

Open Report on behalf of Richard Wills, Executive Director for Environment and Economy

Report to:	Environmental Scrutiny Committee
Date:	23 October 2015
Subject:	Planning Enforcement and Monitoring

Summary:

This report sets out the background to the procedures the Council has in place for monitoring waste sites in Lincolnshire. Following a number of fires at waste sites within the County this report provides Councillors with the mechanisms in place to ensure waste sites are regularly inspected to minimise the risks of unauthorised activity taking place. Breaches of planning control increase the risk of fires or other unacceptable environmental impacts taking place and therefore it is essential that sites are regularly inspected as set out in the Council's Local Enforcement Plan.

Actions Required:

That the contents of this report are noted.

1. Background

- 1.1 This report sets out how the Council carries out its statutory function relating to planning monitoring and enforcement and the legislative background to that duty.
- 1.2 The adopted LEP - Local Enforcement Plan (Review August 2014) sets out the policies the Council has adopted to carry out the monitoring and enforcement function. Although the LEP is not in itself a statutory requirement, its existence is recommended in paragraph 207 of the National Planning Policy Framework (NPPF) 2012 which states, 'Local Planning Authorities should consider publishing a Local Enforcement Plan' setting out, among other advisories, how an authority manages enforcement proactively in a way that is appropriate to their area. Lincolnshire County Council prepared its own LEP shortly after and the LEP 2012 was adopted, now updated as set out above.
- 1.3 The authority has a statutory duty to carry out 'appropriate periodic inspections' of waste sites and to investigate alleged breaches of planning control. With regard to 'periodic', the LEP states that a minimum of one inspection a year should be carried out. In reality for example, a waste transfer station incorporating a materials recycling facility is more frequently

inspected, particularly if there are any issues at that site, and this may result in monthly inspections or more on average for a period of time. Not only are such inspections carried out by enforcement personnel, other site visits are carried out by planning officers who feed back their findings to the enforcement team if breaches are noted. A number of inspections are carried out in conjunction with the Environment Agency with whom Lincolnshire County Council (LCC) is signatory to a Joint Enforcement Protocol. This joint working was seen to be working effectively with the joint prosecution of a skip operator, SOS Skips, in the city of Lincoln in 2014. Whilst a prosecution has been successful the waste remains on site and measures to ensure the waste is removed are still being considered.

- 1.4 Whilst planning authorities have a duty to investigate alleged breaches of planning control, it has discretion whether or not to take formal action. The test is called the 'expediency test'. Guidance to the decision-making process is set out in the LEP which is available for public viewing on LCC's website. Details of every enforcement investigation are set out on the Council's website and when a new case is opened, a link is sent to the local Member and also to the Environment Agency.
- 1.5 Planning breaches are not, in most cases criminal, but the taking of formal action criminalises failure to comply with such notices. Whilst the planning system is generally not criminalised, a range of enforcement powers are given to local authorities called the 'Toolkit' to remedy the effects of unauthorised development and other planning breaches. These include Enforcement Notices, Stop Notices, and Injunctions. The expediency test sets out the action that is appropriate to a particular breach.
- 1.6 Penalties for most planning offences have, until this year, been capped at a maximum of £20,000. This cap has now been removed for most offences and brings a greater level of deterrent to those who consider planning crime is an attractive economic alternative to compliance. The deterrent is also increased by the Proceeds of Crime Act 2002 which is applicable to planning offences.
- 1.7 The main goal of the Council's planning and monitoring function, however is compliance not prosecution. To this end a significant proportion of officer time and resources is given. An example is a Waste Awareness Day. This was organised by the Council and held on 7 October 2015. It was well-attended by waste operators, with presentations by Lincolnshire Fire and Rescue, the Environment Agency and Planning Enforcement. A number of waste operators commented they would like to see another Waste Day event in the not too distant future. It is expected that such events will lead to a greater level of co-operative working between the waste industry and the authority and its partners and as a result, a greater level of compliance.

2. Conclusion

That the contents of the report are noted.

3. Consultation

None

a) Policy Proofing Actions Required

None

4. Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by Neil McBride, who can be contacted on 01522 554814 or neil.mcbride@lincolnshire.gov.uk.

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