

REPORT FROM: PLANNING, BUILDING CONTROL AND LICENSING SERVICES MANAGER

TO: COLNE AND DISTRICT COMMITTEE

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Report Author: Neil Watson
Tel. No: 01282 661706
E-mail: neil.watson@pendle.gov.uk

HUBBS HOUSE FARM, COLNE

PURPOSE OF REPORT

To inform Committee of the current position and the options open

RECOMMENDATIONS

- (1) That Committee note the current position in respect of the agencies involved.
- (2) That the Council ask Lancashire County Council as the Minerals and Waste Authority to pursue the non-compliance with the enforcement notice.
- (3) That the Council formally ask Lancashire County Council to pursue an injunction pursuant to section 187B of the Town and Country Planning Act 1990 to require the removal of the deposited material and the cessation of further tipping.

REASON FOR RECOMMENDATIONS

In order to ensure that activities at the farm are brought under satisfactory control and that the continued harm to the environment being caused ceases.

ISSUE

- 1 The activities that are occurring at the farm are now well documented. Material is being brought onto the farm from different sources and are being deposited in several locations. Some of the material is then burned, other material is buried and other material is left in situ.
- 2 In order to attempt to bring the matter under control several things have happened. We have served notices under section 215 of the Town & Country Planning Act 1990 ("the Planning Act"). This has resulted in the owner of the land being successfully prosecuted. The developer was fined £70 with £170 costs.

- 3 Section 1 of the Planning Act defines the roles of local authorities for planning purposes. Minerals and waste matters are functions allocated to County Councils. Lancashire County Council is therefore the planning body responsible for dealing with waste matters.
- 4 LCC served two enforcement notices dated 19th March 2015 which came into effect on 23rd April. These related to land at Delves Lane and Hubbs House Farm. Both Notices required the cessation of tipping and the removal of all of the imported material. Each Enforcement Notice was accompanied by a Stop Notice served pursuant to section 183 of the Planning Act. The Stop Notices required the cessation of the importation and burning of material. These became effective on 1st April 2015.
- 5 A Community Protection Notice under section 43 of the Anti-Social Behaviour, Crime and Policing Act 2014 was served on 27th March 2015 on the owner of the land by Pendle Borough Council. This required the owner to take steps to prevent anyone tipping on the land, not to burn material, to remove any material not associated with the agricultural use of the land and to ensure the prompt and appropriate disposal of animal carcasses.
- 6 The Environment Agency was also looking at activities on the site but has not served any Notices on the owner and hence currently has no enforcement role relating to the activities on site.

Current Activities

- 7 Monitoring by Pendle officers has revealed that the material on site has not been removed, some material has been buried and further material has been imported onto the site.

Possible Action

- 8 Under section 178 of the Planning Act LCC can go onto the land and carry out the works specified in an Enforcement Notice.
- 9 The breach of the requirements of the Stop Notices is a matter that should result in an immediate prosecution under Section 187 of the Act. The penalties for not ceasing the work can be a fine up to £20,000 or a fine reflective of the benefit the defendant has accrued from disregarding the Notice. It is unusual for a Stop Notice to be served and they are normally only served in extreme circumstances. As such it is expected that the Local Planning Authority serving one should act on them expeditiously.
- 10 The latest position of Lancashire County Council as detailed to us in correspondence dated 21st January 2016 is that they had visited the site on 15th January 2016. They had prepared witness statements for a prosecution and they are awaiting approval from their legal section to prosecute. We asked LCC in emails dated 13th November 2015 to again look at whether they would pursue an injunction. They have not responded to that request.
- 11 Under Section 47 of the Anti-Social Behaviour, Crime and Policing Act 2014 the issuing authority can carry out the work specified in the Notice. Section 49 allows the Court to order the defendant to carry out certain work or allow the issuing authority to undertake the work itself. The Court would ultimately decide what the order should or should not require.
- 12 There is also the option of the minerals and waste authority pursuing an Injunction under Section 187 of the Planning Act. Pendle has procured Counsel's advice on this and supplied it to LCC which basically concluded that there were grounds to pursue an Injunction.

Analysis

- 13** The service of the various notices described in the sections above has not resulted in the activities on site ceasing or the waste material being removed. There has been some work undertaken to the area in front of the farm house but this appears to have been burning of material and burying waste.
- 14** Pendle has pursued a Community Protection Notice (CPN) mainly because of the initial inaction of the Minerals and Waste Authority and the need to control activities that were significantly detrimental to the area. The CPN is now in place but there are also two enforcement notices which require broadly similar things to happen. It is highly unlikely that action taken to require compliance with both notices would be viewed favourably by the courts as in effect the land owner would be pursued twice for the same issue.
- 15** The control of waste is clearly a matter that is given to the Mineral and Waste Authority to deal with. It is the body that the Planning Act gives powers to in order to deal with situations such as this. The Planning Act also has with it more significant powers to ultimately deal with issues such as are prevalent at Hubbs House. This is particularly important here as the action and Notices issued so far have not resulted in the activities ceasing or the material being removed. The option to pursue an Injunction under Section 187B of the Planning Act should now be further considered by LCC as this is the most powerful of the enforcement powers open to either Council to deal with an operator who is unwilling to comply with the requirements of the CPN, Enforcement Notices or Stop Notices.

Conclusions

- 16** It would not be appropriate for Pendle to pursue the CPN simultaneous to LCC pursuing the Enforcement and Stop Notices. LCC are the body who are charged with dealing with mineral and waste matters and have the most effective enforcement powers available to them.
- 17** It is recommended that Pendle asks LCC to commit effective resources to pursue the developer for non-compliance with the Enforcement and Stop Notices (we have supplied them with evidence of breaches) and that we ask LCC again to pursue an injunction as all of the enforcement measure both Councils have pursued so far have not proved to be effective.

IMPLICATIONS

Policy:	None
Financial:	Pursuing remedial action directly to enforce the requirements of the CPN would result in significant costs.
Legal:	None
Risk Management:	None
Health and Safety:	None
Sustainability:	None
Community Safety:	None
Equality and Diversity:	None