

**Open Report on behalf of Richard Wills
Executive Director, Environment & Economy**

Report to:	Planning and Regulation Committee
Date:	2 July 2018
Subject:	Planning Enforcement Prosecution

Summary:

This report gives details of a joint prosecution taken out by Lincolnshire County Council and the Environment Agency under the Town and Country Planning Act and the Environmental Protection Act. The offences were carried out at a waste recycling facility at Barkston Heath, Wilsford, Lincolnshire. As a direct result of storage of wastes at the site in breach of a planning condition, a serious fire occurred in July 2015 resulting in a significant environmental incident, road closures and warnings to local residents to keep windows and doors closed. On 24 July 2017 the Defendants pleaded guilty to a total of two environmental charges and three planning charges. Sentencing took place on 07 June 2018 at Lincoln Crown Court. MidUK Recycling Ltd was fined £100,000 and ordered to pay costs of £50,000. In sentencing the Judge took into account that MidUK Recycling Ltd agreed to pay the Council's Fire and Rescue service costs of £230,000 for attending and managing the fire. No separate penalties were awarded against the Managing Director Christopher Mountain or the landowner MC Mountain and Son Ltd who had also pleaded guilty.

Recommendation:

That the Report is noted.

The Report

1. MidUK Recycling Ltd operates a large recycling facility at Barkston Heath, Wilsford near Ancaster. The land is owned separately by MC Mountain and Sons Ltd. Mowbray Christopher Mountain is a director of both companies. These three are the Defendants in the prosecution.
2. Planning permission for the site was granted by the County Council in 2012 and allows a moderate amount of baled and wrapped wastes to be stored externally on a designated area and, at that time, to a maximum height of 3.5m. The operator is not allowed to store loose wastes or unwrapped wastes externally or outside the designated area. However, during a routine monitoring inspection in April 2014 it was noted that stockpiles of both wrapped and unwrapped baled wastes were being stored at various

unauthorised locations around the site and stacked to a height of over 8 metres. There was also a stockpile of several hundred tonnes of loose, mainly carpet wastes, stored externally. There were no appropriate fire breaks between the largest stockpiles of wastes. The operator was told to remove the wastes that were stored outside the designated area; to reduce heights of waste to 3.5 metres; and to remove the loose wastes. A deadline of 06 May 2014 was given for the works to be carried out.

3. A follow-up inspection on 22 May 2014 found that the operator had not complied with the requirements of the Council and had continued to deposit wastes in breach of the planning permission and increasing the stockpiles. The Council issued a planning Enforcement Notice for a Breach of Condition, copies of which were served on both the operator and landowner on 09 July 2014. The deadline to remove wastes and store wastes in accordance with the planning condition was 05 September 2014. Under the Town and Country Planning Act both the operator and the landowner are liable for compliance with planning enforcement notices.
4. On 05 August 2014 the operator submitted proposals to remedy the planning breach and gave an assurance he would comply with the Enforcement Notice. It was agreed that the operator would be given an extension until 31 January 2015 to comply with the Notice to avoid further action. This deadline was later revised to 31 March 2015 following further representations by the operator. The Council informed the operator that this was the final deadline and no further extension would be given.
5. In the meantime, and notwithstanding that the Enforcement Notice was in place, and notwithstanding that an agreement and assurance to remove the wastes had already been made, on 23 February 2015 the operator submitted a retrospective planning application for temporary storage of the wastes on site, which if granted, would have nullified parts of the Enforcement Notice and would have allowed him to continue storing the wastes in the unauthorized manner detailed above. However, the application was refused on 14 May 2015.
6. As wastes continued to be stored in non-compliance with the Enforcement Notice, evidence for a prosecution was gathered. On 18 May 2015 the operator was requested to attend at a PACE (Police and Criminal Evidence Act) interview to answer questions relating to the then alleged failure to comply with the Enforcement Notice which could result in him being prosecuted. Following the interview a decision was made to prosecute.
7. Wastes continued to be stored in non-compliance with the Notice and whilst the prosecution file was being prepared, a serious fire broke out at the site at 0150 hours on 07 July 2015. According to the fire officer the seat of the fire was within the unauthorized unbaled/loose waste located within a corral-type structure made up of waste bales which then quickly spread to the adjacent baled waste stockpiles and a warehouse building. Lincolnshire Fire and Rescue Service attended. Due to the smoke and potential hazards, Lincolnshire Highways closed the High Dyke Road for several

days. Fire-fighting water had to be sourced from amenity/fishing lakes at Woodland Waters in Ancaster. Warnings were issued to local residents in Ancaster to keep doors and windows closed. Lincolnshire Fire and Rescue were in full-time attendance at the site from the early hours of 07 July 2015 until 1145hours on 13 July 2015. The costs incurred by the Fire and Rescue Service attending the fire was in the region of £230,000. It is these costs that the Council successfully recovered through the legal action. Several thousand tonnes of baled wastes and hundreds of tonnes of carpet waste were burned in the fire. The fire also spread to one of the warehouse buildings which was gutted.

8. The Council prepared charges under both Planning and Environmental legislation. The persons charged were the operator, the landowner, and Christopher Mountain personally. It is drawn to the attention of Members that under section 222 of the Local Government Act 1972 a local authority can prosecute in any legal proceedings where it considers it expedient for the promotion or protection of the interests of the inhabitants of their area. The Council also considered it expedient to prosecute Christopher Mountain personally as a Director. It was considered that it was appropriate to bring charges under both Planning and Environmental legislation having regard to the circumstances this matter.
9. Following the charges being laid by the County Council, the Environment Agency also laid charges in respect of environmental offences relating to the storage of waste materials and the subsequent fire. All of the charges were subsequently heard under one joint prosecution brought by the County Council and the Environment Agency.
10. At a hearing at Lincoln Crown Court on 20 June 2016 the Defendants pleaded not guilty to all charges. The Defendants also challenged the prosecution proceedings as an abuse of process claiming duplication of charges by the two separate regulatory authorities. This challenge was later dropped and the case proceeded to submission of pleas.
11. At Lincoln Crown Court on 24 July 2017 MidUK Recycling Ltd, MC Mountain and Son Ltd and Mowbray Christopher Mountain, pleaded guilty to a total of five charges.
12. At sentencing at Lincoln Crown Court on 07 June 2018 the Judge, HHJ Pini stated that the company should have taken the excess waste materials to landfill as the lesser of two evils – the greater evil being the fire. He stated that "*the culpability here is properly characterised as reckless and not just negligence*". He imposed the following fines and costs:

MidUK Recycling Ltd (Operator): Fine £100,000
Legal costs awarded jointly to LCC and EA: £50,000

MC Mountain and Son Ltd (Landowner): No separate penalty

Mowbray Christopher Mountain (Director): No separate penalty

MidUK Ltd agreed to pay the following sum in compensation to the County Council's Fire and Rescue Service: £230,000

13. The total amount to be paid by MidUK Recycling Ltd is £380,000.

RECOMMENDATIONS

That the Report is noted.

Background Papers

The following background papers as defined in the Local Government Act 1972 were relied upon in the writing of this report.

Document title	Where the document can be viewed
Enforcement Investigation and prosecution files reference INV/011/2014	Lincolnshire County Council, Planning, Lancaster House, 36 Orchard Street, Lincoln, LN1 1XX
Transcript of Judgment by HHJ Pini 07 June 2018 (30 pages)	Lincolnshire County Council, Planning, Lancaster House, 36 Orchard Street, Lincoln, LN1 1XX

This report was written by Tim Collis, who can be contacted on 01522 554847 or dev_planningenforcement@lincolnshire.gov.uk