passed through to the EA, I cannot really answer for what the thoughts were of the officers who were dealing with it at the time. I think that with any site there is an element of risk. As to how you deal with that, we were doing what we thought was required to deal with the breaches. At the time when we received this call we were in that process of working with the EA to formulate this joint prosecution so that I cannot really give you an answer on that one.

Question - Do you think given a similar situation with a progression of small fires that you would look at this or the EA, depending who is the lead body, would look at it differently because of what you have learnt from past experiences?

YD – I think any agency including Rochford should learn from past experience and obviously an event like this is an ideal opportunity to reflect on how you dealt with things in the past. I would imagine as a result of the disruption that resulted from the fire that all bodies are reflecting on how they would deal with matters of waste etc.

Could we write to the EA and ask them the question of risk assessment and whether assessments of the risk assessments could have led to a better expectation?

Question - I would be interested in the cause of the fires especially the one in March 2015. Was it simply a case of the burning of the waste got out of control?

MH – I don't think that was determined, I don't think the Police got very far with the interviews they carried out, I don't think they determined whether the fire was deliberate to start with. I attended the site on the Monday night at approximately 10.00pm and I understand the fire started about 90 minutes before that. It was well alight at the point that I attended but I believe it started after the working day had finished.

YD – If I can just add in the response we had from the EA declining to attend the meeting they have said in their last paragraph and I quote:-

“We have been doing a lot of work on waste site fire risk in the last year but the initial focus has been on active permitted high risk waste sites. Since Michelins Farm was neither active or permitted, and that the number of tyre bales was around 400, compared to nearly 3000 in 2010, it was not considered in the initial tranche of work.”

So the EA are looking at permitted sites with high risk of fire so this is perhaps a result of the fire at Michelins Farm.

MH – Certainly the Fire Service are working along side an industry body for waste management, to look at revising their guidance due to the current phenomenon of waste fires that are happening. There is at least one a day of significance across the country. Guidance tends to be used across regulated/legitimate sites, of which clearly this wasn't one, but also the tactics and suppressants that can be used by the fire service to extinguish such a fire and to do so in a more efficient and timely manner.

Question - Is there still waste on the site?

YD – Yes

Question - When you get a site that has got a risk is there a cut off point where you could take control of that site?

YD – We do have direct action powers where the Council can actually go onto the site and carry out works to clean up the site yes.

Question - But you didn't think it was necessary with this site?

YD – That is normally a course of action that we take after we have served an Enforcement Notice and we have prosecuted. There is a formal process that we

follow, negotiation, serving the notice, monitoring and compliance with the notice, then if it is not complied with we have the option to prosecute, then we do have the option to take Direct action.

Q - Are there any enforcement notices still outstanding on this site?

YD – Yes there are, we have two enforcement notices that have not been complied with however we have had a discussion prior to this evenings meeting whether or not we can revisit those actual notices because of a court order which was issued and it is something we need to look into further and get a legal opinion.

Q - The last site visit was in August what hazards were identified and is there a risk of a further incident at the site?

MH – The last site visit in August was undertaken by my colleagues here rather than by myself. I understand there was another fire in August but again there was not any contact with us by any party. In terms of having seen the site, yes there are tyres on site both the unburnt and burnt remnants from the original pile which burnt in March and then there was a separate collection of baled tyres which were a bit deeper into the site, but still on the side where the rail embankment is. Yvonne will be able to tell you more about the other types of waste scattered around the site. In respect of tyres, yes but there isn't the material on site for anything on the scale of the fire in March. It would still be significant but not of that same scale. The EA do have the power to move waste were it is polluting a water course and my understanding is that they did move some of the remnants of the tyres in order to prevent/stop contamination of the water courses as a result of the fire at that time.

SS – I did have a conference call on this very issue with the EA. As Martin has said they made arrangements to move some of the remnants to a better location but that was as far as they were prepared to go in terms of expenditure to make the site and the water courses around the site safe from contamination. I mention costs as that was part of the discussion around resources that the EA had to take remedial action on the site.

Second part of the meeting

Question - Has a strategy been drawn up by the Council and the other agencies to avoid another incident at the site?

Cllr Ward – At this moment no there hasn't been. I think it would be essential to draw something together so that we actually do have a relevant plan of action when something does come along. Looking back over the history you can see Mr Phipps has used the lack of a joined up court process to his advantage. I downloaded the

EA booklet, the new one, which gives a whole lot of processes that have to be ticked off before you can actually get to anything.

Question - Yvonne you started to elaborate on what you are trying to do for the future a plan or action with Suzanne, perhaps you could elaborate now

YD – I mentioned earlier the fact that there is two issues here, one as an enforcement team, we are looking at developing an enforcement plan which clearly sets out how we will deal with all breaches of planning control. How we will prioritize them and how we will investigate and what powers we have whether or not this issue of expediency and taking action etc. But I also think, in reference to this particular case and the lessons that we have learnt from this case, is that we need to have a clear strategy in case of another instance like this. Suzanne and I are working on another case together at the present moment and if we had a strategy in place what we would do. We are discussing it as we are going along, we are already saying that we are potentially going to take action on this particular site and let's serve our enforcement notices at the same time. So I think that if we drew something up on that basis, that if there are two parties involved that we get together early in the investigation and work together towards a joint strategy.

Question - (Referring to the EA booklet that Cllr Ward mentioned) Is it a new procedure and in your opinion does it slow things down?

Cllr Ward – It is a new procedure. Whether it slows things down I don't think it has been tested, it only came out April this year so it is a new procedure that has been introduced and I was having a look through all the various things. The acts are included in this new booklet but it has got the new items in there, the various guidance that the EA has put forward as to how they will approach a problem. If it has been tested yet I have no knowledge but I have had sight of it because I was doing some research. Of course you are aware our own officers are working in tandem with Essex trying to formulate something as at this moment.

Chairman I think we need that as part of our review. And perhaps he can steer the enforcement officers to the relevant link.

Question - Ian has put his finger right on the button because clearly the action we take next is about putting it right. What I cannot quite understand is that if the courts have got it out of line with the various actions is there not a procedure where you could go back to that court and say look what has happened. We want to ensure that this does not happen again. We need to progress this, the decision you have made needs to be reviewed. Is there any such mechanism where the parties could take it back to court and redress the balance?

AL – Just to clarify there was a difference between the enforcement notices and appeals at planning inspectorate stage and I think that was why Suzanne was saying that different planning inspectors gave different timelines for enforcement. With regards to the prosecution and court action, that was a joint effort with the EA. There was not an issue there with regards to having to go back and say that it was not in keeping with that as it is a separate jurisdiction. There is a difference between the Planning Inspectorate and the Court System.

Question - Then surely we can go back to the Chief Executive of the Planning Inspectorate and point out the error of their ways and ask for assistance?

SS – I think the point that Yvonne is trying to make is that we are looking to see in a more holistic way from now on about how we can work with the County Council and the EA on dealing with particular issues. I don't think we should lose site of the fact that one of the challenges that they were faced with this site as you have heard was that things started in a small way. There were particular circumstances behind the aims of the land owner, for example, initially the reason for bringing tyres onto that particular site was that he had another company that he thought could use those tyres. So the intention was to bring them on and then after time move them off and all would be well. After a period of time it was apparent that was not going to happen and then I think it was a main chance that was possibly spotted. Look it costs a lot for companies who have tyres to dispose of, to put them in land fill that is a particular cost, he puts his hand up and says bring them onto my site and I will charge you a lot less. So there was a change in how the site was viewed over time. Tyres were being brought onto the site and he was pocketing the cash, RDC said they had got to serve Enforcement Notices and take action and later on as things developed the County Council came on board and then the EA and then you have got these different processes going on with different timelines. It would be brilliant in particular circumstances depending on the site to have this direct coordinated approach but it may not be possible to do that because you have got incremental changes over time. You are trying to take action as early as possible and resolve the issue and that is then developing over a period. There were substantial changes in the way the site developed over time following the enforcement notices and then the involvement of the EA over time and the committee need to be aware of that.

Question - Martin you mentioned earlier about water contamination are we still monitoring that?

MH – No, certainly the local authority did not monitor that it was the EA. Pollution in water courses is something they do relatively routinely as a monitoring authority.

Question - Would it be possible to check back with them to see if they are monitoring it and report back to the committee?

MH - Yes

SS – I don't think they are monitoring it, I think they monitored it for a period of time after the incident until they were satisfied that there were no undue difficulties with the water quality. I think they took the view that there was no need for ongoing regular monitoring but whether they will come back at yearly intervals or not I don't know and asking that question would be useful. The second point if I may about the issue of best practice, the answer is yes because officers have meetings with colleagues from other authorities in Essex and gatherings of planning enforcement officers from across the country where they talk about cases, best practices and changes in legislation and so on.

Question - What do they glean from that?

SS – Well much of the processes and procedures that we follow are based on best practice.

Question - Martin can I ask that you contact the EA and ask what their view is on current /potential contamination of water courses and also what period of inspection they have done up to and what is their period of routine inspection?

We talk about water courses and the EA responsibility for that but what about the water table, are the EA responsible for that as well?

MH – I am not completely sure of the definition of controlled waters and would have to ask them that question as well.

Question - This joint strategy that you are working on, you are working together and developing it as you go along, have you got a timeline for when you expect to have a joint plan put in place. Are we saying by the middle of next year there will be a joined up process/ plan and this is what it will be and this is what our strategy will be. Or is it a more protracted view or is it going to be done in three months?

YT – I think I indicated that it is on an almost informal basis at the moment but it is the way we have decided to work together on this next case. I have made a note here that it is sensible to have something formalised. At the moment it is something we have started off our own back but no formal procedure has been put in place.

Question - Were the fines written off when Mr Phipps was sent to prison for non payment?

AL – The fines were set in accordance with the legislation and the scale and that is set down by the judge on the case. The fines were not written off and the Court chased for payment and after taking their part our costs were paid to us. Of the costs

we took our costs of £6123 and the rest went to the EA as they incurred more costs than ourselves as lead agency.

Question - Could we have put in a claim for all our staff costs etc. relating to the work that we had incurred?

AL - Whilst we can charge for the costs of the officers giving witness statements we cannot charge for officers time while they are carrying out their statutory duties such as investigating cases like this.

SA – I think the difficulty with the EA is they have permits and exceptions, someone could have an exemption for a site and they could import a certain amount of waste under that exemption. We then have to prove that they are not working within that exemption, so the first part of the EA investigation would be to see if what they are importing was over and above that agreed exemption.

YT – We are looking at the planning side of the land, we are looking to establish if there is a breach of planning control. It is down to the EA to establish if it is waste or something to do with agriculture.

MH – That structure for waste and exemptions stretches to fires as well.

Question - With the pollution have we had any claims against the Council following the fire?

AL – Not that I am aware of.

Question - Are we covered?

AL – On the basis that officers have been working on it and done everything under legislation within our powers, I think we are covered.

MH – Public Health England did send out its own staff to two sites to monitor the air quality as the plume moved round which did not give rise to concern about air pollution.

Question - Would it have been better to have taken direct action at the site when the court process first started?

SS – It was appropriate for the Council to follow all the relevant procedures. Direct action is very much a last resort. Over the course of events I think one might have thought that taking one to court and actually Mr Phipps was imprisoned, one would have not envisaged it getting to the stage that it did. Experience would show that long before that stage in the majority of cases that it is possible to reach a resolution.



WORKING TOGETHER

JOINT ENFORCEMENT PROTOCOL

Introduction

The purpose of this document is to set out a framework for joint enforcement activities where there is an overlap between the enforcement activities of Lincolnshire County Council (LCC) and the Environment Agency (EA) to promote the objectives of the Regulator's Compliance Code.

LCC have a wide remit in respect of enforcement powers within Lincolnshire and recognise that there are areas of enforcement carried out by Planning Enforcement, Trading Standards and Lincolnshire Fire and Rescue (LFR) that can overlap with the enforcement powers of the Environment Agency.

The aims of this protocol are to:

- Identify where there is an overlap in enforcement activity to ensure that each agency is aware of the activity of the other.
- To ensure that where both LCC and the EA are taking action in relation to the same business or individual joint investigations, inspections and or prosecutions are undertaken to avoid duplication and the placing of an unnecessary burden on businesses and individuals.
- To ensure that the enforcement of legislation in respect of breaches of relevant legislation is pursued in a proportionate, consistent, transparent and fair manner.
- To ensure the best use of public resources in respect of promoting compliance with regulations enforced by the relevant authorities.

Shared Working Arrangements

There are a number of areas where officers of either authority may identify that the other authority may have an enforcement role in relation to a business/individual or become aware that the other authority is already engaging in an enforcement capacity with that concern. This could include, but is not restricted to:

- Waste sites of all types, both permitted and illegal.
- Agricultural concerns

(Appendix B)

- Businesses/individuals generating a high volume of complaints of a sort likely to impact on local amenity and the environment such as trading in a residential area without relevant planning permission.

Wherever officers of either LCC, LFR or the EA recognise the potential for involving each other in regulatory activity they will:

- Share information about their findings and concerns on the business/individual.
- Where then deemed appropriate arrange a joint inspection
- Follow any inspection with a post inspection meeting to decide upon the next steps and the best use of available powers to address any breaches disclosed by the inspection.
- Decide, where appropriate as to which agency should take the enforcement lead.
- Follow up enforcement actions such as the serving of formal warnings, notices or cautions with further joint inspections.
- Share communications with the target business/individual with the other agencies involved.
- Consider conducting joint PACE interviews where more formal enforcement action is contemplated.
- Meet to discuss cases considered for prosecution to ensure best practice and the prosecution actions most likely to address compliance issues.
- Inform respective legal advisors of the joint nature of the enforcement action and where suitable provide witness statements for the authority taking the lead.
- Where enforcement action is to be taken by more than one authority to coordinate the same to ensure there is no duplication of action and that the resultant prosecution is a proportionate response to the circumstances.
- Coordinate press releases and updates to MP and elected members resulting from prosecutions.

Communication

Officers from the EA and LCC Planning Enforcement, Trading Standards and LFR will attend a biannual meeting to:

1. Discuss any ongoing issues
2. Provide a formal venue for identifying any new areas of joint concern.
3. Ensure that this agreement is still fit for purpose
4. Provide an update on contact details for various officers within the authority
5. Feedback on any learning from earlier joint investigations

Item 5
Appendix B

(Appendix B)

Signed..... 11 SEPT 2014

Simon Mitchell, Environment Manager

On behalf of the Environment Agency

Signed..... 11 Sept 2014

Neil McBride, Development Manager

On Behalf of Lincolnshire County Council