

## Review Committee – 3 November 2015

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Minutes of the meeting of the **Review Committee** held on **3 November 2015** when there were present:-

Chairman for the meeting: Cllr D J Sperring

Cllr C I Black

Cllr R R Dray

Cllr J D Griffin

Cllr B T Hazlewood

Cllr G J Ioannou

Cllr J L Lawmon

Cllr J R F Mason

Cllr Mrs M H Spencer

Cllr M J Webb

### **VISITING MEMBER**

Cllr I H Ward, Portfolio Holder for Planning

### **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Cllrs Mrs L A Butcher, J H Gibson, M Hoy and Mrs C A Pavelin.

### **OFFICERS PRESENT**

S Scrutton - Director

A Law - Assistant Director – Legal Services

Y Dunn - Team Leader, Planning Enforcement

M Howlett - Principal Environmental Health Officer

S Armstrong - Essex County Council Enforcement Officer

P Gowers - Overview and Scrutiny Officer

M Power - Committee Administrator

### **216 MINUTES**

The Minutes of the meeting held on 6 October 2015 were agreed as a correct record and signed by the Chairman.

### **217 DECLARATIONS OF INTEREST**

Cllrs J L Lawmon and J D Griffin each declared a non-pecuniary interest in Item 5 of the Agenda 'Review of the Council's Actions Prior to the Fire at Michelins Farm' by virtue of being Ward Members.

### **218 REVIEW OF THE COUNCIL'S ACTIONS PRIOR TO THE FIRE AT MICHELINS FARM**

The following responses were given to Member questions:-

### **What role does the department you represent have in relation to Michelins Farm?**

Rochford District Council (RDC) Planning Enforcement team is responsible for investigating and negotiating with transgressors to remedy planning breaches. If the breach cannot be resolved the Council can take formal action and issue an Enforcement Notice. In the case of non compliance with an Enforcement Notice the Council can prosecute and, as a last resort, take direct action. The Essex County Council (ECC) Waste and Minerals Enforcement team has a similar responsibility but deals with matters relating to waste.

The RDC enforcement officer at the meeting had no involvement in this case prior to her appointment to the role. The ECC officer became involved in the case from 2012. RDC Environmental Health (RDC EH) deals with statutory nuisances where smoke might have an effect on another party; at Michelins Farm the emission of dark smoke was investigated. The Environment Agency (EA) is the body responsible for the regulation of movement, storage and treatment of waste.

### **Which agency/department has the lead role, i.e. is it predominately an enforcement issue or an environment issue?**

The initial concern in 1999 was whether there had been a material change of use of the land. Photographs show that the site at this time was being used to store vehicles, to undertake car repairs and for grazing horses. The importation of waste was not on the scale that has been witnessed more recently. This reached a critical level in 2010, which was when ECC became involved. RDC EH became aware of the site in May 2005. Enforcement notices had been served on the land prior to the EA becoming involved in 2006, following a fire on the site.

### **Who took the lead and how did you collaborate during 2002 - 2003**

Photographs from 2001 and 2002 show that the land was predominantly green fields, with some areas for storage of cars and tyres. At the time the tyres stored would not have been considered to be waste and so ECC, as the waste authority, would not have been involved. Therefore, the District Council was the lead authority and served the Notice. Over time the tyres stored became regarded as waste and as a risk covered by legislation. At this point there is a need to follow certain procedures for their disposal. This matter was taken up by the EA.

### **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?**

The EA has advised that when the tyres were first brought to the site there were plans to store them short-term only. Further information will be requested from the EA.

It was not felt that the way of defining what was regarded as waste caused a delay in the investigations as RDC served an enforcement notice in 2002 for a breach of planning control. The conditions of the site changed over time and the situation evolved.

### **What powers has each department to visit the site/ensure that identified requests for remedial work are complied with?**

Enforcement officers at both RDC and ECC work under the Town and Country Planning Act, which permits entry to sites to carry out investigations to assess whether there has been a breach of planning control and to monitor the situation. The regulations state that Council officers must be allowed to carry out investigations without obstruction; further steps can be taken if access is obstructed. The Councils have the power to prosecute non-compliance with enforcement notices via the Courts.

The Environmental Protection Act 1990 gives powers of entry to sites to investigate nuisances; the Clean Air Act 1993 relates to any dark smoke offences, and the Environmental Protection Act 1990 and the Environment Act 1995 relate to land contamination

A planning officer dealing with a planning application has the power to go onto a site to investigate breaches of planning control.

The Team Leader, RDC Planning Enforcement would advise the Committee of the reasons for the initial visit and what the complaint said.

Officers confirmed that there would be a written record for each site visit: copies of the written notes taken during the site visits in May 2013 and November 2013 would be provided to Councillors following the meeting.

ECC and RDC had both served Enforcement Notices on the site; if enforcement notices are appealed, different dates for compliance may be given, which can result in different compliance dates and timescales for each agency.

### **Do the agencies have an agreed strategy?**

RDC has a Guide that details how enforcement cases will be dealt with. ECC has a planning protocol, which can be found on their website.

### **Was there a joint strategy involving RDC EH/Planning Enforcement, EA and ECC planning enforcement on this case.**

Although there was some collaboration and some joint site visits, there were no formal meetings to discuss strategy. When the EA decided to lead on the prosecution exchange of information increased. Lessons have been learnt from this case and ECC and RDC now work more closely together and, when considered appropriate, strategic meetings between all the agencies will be arranged. A joint strategy for planning action is recognised as the best way

forward but this may not have had any impact on this case as many of the issues were around difficulty in getting site access and time delays in setting the court date.

### **What other agencies and/or authorities have been involved in this case?**

Following the fire at Michelins Farm in March a number of organisations/regulatory bodies worked together to establish the facts of the case, including Essex Police, Essex Fire and Rescue Service and Network Rail.

The allocation of Planning Inspectors to cases depends on inspector availability, which can result in a range of inspectors hearing the case. Some judges may not have specific planning experience.

The cost was shared but EA took the lead role in the prosecution and there was reciprocal sharing of information and evidence. Until the EA took over the lead, all the agencies were working independently because of the different enforcement aspects. The EA conducted its own investigation, which included the use of covert surveillance to gather evidence: photographic evidence from the EA was shared with RDC. The EA confirmed that there had been contamination of the water course at Michelins Farm and aquatic life as a result of the fire.

### **From the very beginning do you feel that the enforcement notices were not complied with and you were misled from the very beginning?**

The records of the case indicate that there were periods of compliance and then non-compliance with the various enforcement notices served. There appeared to be a greater degree of compliance when planning agents were providing advice.

### **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?**

Although there are no formal procedures in place, RDC and ECC now undertake joint site visits and liaise with the EA for updates on the current position in cases. An enforcement plan is scheduled to be drawn up, which will set out how planning enforcement matters are dealt with by the Council, how the different organisations should work together and what are considered to be serious breaches.

### **Was any action taken between August 2007 and April 2008?**

The files show that in February 2008 Essex Police advised that they were carrying out their own investigation on the site and invited RDC and the EA to go on a joint visit. During this period the RDC enforcement team was also dealing with another serious waste-related case in the District that took up a considerable amount of officer time.

**On the timeline the word ‘burning’ is shown in April 2008, July 2008 and December 2008/January 2009. Given that the risk had increased so dramatically to include burning could this event in 2015 been foreseen?**

RDC Environmental Health first became involved in May 2005. There were eight 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 calls were from motorists who observed the smoke, some were from local residents. In 2012 the Police and Fire Services attended two simultaneous fires: one wood and one rubbish. The Police reported an incident of smoke across the carriageway in January 2014. The EA, being the lead agency for matters relating to waste matters, investigated these incidents. There were instances of burning on the site prior to March 2015; however, RDC EH received very limited direct reports of burning.

**So summing up, are you saying it could not have been foreseen?**

RDC was aware that the EA was passed details of three fires that the Fire Service attended in 2008. From RDC point of view, although it was thought that burning would have continued on occasion, there was no indication that there would be a fire on the scale of the incident in March. There is an element of risk with any site of this nature; RDC believed that it was dealing with breaches in an appropriate way and was working with the EA to formulate a joint prosecution at this time.

**Do you think should a similar situation with a progression of small fires occur now that it would be dealt with differently?**

All agencies, including RDC, will learn from past experience and reflect on how a situation has been dealt with in the past. As a result of the disruption that resulted from the fire at Michelins Farm, all bodies will reflect on how they will deal with matters of waste, etc in future.

Officers will write to the EA and ask them whether risk assessments could have led to a better expectation.

**What was the cause of the fires, in particular the one in March 2015? Was it simply a case of the burning of the waste got out of control?**

The cause of the fires has not been determined. RDC EH attended the site on the night of the fire, approximately 90 minutes after it had started. It is understood that the fires started after the working day had finished.

A letter received from the EA when they declined to attend this meeting included the following:-

“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 nor 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.”

It appears from this that the EA is looking at permitted sites with high risk of fire as a result of the fire at Michelins Farm. The Fire Service as well the industry body for waste management are looking at revising their guidance, due to the occurrence of at least one fire of significance across the country each day. However, guidance tends to be used across regulated/legitimate sites, although the tactics and suppressants can also be used by the Fire Service to extinguish these fires in a more efficient and timely manner.

**When you get a site that has a risk is there a point where you could take control of that site?** The Council has direct action powers to go onto the site and carry out works to clean up the site.

**But you didn't think that direct action was necessary with this site?**

There is a formal process that is followed: negotiation, serving an enforcement notice, monitoring compliance with the notice, in the case of non-compliance considering the option to prosecute, then considering taking direct action and entering the site.

**Are there any enforcement notices still outstanding on this site?**

There are two enforcement notices that have not been complied with. However, since the notices were served, a Court order has been issued so these will have to be considered from a legal standpoint.

**From the last site visit in August what hazards were identified and is there a risk of a further incident at the site?**

The site visit in August was undertaken by RDC Planning Enforcement and it is understood that there was another fire in August but again there was not any contact with the Council by any party. There are still tyres on site, including the unburnt and burnt remnants from the pile in the fire in March, but there isn't the material on site for anything on the scale of the fire in March. The EA does have the power to move waste where it is polluting a water course and they have moved some of the tyre remnants to a better location. However, this is 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.

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

It is intended that an action plan be drawn up to deal with incidents of this nature in future. A booklet that has been produced by the EA that details new guidance for dealing with issues will be provided to Members of the Committee as part of the review.

The RDC Enforcement team is looking at developing an enforcement plan that sets out how breaches of planning control will be dealt with, how they will be prioritized and investigated and what powers RDC has in terms of taking action. This case has highlighted that it is vital to have a clear strategy to enable joint working in case of another incident.

**It is important that the action that is taken next should be about putting the situation right. Is there any such mechanism where the parties could take it back to court and redress the balance?**

The prosecution and Court action was undertaken jointly with the EA. The enforcement notices are covered by the Planning Inspectorate. It should be remembered that one of the challenges on this site was that the land owner initially had tyres on the site for short term storage prior to resale. After a period of time it was apparent that this was not the case and RDC served Enforcement Notices. As things developed ECC and then the EA became involved. Things could be improved if there were a direct coordinated approach in the future. RDC plans to work with ECC and the EA when dealing with particular issues, although this may not always be possible if there are substantial changes in the way the site develops over time, as were seen at Michelins Farm.

**Are the water courses affected by the site still being monitored?** The EA, as the monitoring authority, routinely monitors pollution in water courses. Officers meet with planning enforcement colleagues from other Essex authorities and from across the country to exchange information about cases, best practices and changes in legislation. Many of the processes and procedures that the Council follows are based on best practice.

The EA will be asked to advise on the current/potential contamination of water courses in this area, the period of time following the fire in March that the water courses were monitored and how often ongoing routine inspections are undertaken. Officers will advise Members whether the EA has responsibility for the water table/controlled waters.

The need to establish a more formalised procedure for joint strategic working was recognised by officers. At present collaboration is on an informal basis.

**Were the fines written off when the landowner was sent to prison for non-payment?**

The fines set by the judge in the court case against Mr Phipps were not written off and, after costs, fines of £6,123 have been paid to the Council; the remainder was paid to the EA who, as lead agency, incurred higher costs.

### **Could the Council have put in a claim for staff costs, etc relating to the work incurred?**

Whilst the Council can charge for the costs of the officers giving witness statements, a charge cannot be made for officer time in carrying out their statutory duties, such as investigating cases.

RDC is looking to establish if there is a breach of planning control. The EA needs to establish whether the site owner is using the land to carry out operations outside the boundaries of the agreed permit/exemption.

There have been no claims brought against the Council for pollution following the fire. The Council has insurance cover as long as it can be shown that officers have operated within the boundaries of the legislation. Public Health England staff have been to the site to monitor the air quality but there was no particular concern about air pollution.

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

It was appropriate for the Council to follow all the relevant procedures; direct action is very much a last resort and with the course of events it would not have been envisaged that it would get to the stage that it did. Experience would show that in the majority of cases it is possible to reach a resolution long before an event such as happened at Michelin's Farm.

The meeting closed at 9.00 pm.

Chairman .....

Date .....

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