



AGENDA

REGULATION COMMITTEE

Tuesday, 22nd January, 2008, at 10.00 am

Ask for: **Andrew Tait**
Telephone **01622 694342**

Tea/Coffee will be available 15 minute before the start of the meeting.

UNRESTRICTED ITEMS

(During these items the meeting is likely to be open to the public)

1. Substitutes
2. Declarations of Interests by Members in items on the Agenda for this meeting.
3. Minutes (Pages 1 - 4)
 - (a) Committee: 18 September 2007
 - (b) Member Panel: 29 November 2007
4. Presentation on Home to School Transport (including Home to School Transport Statistics). (Pages 5 - 8)
5. Application to Register Public Rights of Way on the former Bayham Estate, Lamberhurst and Pembury (Pages 9 - 10)
6. Update on Village Green Issues (Pages 11 - 12)
7. Application made by Oxfordshire County Council under Section 116 of the Highways Act 1980 to extinguish an ancient track way. (Pages 13 - 14)
8. Update on Planning Enforcement Issues (Pages 15 - 42)
9. Other Items which the Chairman decides are Urgent
10. Motion to exclude the Press and Public:

That under Section 100A of the Local Government Act 1972 the public be excluded for the following business on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 5 and 6 of Part I of Schedule 12A of the Act.
11. Update on Planning Enforcement issues at at Woodgers Wharf, Upchurch (Pages 43 - 58)

12. Update on Planning Enforcement issues at Deal Field Shaw, Charing (Pages 59 - 60)

EXEMPT ITEMS

(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)

Peter Sass
Head of Democratic Services and Local Leadership
(01622) 694002

Monday, 14 January 2008

Please note that any background documents referred to in the accompanying papers maybe inspected by arrangement with the officer responsible for preparing the relevant report.

KENT COUNTY COUNCIL

REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held at Sessions House, County Hall, Maidstone on Tuesday, 18 September 2007.

PRESENT: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr A R Bassam, Mr A H T Bowles, Mr C J Capon, Mr L Christie, Mr I S Chittenden, Mr J Curwood, Mr J A Davies, Mr J B O Fullarton, Mr T Gates, Mr C Hart, Mr I T N Jones, Mr R A Pascoe, Mr A R Poole (substitute for Mr T J Birkett), Mrs P A V Stockell, Mr C T Wells and Mr F Wood-Brignall.

IN ATTENDANCE: The Head of Planning Applications Group, Mrs S Thompson (with Mr R Gregory); and the Democratic Services Officer, Mr A Tait.

UNRESTRICTED ITEMS

14. Membership:

The Committee noted the appointment of Mr T Gates in place of Mr C T Wells and of Mr I S Chittenden in place of Mr S J G Koowaree.

15. Future meetings of the Committee:
(Item 4)

The Committee agreed that its future meetings would commence at 10.00 am on the following dates:-

Tuesday, 22 January 2008;
Tuesday, 20 May 2008;
Thursday, 18 September 2008;
Tuesday, 21 January 2009;
Tuesday, 19 May 2009.

16. Minutes

RESOLVED that the Minutes of the meetings of the Committee held on 22 May 2007 and of the Member Panel held on 2 August 2007 are correctly recorded and that they be signed by the Chairman.

17. Update on Planning Enforcement issues

(Item 6 – Report by Head of Planning Applications Group)

- (1) The Committee agreed that the Chairman should write on its behalf to the Cabinet Portfolio Holder for Environment, Highways and Waste to request that the necessary measures be taken to assist with the recruitment of additional Enforcement Officers of sufficient calibre.
- (2) The Committee requested that future reports incorporate the names of the local Member and (where appropriate) the relevant Cabinet Portfolio Holder in the heading for each of the sites, as well as the dates of appeals and the date that the enforcement cases were first brought to the attention of the County Council.
- (3) RESOLVED to endorse the actions taken or contemplated in the respective cases and monitoring work set out in paragraphs 4 to 145 of the report and to note the work towards establishing working protocols with the Environment Agency as outlined in paragraphs 146 and 147 of the report.

EXEMPT ITEMS

(Open Access to Minutes)

(Members resolved that under Section 100A of the Local Government Act 1972 the public be excluded from the meeting for the following business on the grounds that it involved the likely disclosure of exempt information as defined in paragraphs 5 and 6 of Part 1 of Schedule 12A of the Act)

18. Update on Planning Enforcement Issues at Woodgers Wharf, Upchurch

(Item 9 – Report by Head of Planning Applications Group)

- (1) The Head of Planning Applications Group reported the latest enforcement position concerning the Woodgers Wharf site, Upchurch.
- (2) RESOLVED to endorse the enforcement strategy outlined in paragraphs 4 to 13 of the report.

19. Update on Planning Enforcement Issues at Deal Field Shaw, Charing

(Item 10 – Report by Head of Planning Applications Group)

- (1) The Head of Planning Applications Group reported the latest enforcement position concerning Deal Field Shaw (Shaw Grange), Charing.
- (2) RESOLVED to endorse the enforcement strategy and actions outlined in paragraphs 5 to 12 of the report and to thank the officers of the Enforcement Team for all their work on the case up to this point.

KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held at Sessions House, County Hall, Maidstone on 29 November 2007.

PRESENT: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr I S Chittenden, Mr T Gates and Mr I T N Jones.

ALSO PRESENT: Mr D L Brazier and Mr R L H Long.

OFFICERS: The Principal Case Officer – Public Rights of Way, Mr C Wade (with the case Officers, Mrs M Mclauchlan and Miss M McNeir); and the Democratic Services Officer, Mr A Tait.

UNRESTRICTED ITEMS

5. Application to register a Claimed Footpath from The Freehold to Carpenters Lane, Hadlow.

(Item 3 – Report by Director - Environment and Waste)

(Mr R L H Long was present for this item pursuant to Committee Procedure 2.24 and spoke).

- (1) Members had previously visited the site in connection with other applications.
- (2) Mr J Rutherford, the landowner addressed the Panel in opposition to the application.
- (3) RESOLVED to inform the applicant that the registration authority is not prepared to modify the Definitive Map and Statement by showing at footpath status a route running between Carpenters Lane and The Freehold at Hadlow.

6. Application to register land at Hartley Woods, Hartley as a new Village Green.

(Item 4 – Report by Director - Environment and Waste)

(Mr D L Brazier was present for this item pursuant to Committee Procedure 2.24 and spoke)

- (1) A site visit to Hartley Woods, Hartley took place prior to the meeting. It was attended by representatives from Hartley Parish Council, Southwark London Borough and some half dozen members of the public.
- (2) Letters from Field Fisher Waterhouse dated 21 and 27 November 2007 were tabled together with a letter from Hartley Parish Council dated 27 November 2007.
- (3) Mr K Tucker and Mr P Laister addressed the Panel in support of the application. Mrs I Sharpe spoke against the application. Mrs A Oxtoby from Hartley Parish Council addressed the Panel as the applicant. Southwark London Borough, the Landowner was represented by Mr M Mayne and Mr T Kemp. They were supported by George Kennedy QC and Ms T Storm from Field Fisher Waterhouse.

(4) The Chairman moved that consideration of this application be postponed to a date in mid-February 2008 to enable Southwark London Borough to gather further evidence in relation to this case.

Carried unanimously

(5) RESOLVED that consideration of this application be postponed to a date in mid-February 2008 to enable Southwark London Borough to gather further evidence in relation to this case.

7. Application to register a claimed footpath from the A227 (Wrotham Road) to Byway NS285 in Meopham

(Item 5 – Report by Director - Environment and Waste)

(1) A site visit to Steele's Lane, Meopham took place prior to the meeting. It was attended by Mr K Dare, the applicant, some residents from Steele's Lane and other Members of Meopham Parish Council.

(2) A letter from Ms Karina Lucas, a local resident was tabled together with further representations from Mr A Tomlinson in rebuttal of the Director – Environment and Waste's report.

(3) Mr A Tomlinson, a local resident from Steele's Lane, Meopham addressed the Panel in opposition to the application. Mr K Dare spoke in reply on behalf of Meopham Parish Council, the applicants.

(4) The Chairman moved, seconded by Mr A D Crowther that the recommendations set out in Paragraph 42 of the report be adopted.

Carried unanimously

(5) RESOLVED to inform the applicant that the County Council is prepared to modify the Definitive Map and Statement by showing at Public Status a route running between the A227 (Wrotham Road) and Byway NS285 in Meopham.

Item 4

By: Head of Democratic Services

To: Regulation Committee – 22 January 2008

Subject: PRESENTATION ON HOME TO SCHOOL TRANSPORT
(INCLUDING HOME TO SCHOOL TRANSPORT STATISTICS)

Classification: Unrestricted

Summary: To provide Members with a brief overview on Home to School Transport Policy and the role of the Transport Appeals Panel, including Home to School Transport appeal statistics for the period between 1 January 2007 and 31 December 2007 and for the corresponding period in 2006.

1. Introduction

The Chairman has requested that the Committee receive a brief overview on the Home to School Transport Policy and the role of the Transport Appeals Panel. More information on this together with a presentation will be provided by Officers at the meeting.

2. Transport Appeal Statistics – 2007

(2.1) For the period between 1 January 2007 to 31 December 2007 a total of 137 Home-to-School Transport appeals were submitted to 30 Transport Appeal Panel meetings. 70 (51%) were successful, at least in part (eg, time-limited assistance).

(2.2) 52 of the appellants had Local Member representation at their appeals and 17 different Members sat on the Transport Appeal Panels.

3. Transport Appeal Statistics – 2006

(3.1) Corresponding figures for the same period in 2006 were 150 appeals to 36 Panels with 74 (49%) at least partly successful.

(3.2) 66 of the appellants had Local Member representation at their appeals and 17 different Members sat on the Case Panels.

4. Statistic Details

(4.1) Details relating to the Admissions and Transport Home to School Transport appeals are set out in Appendix 1. Those submitted by the Additional

Educational Needs Teams in respect of Statemented Pupils are shown in Appendix 2.

5. Costs

(5.1) Members will receive at the meeting information relating to the approximate total cost of mainstream transport for the year.

6. Recommendations

(6.1) Members are asked to note this report.

Geoff Rudd
Assistant Democratic Services Manager (Appeals)
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Background Information: *To be circulated at the meeting*

**MAINSTREAM HOME TO SCHOOL TRANSPORT APPEALS
(ADMISSIONS AND TRANSPORT)**

1 JANUARY 2006 - 31 DECEMBER 2006

Grounds for Appeal	Upheld	Not Upheld	Total	% Upheld
Denominational	2	7	9	22
Distance	5	16	21	24
Not Attending NAS	60	46	106	57
16+	0	3	3	0
Hazardous Routes	1	1	2	50
TOTALS	68	73	141	48

APPEALS BY AREA: WEST: 54 - MID: 34 - EAST: 53

1 JANUARY 2007 - 31 DECEMBER 2007

Grounds for Appeal	Upheld	Not Upheld	Total	% Upheld
Denominational	2	2	4	50
Distance	8	11	19	42
Not Attending NAS	54	44	98	55
16+	0	4	4	0
Hazardous Routes	0	1	1	0
TOTALS	64	62	126	51

APPEALS BY AREA: WEST: 40 - MID: 50 - EAST: 36

**STATEMENTED PUPILS HOME TO SCHOOL TRANSPORT APPEALS
(ADDITIONAL EDUCATION NEEDS)**

1 JANUARY 2006 - 31 DECEMBER 2006

Grounds for Appeal	Upheld	Not Upheld	Total	% Upheld
Denominational	0	0	0	0
Distance	3	1	4	75
Not Attending NAS	2	0	2	100
Other	1	2	3	33
Hazardous Routes	0	0	0	0
TOTALS	6	3	9	67

APPEALS BY AREA: WEST: 4 - MID: 1 - EAST: 4

1 JANUARY 2007 - 31 DECEMBER 2007

Grounds for Appeal	Upheld	Not Upheld	Total	% Upheld
Denominational	0	0	0	0
Distance	0	2	2	0
Not Attending NAS	4	2	6	67
Other	2	1	3	67
Hazardous Routes	0	0	0	0
TOTALS	6	5	11	55

APPEALS BY AREA: WEST: 3 - MID: 3 - EAST: 5

From: Director – Environment and Waste **ITEM 5**

To: Regulation Committee- Tuesday 22nd January 2008

Subject: Application to register Public Rights of Way on the former Bayham Estate, Lamberhurst and Pembury.

Classification: Unrestricted District: TUNBRIDGE WELLS

Summary: To inform Members of the current position relating to this application and to seek approval to refer the eventual decision from the Government Office for the North East to Counsel for advice on further action.

FOR DECISION

Introduction

1. On 5th of April 2005, a Regulation Committee Member Panel meeting resolved to reject an application lodged by the Ramblers Association (“the applicant”) under provisions contained within Section 53 of the Wildlife and Countryside Act 1981. The application was seeking to modify the Definitive Map of Public Rights of Way by adding a number of Public Footpaths across the former Bayham Estate.
2. In such cases, where an application is refused, the applicant has the right of Appeal to the Secretary of State. The applicant exercised this right, and the matter is currently being dealt with by an Inspector appointed by the Secretary of State. The Government Office for the North East is responsible for the administration of this process.

The effect of the ‘Godmanchester’ case

3. The original decision to reject the Ramblers Association’s application was based upon a number of factors. In order to be successful with their application, the Ramblers’ Association needed to show that the criteria contained within section 31 of the Highways Act 1980 had been met. Section 31 reads as follows:

‘where a way over land... has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention [by the landowner] during that period to dedicate it’ (emphasis added).
4. One of the prime factors considered in this case was whether the landowner had taken sufficient **overt** actions in order to inform the general public that he had no intention to dedicate rights for the public on land within his ownership. The interpretation which had to be given the words ‘overt’ and ‘intention’ *at the time* of the County Council’s decision had been decided by the Court of Appeal which clearly held that any action taken by a landowner in a manner that appeared to show his desire not to dedicate such rights would be enough to deny the public, despite the fact that some (if not all) of those actions were not being made in a manner that the public would have been aware of.
5. A good example of this at Bayham was the tenancy agreements which were in force during the relevant 20 year period of claimed use. The landowner made it quite clear to his tenants

6. within this agreement that it was his intention that no rights of Way should be dedicated to the public. Although the clause within these agreements would not have been available to the public at large, the interpretation of the word ‘overt’ *at the time* deemed this was enough to show the landowner had no intention to dedicate. Members, in taking their original decision, interpreted that evidence at the time in the accepted manner and this was one of the reasons why the Regulation Committee Member Panel rejected the application.
7. The question arising in the Godmanchester case, which was finally heard in the House of Lords, was the relevance of such actions and, in particular, whether such actions constituted *sufficient evidence* of a landowner’s lack of intention to dedicate. After careful consideration and having heard submissions from very learned Barristers representing both parties, the Law Lords decided that the previous interpretation of the word ‘sufficient evidence’ in the lower courts was wrong. As a result of this decision, it is now considered that landowners must bring to the attention of users of the way by very deliberate acts to show that they have no intention to dedicate the path to the public: the fact that they might have written this in other documents to which the general public do not have access is simply not enough.

The powers of the Secretary of State

8. As a result of the appeal by the applicants against the County Council’s resolution, the decision as to whether or not an Order should be made has now passed to the Secretary of State. He has the power to direct the County Council to make an Order should he deem it appropriate. The Inspector appointed by the Secretary of State to take a decision on this matter has no option other than to interpret the words ‘sufficient evidence’ and ‘overt’ in the manner decided in the House of Lords. It is therefore possible that the County Council may receive a direction from the Secretary of State to go against the original decision not to make an Order. If this should be the case, then I would ask for Members approval to seek Counsel’s opinion as to the stance the County Council should take at any subsequent Public Inquiry.

Recommendation

9. I recommend that members receive this report for information.
10. I also recommend that the County Council seeks Counsel’s opinion on further action in the event the County Council receives a direction from the Secretary of State to make a Definitive Map Modification Order to add Public Rights of way across the former Bayham Estate.

Chris Wade – Public Rights Principal Case Officer
01622 221511

Background Documents - None

From: Director – Environment and Waste

To: Regulation Committee – Tuesday 22nd January 2008

Subject: Update on Village Green issues

Classification: Unrestricted

ITEM 6

Summary: New legislation to enable the voluntary dedication of a Village Green

FOR INFORMATION

Introduction

1. As the Commons Registration Authority for this county, Kent County Council is responsible for maintaining an up-to-date Register of Common Land and Village Green. This is a legal document which records details of all the registered Common Land and Village Greens within this county.
2. The Commons Act 2006 (and prior to that the Commons Registration Act 1965) enables any person to apply to the County Council to modify the register by registering a piece of land as a new Village Green. However, applications had to satisfy certain legal criteria: i.e. the land in question had to have been used ‘as of right’ for recreational purposes by the residents of a locality for a period of at least 20 years.

New provision under the Commons Act 2006

3. Section 15(8) of the Commons Act 2006 has recently introduced a new provision: for the first time this will enable any landowner including private individuals, organisations or a public body to dedicate land for use as a Village Green without having to fulfil the previous onerous requirements.
4. This could be of benefit in cases where the land may already be in use for recreation with the permission of the landowner who might want to formalise the position and protect the land for the future. Alternatively, landowners may wish to create a lasting memorial or put something back into a community by providing an open space. More importantly, in planning terms, a Planning Authority may consider it appropriate to require such registration of an area of land as a Village Green as part of planning agreement or condition.
5. The process of registration can be completed very simply. It is also possible, once the necessary permissions have been obtained, to register land if there is more than one owner. The County Council is not required to advertise the application and does not have to examine the merits of the application: it needs only to be satisfied that the applicant is legally entitled to register the land and that all those with an interest in the land (e.g. tenants) are aware of and have agreed to the proposal.
6. Once the County Council is satisfied that the application has been properly made, then it is under a legal duty to register the land as Village Green. An application cannot be rejected.

Recommendation

7. I recommend that Members receive this report for information

Chris Wade – Public Rights Principal Case Officer
01622 221511

Background Documents - None

From: Director – Environment and Waste **ITEM 7**

To: Regulation Committee- Tuesday 22nd January 2008

Subject: Application made by Oxfordshire County Council under Section 116 of the Highways Act 1980 to extinguish an ancient track way.

Summary: To inform Members of the issues and the reason for national media exposure and the future implications for similar cases in Kent.

FOR INFORMATION

Introduction

1. During the course of last year, an application to the Magistrates Court by the Oxfordshire County Council gained national publicity. The application was made under Section 116 of the Highways Act 1980 and the Oxfordshire County Council had been asked to do this on behalf of the car manufacture BMW ('the landowner'). The reason stated was on the grounds the route was unnecessary and posed security problems. An alternative footway and cycleway adjacent to an existing full highway was to be provided as a replacement.
2. The landowner wanted to stop up a Public Bridleway which ran through its works at Cowley. The reason for the furore however was due to the age of the Bridleway which was known to have been in use and existence since Roman times. There was, in consequence, a massive swell of objection from the public and the application was contested by both the Ramblers Association and the British Horse Society.
3. The application was heard at the Witney Magistrates Court in front of a District Judge who granted the Order.
4. The implication for the County Council is that in the past it (in company with other Local Authorities) has always felt that applications to stop up Public Rights of Way on the basis they were unnecessary would not be successful if a small minority dispute the proposal. However, in this case the Order was granted in the face of massive public opposition and therefore this shows that when considering objections to Public Rights of Way (or indeed Village Green) applications, it is more important to consider the quality and substance of the objections received rather than the quantity or volume.

Recommendation

5. I recommend this report is received for information.

Chris Wade – Public Rights Principal Case Officer
01622 221511

Background Documents - None

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Update on Planning Enforcement Issues

Report by Head of Planning Applications Group to the Regulation Committee on 22nd January 2008

Summary: Update for Members on planning enforcement matters.

Recommendation: To endorse the actions taken or contemplated on respective cases.

Local Member: Given by case in Appendices 1 to 3

Unrestricted

Introduction

1. This report provides an update on enforcement and monitoring work carried out by the Planning Applications Group since the 18th September 2007 Regulation Committee. The report has previously been divided into 3 main sections – those cases
 - where formal enforcement action has been taken;
 - which are currently under-investigation; and
 - that have been resolved since the last meeting

With the knowledge of the Chairman of this Committee, an alternative format is being trialled for this Meeting to help produce a more balanced and focussed report.

2. The essence of the report remains the same but an attempt has been made to provide a more 'user-friendly' format. Summary schedules of all current cases have been produced (see appendices 8(i) to (xvi), which should be more accessible and easier to update. They are drawn from my report to the 19th September 2007 Meeting and give further background information to each case. The cases are organised by District and the local County Member(s) identified in each case. Members are already notified on any new County enforcement cases under the existing Enforcement Protocol arrangements. The summary tables cover unauthorised breaches of planning control and those occurring on permitted sites, whether minerals or waste related or those further connected with County Council developments.

The New Format

3. Cases from these schedules have been taken and expanded reports produced. These in turn are presented under the following categories:
 - Achievements / successes [including measurable progress on existing sites]
 - New cases, especially those requiring Member endorsement for action
 - Significant on-going cases
 - Other cases of interest and those requested by Members

Members may wish to have updates on particular sites from the schedules, which on this occasion will need to be given verbally at Committee (ideally with prior notice) or reports returned to the next Meeting. The overall aim is for selective cases to be drawn from the set of schedules for longer reports to be produced, in a more targeted way. Potentially, that may allow more time at Committee for discussion of enforcement trends and

Update on Planning Enforcement Issues

themes and our work with other agencies. Planning enforcement is of course one part of a wider public enforcement effort.

4. The report continues to give details of site monitoring and progress on chargeable site monitoring arrangements for minerals development.

Meeting Enforcement Objectives

5. Since the last meeting of the Regulation Committee work has been affected by staffing vacancies and statutory requirements to support corporate BVPI targets. Efforts have been concentrated chiefly on defending formal actions that have previously been taken and have progressed to planning inquiry. Resources have been focussed on 5 sites where formal enforcement action has been taken, 23 cases where investigations are underway and a further 9 cases has been satisfactorily resolved and 3 partly resolved. Amongst monitoring visits on permitted sites there have been 9 chargeable visits. Significant time has been spent on preparation for a public inquiry in Swale and the need for meetings with retained Counsel on a series of complex cases.
6. Members will be aware that enforcement action is a discretionary function and each case has to be considered on its own merits. Action should only be taken as a last resort and only where it is expedient to do so. Resources are targeted in accordance with the Council's Enforcement Protocol to those sites where the activities being carried out have the potential to create the greatest and potentially the most irreversible environmental damage. These cases are investigated as a priority.
7. The imperative in strategic enforcement action is to ensure that the breach and any further damage to the environment is stopped at the first opportunity. The County Council has a notable track record in this regard. The next aim is to attempt to achieve restoration. That may take considerably longer, for two main reasons. Firstly, there is the need at any given point to switch resources from protracted restoration cases to the urgent protection of land from new contravenors. The other reason is that we do not have immediate call on prosecution powers. Reluctant contravenors / landowners, with little funding, equipment or expertise have to be cajoled into restoring sites largely through 'out of court' means. Successes are achieved but the speed depends on the circumstances of the case, appeal turnaround times by the Planning Inspectorate and the workload and inclination of the Courts. Officers, especially in serious unauthorised cases have to sustain a high level of concentration and effort over extended periods of time. The length of time to achieve acceptable levels of final or even interim restoration and what those requirements might be will vary on a case by case basis.
8. The main objective in terms of restoration is to '*remedy the breach*'. In other words, to seek a return of the land to its original state. That typically involves the removal off site of all imported waste materials. However, often there are highway limitations in seeking such removal and more practically speaking we may only be able to '*alleviate the injury to amenity*'. In general, that involves correcting the breach as far, as is practicable without creating further environmental damage and harm to amenity in the process. This can often involve the retention either of all material on site or part removal of the imported spoil, leaving the remainder to be spread and levelled to best effect given the circumstances of the site and its surroundings.

Update on Planning Enforcement Issues

9. A balanced judgement is required on the individual set of circumstances of each case. For instance, in the case of Woodgers Wharf, Upchurch (see confidential Item 11 of these papers and summary number 17 of Appendix 1, page 8(vi)), the Enforcement Notice, now subject to appeal, requires amongst other matters the complete removal of all imported concrete beams. The requirement is precise and measurable and there is the sustainable option of at least part removal by water transport through the existing wharf. Conditions are also included (should the Notice be upheld on appeal) limiting the level and frequency of road traffic during removal of material off site. In the case of Chapel Lane, Lower Halstow (see number 20 of Appendix 1, page 8(vii) for summary), a figure of 20 lorry loads of material has been required to be removed given site requirements, the need for measurable enforceability and the sensitivity of access routes to and from the site. The same measured approach will need to be taken in assessing the restoration requirements of the Longton Wood site, off the A249, Detling (see number 12 of Appendix 1, page 8(iv) for summary).

Achievements / Successes [including measurable progress on sites]**Raspberry Hill, Park Farm, Iwade (Members: Brenda Simpson / Roger Truelove)**

10. This case (see number 19 of Appendix 1, page 8(vi) for summary) concerns the importation, deposit and burning of waste material on a site in the open countryside and impinging on nearby orchards. There is also an unauthorised mobile home and an operating base which at one stage was being used for the circulation and parking of large goods vehicles, as part of an apparent commercial distribution use. A range of District planning and enforcement matters have remained, alongside the alleged waste related breaches. I have therefore been jointly handling the case with Swale Borough Council.
11. The Borough Council served two Enforcement Notices to cover the residential and business elements, which have both been appealed. A public inquiry was scheduled for 7 March 2006. I had submitted a supporting statement and offered to attend the hearing to further assist the Borough. The Notices however, were overtaken by events. The area of the commercial breaches became extended beyond the original enforcement boundaries, through the depositing of further largely inert waste. This prompted a need for the County Council to serve an all embracing Enforcement Notice (extending over the full footprint of the series of contraventions and including all of the breaches). It requires a return of the site to agriculture and was drafted to read alongside the Borough Notices.
12. The County Council's Enforcement Notice was also appealed, prompting the arranged hearing to be cancelled by the Planning Inspectorate in favour of a co-joined public inquiry. That was heard on 1st to 3rd May 2007. All 3 appeals were heard together with Swale Borough Council and this Authority presenting a joint case under shared Counsel. That ensured the most cost-effective and robust defence of the various Enforcement Notices.
13. In late August 2007, the Planning Inspectorate advised that the County Council's Enforcement Notice concerning the waste related breaches had been upheld in its entirety. I briefly reported this important appeal win to the last Meeting and said that I would present a fuller account to this Meeting.

Update on Planning Enforcement Issues

14. All waste deposited on site and that buried will have to be removed and the land restored to agriculture. The first of the Borough Council Notices concerning unauthorised industrial and distribution uses was quashed largely on drafting issues. The second Borough Notice was amended but upheld in key respects, not least that in this instance the case for countryside protection in its own right was able to override the appellant's case to remain resident on the land, essentially on human rights grounds. That element of the appeal decision helps to underpin the countryside protection policies of the Kent & Medway Structure Plan and assists the Borough Council in its management and control of ad-hoc travellers' encampments within its area.
15. I indicated at the last Meeting that the upheld Borough Council Notice given its impact on the appellants living arrangements and the potential precedent it might set might have been appealed in the High Court on a point of law. I have no knowledge of any legal challenge of this sort having been made, which in any event by now would be out of time. Nevertheless, while awaiting the deadlines for compliance with the County Council's Enforcement Notice the land will still need to be protected from any resumption of the breach experienced, when the waste depositing and commercial distribution and related uses were at their peak. Both original contraventions have been suspended, the latter following a police action concerning a range of vehicles on site and network of activities surrounding them.
16. Of particular note in this welcome appeal decision is increased support for the principle established in appeal case law by previous County Council actions that waste deposits fashioned crudely into the appearance of bases for development should not automatically be classed as 'hardstandings'. Those district related engineering developments require proper construction to industry standards and specifications. Consequently, such cases are able to remain within the County Council's remit and waste related sphere of expertise. Any surface uses (whether district related or not) then become unauthorised because the base, which they operate from (in this case haulage and distribution type uses), is in itself unlawful. Added to this, complete removal of strategic quantities of imported construction spoil has again been upheld. In short, the land has to be returned to its original state whatever the scale and cost of the task.
17. Overall, this decision crucially underpins the determined enforcement stance taken by the County Council along with Swale Borough Council against this large-scale contravention in the open countryside.
18. Timescales for compliance are still running. Removal must be achieved by 22nd May 2008 and restoration by 22nd June 2008. A practical problem in this case is that the operators are either in prison or on remand. Ultimately, however it is the landowners (who are known and traceable) that are responsible under the Enforcement Notice for ensuring full compliance. It is for them to secure restoration, including the operators and their assets on what ever private arrangements they might make.
19. *I would request as a contingency, Members continuing support for the seeking of a County or High Court Injunction, should it become necessary, in order to underpin the County Council's own Enforcement Notice. Also, in addition to a recent article on the case in the trade press, that appropriate general publicity is given to this appeal win.*

Update on Planning Enforcement Issues**Chapel Lane, Lower Halstow (Member: Keith Ferrin)**

20. In this case (see number 20 of Appendix 1, page 8(vii) for summary), a large area of marshland to the north of Chapel Lane, Lower Halstow has been subjected to waste tipping through the importation and disposal of construction materials, including road planings. A joint investigation has been conducted with the Environment Agency.
21. I have previously reported that without due authority waste materials have been imported and tipped on to the land to the north of the above site. The tipped materials had been spread to raise the existing levels of the land. The tipping ceased on my advice and a productive meeting held with the landowners resulting in their agreement to restore the land through the strictly controlled removal of 20 lorry-loads of tipped waste materials. Restoration is required by 31 March 2008 (subject to weather conditions) and progress will be monitored throughout.
22. *Should the landowners fail to resolve this breach of planning control on a voluntary basis, with Members endorsement, I shall need to serve an Enforcement Notice to secure restoration. As a similar planning breach has already occurred on their land, I would seek endorsement for the geographical area covered by the terms of the Enforcement Notice to include the landowners' entire land holdings. Additionally should the tipping of waste materials resume on any part of their land I would seek your support for the immediate service of a free-standing Temporary Stop Notice and / or a full Stop Notice attached to any Enforcement Notice served to secure compliance.*

Chalkwell Farm, Lydden (Member: Bryan Cope)

23. This case (see number 7 Schedule 1, Appendix 1, page 8(iii), for summary) involves an alleged unauthorised stone crushing, screening and stockpiling use in the open countryside. Dover District Council informs me that the site has a chequered history attracting 3 Enforcement Notices from that Authority. That forms the starting point to the case, since by prior agreement within the County Council's Enforcement Protocol, mixed use contravention sites would be for the respective District Council to enforce. The County Council's enforcement powers in this context are confined to waste management breaches, yet as found in the Raspberry Hill case (see paragraphs 10 to 19 of this report). Borough enforcement is often required in order to access the full range of powers necessary to cover all interrelated breaches on site.
24. Of concern and within the immediate remit of the County Council has been the crushing and screening operation. All other matters, including the planning status of the access road, the farm building on site, 'bund' development and the stationing of mobile homes, remains with Dover District Council. On the waste processing element, I have secured an end to the activity and removal of the plant & equipment and related stockpiles of material. The Exemption from Waste Management Licensing granted by the Environment Agency was on hearing of the alleged contraventions de-registered. As I suspected, that action alone averted the need for extensive and involved planning enforcement action.
25. The landowner is currently discussing future potential land uses with Dover District Council. *There is no need for this Authority to take any further enforcement action but the site will continue to be monitored.*

Update on Planning Enforcement Issues

Ripley's Scrapyard, Tennyson Road, Ashford (Member: George Koowaree)

26. I have previously advised that a building to meet the requirements of the End of Life Vehicle Regulations had been erected on the site without planning permission (see number 2, Appendix 2, page 8(ix) for summary). In accordance with the County Council's Enforcement Protocol the operator was invited to submit a retrospective planning application. A submission was eventually made and granted conditional permission under delegated powers. The scheme involves a wider rationalisation of the site and its use with several dilapidated buildings having already been demolished and with a new and properly appointed replacement building under construction.
27. As part of these negotiated improvements on site, local residential amenity is due to be further safeguarded by 4m high, inner movable concrete block screening along the more residentially sensitive sections of the site perimeter. To the credit of the operator that concession was offered voluntarily and screening trials have taken place in consultation with local residents. The opportunity has further been taken to update the existing permissions and to make them clearer and in that way more readily enforceable.
28. *No further action is required beyond normal site monitoring and during that time I shall evaluate the effectiveness of the moveable amenity screens.*

Larkey Wood, Chartham (Member: John Simmonds)

29. This case concerns the unlawful deposit of construction spoil and related waste processing activities on a protected Special Landscape Area section of the scarp slope at Chartham, near Canterbury (see number 4, Schedule 1, Appendix 1, page 8(ii) for summary). A confirmed Enforcement Notice requires restoration to a standard, which reflects its protected status. Amongst other available controls an injunction personally restrains the former operator from any further breaches and places an obligation on him to carry out restoration.
30. Three land parcels apply. The 'upper' and 'lower' fields, comprising the majority of the Enforcement Notice area have been restored and are being either cropped or used for livestock. I am confident that the former contravenor has now fully returned to agriculture. On the remaining smaller area, all non-agricultural items have been removed, leaving repair of this parcel of land the remaining objective. However, the surplus tipped material has first to be removed. The use of a screener has previously been sanctioned by Members but the logistics of carrying out such an exercise, the availability of suitable and permitted outlets for the material and the funding arrangements have all proved problematic. Nevertheless, a further attempt will be made to make good the residual area of land this coming spring / early summer.
31. *I shall keep Members informed on any new progress on site. Meanwhile and as an on-going contingency, including any unjustified delay in restoration I seek support for use of the secured injunction at anytime.*

Update on Planning Enforcement Issues**New Cases, especially those requiring action/ Member support****D&D Waste Recycling, Units 6, 13 & 14 Detling Airfield Industrial Estate, Detling**

32. I have had cause before to bring this site on the Detling Airfield Industrial Estate, to Members attention (see number 13 of Appendix, page 8(iv) for summary). On that occasion, some 3 years ago, unauthorised waste management activities were taking place.
33. As background, a waste transfer station was permitted by the County Council in 1995 on Unit 6 of the above site. In 2005 this Authority served an Enforcement Notice on Units 6 and 13, which was upheld on appeal, as the previous operator, Coopers Waste Management, was using both sites in a combined way for unauthorised waste related activities. The terms of the Enforcement Notice were eventually complied with in 2006. D&D Waste Recycling assisted in that and subsequently took over operation of the original facility on Unit 6.
34. However, a monitoring visit carried out in November 2007 revealed that Unit 13 was in breach of the terms of the confirmed Enforcement Notice. Stockpiles of waste materials were being stored therein together with empty skips, which were clearly ancillary to the primary use of waste processing at the adjoining Unit 6. The unauthorised waste related activities, which included wood shredding, had also expanded in to Unit 14, which is located immediately to the west of Unit 13. The operator of D&D Waste Recycling was confirmed as the lessee of all three Units and has accepted responsibility for the various waste-related breaches. Those include the stockpiling of imported mixed waste for sorting, wood for chipping, installation of a weighbridge and the presence of a wood chipping machine and power screener.
35. The alleged breach of a confirmed Enforcement Notice is a criminal offence, attracting a fine of up to £20,000 on conviction. Having been reminded of the seriousness of the situation the operator became contrite. He agreed to urgently resolve the breaches on a voluntary basis by 11 January 2008. I reinforced the position by also reminding the landowner of his overarching responsibility for breaches of planning control on his industrial estate. As a series of previous breaches can be cited, he was told that unless the current alleged contraventions were dealt with forthwith that he would be subject to injunctive action in the County or High Court.
36. I can report that by the deadline, Unit 13 was close to being cleared of all unauthorised stockpiles of materials. The listed plant & machinery however, remained. Given that a serious attempt has been made to comply, along with time lost over the Christmas period and recent poor weather I have agreed to extend the deadline to 31st January 2008.
37. *I would seek Members support for that stance including if needed endorsement for prosecution under the confirmed Enforcement Notice and the seeking of injunctions against the operator and landowner should that again prove necessary.*

Update on Planning Enforcement Issues

Significant on-going cases**Woodgers Wharf, Upchurch**

38. This site and waste management activity is the subject of an exempt report to these papers (Item 11; also see number 17 of Appendix 1, page 8(vi) for summary). The case concerns the use of a marine wharf at Otterham Quay, Upchurch for the screening and crushing of largely inert materials. The planning history of the wharf is complex. Considerable efforts have been made to resolve this case and to ensure that all relevant parties, the local community and their representatives have been kept informed of progress. To that end, an Enforcement Notice has now been served to help arrest the alleged breaches on site and as a means to secure restoration.
39. The operator has now left the scene and there are currently no waste-related vehicles entering or leaving the site. The landowner meanwhile has appealed the Enforcement Notice and a provisional Public Inquiry date of 22nd July has been set.

Deal Field Shaw, Charing

40. This landfill site requiring restoration is the subject of an exempt report to these papers (Item 12; also see summaries under number 1 of Schedules / Appendices 1 and 2 on pages 8(i) and (ix), respectively).

Other cases of interest and those requested by Members**The Sunrise Childrens' Respite Centre, Southborough**

41. The Sunrise Childrens' Respite Centre adjacent to The Meadows School in Southborough was permitted under the Regulation 3 procedures by the County Planning Authority, but associated access improvements were also carried out without planning consent. Whilst the planning aspects were subsequently addressed by the submission and permitting of a retrospective planning application, there is an ongoing legal dispute over the need for separate consent from DEFRA for the widening of the access road across registered Common Land. This is delaying implementation of the revised scheme.
42. Legal advisors for the Southborough Society contend that this additional consent is required because the 1949 Scheme for the Common, which was made pursuant to the 1899 Commons Act, cannot be relied on as superseding the requirements of the (subsequent) Law of Property Act 1925. In order to settle the matter, the County Council's Legal Services have referred the matter to DEFRA for a considered response. At present a reaction from DEFRA is still awaited, but Members should note that this is an entirely separate matter to the planning consent procedure.

Update on Planning Enforcement Issues

Monitoring

Monitoring of permitted sites and update on chargeable monitoring

Introduction

43. This section reports on progress in the implementation of new powers to charge for the monitoring of mineral and landfill permissions. Together with the work and resources required to introduce charging for our formal monitoring of mineral and landfill permissions in Kent. Members are recommended to note the progress in this work and to support the prioritisation of work for the period to 31st March 2009.

Background

44. As background, I reported in May 2006 to Members that new Regulations had come into force giving mineral and waste planning authorities (mwpas) the powers to charge for the monitoring of mineral and landfill waste permissions.

Update on work completed to date

45. We have prepared our own interim guidance explaining how we will administer the scheme and approach site monitoring in Kent for the period up to 31st March 2008. However, we said that we would review our interim guidance taking into account operator comments that we have received and the findings from the first full 18 months of monitoring under the new regime. We have not received any specific comments from operators in Kent about how we have implemented the scheme. However, it is apparent from the work completed to date that we need to review and simplify how we will agree site categories and monitoring visit frequencies for the period 1st April 2008 to 31st March 2009, given the resources that are likely to be available.
46. We have written to relevant site operators in order to introduce the system to them. Operators have been told of our initial site categorisation and indicative monitoring frequency and have been asked for their views via completion and return of a site survey form to us. We have started the process of agreeing site categorisations and site visit frequencies, but have not been able to visit all the sites in order to complete this process.
47. Initial chargeable visits to sites have commenced and to date 44 chargeable visits have been carried out to 42 sites. Two sites have been formally monitored twice. Some monitoring categories and visit frequencies were also agreed by correspondence but the first chargeable visit is still required.
48. We did not have sufficient additional appropriately skilled staff in place, in order to carry out all of the visits that would be required in order to deliver an the 'excellent' monitoring service Members have previously endorsed, in the period up to 31st March 2008.
49. As expected, monitoring carried out generates further case work in terms of securing full compliance, for case officers within the group. This impact still remains difficult to quantify at this stage because of the time lag between monitoring and submission of remedial schemes and because submissions are often linked to other applications.

Update on Planning Enforcement Issues

50. Improvements to our databases and systems are required, in order to be more efficient and effective. We are incorporating monitoring work within other database improvements within the Planning Applications Group.
51. Our implementation of chargeable monitoring allowed for agreeing visit frequencies to 31st March 2008. Therefore, depending on the time of the visit, we were agreeing site-monitoring frequencies for more or less than a 12 month period. We will need to agree a chargeable visit frequency with operators for the period from 1st April 2008 to 31st March 2009.
52. This is an opportunity to review how we want to deliver chargeable monitoring given the need to be realistic about the level of monitoring that can be delivered without additional skilled resources in place to do this work. It does not seem efficient to continue to agree site visit frequencies with operators when we do not have the resources to carry out the work. Continued flexibility will be needed in order to allow variation to the phasing of monitoring visits, according to resource availability.

Work to progress the implementation of chargeable monitoring in the period to 31st March 2009

53. We shall need to write to all operators in February 2008 in relation to the visit frequencies for the period 1st April 2008 to 31st March 2009.
54. We propose to inform operators that we do not intend to go through a further process of reviewing the agreed visit frequencies for the period 1st April 2008 to 31st March 2009. We do not currently have resources to deliver the agreed visits frequencies. We therefore intend to visit and charge only as resources allow, which we expect to be *at least* once a year for sites that are active (as defined by the regulations – sites which we consider are in category 2 - 5). Further chargeable visits will occur if resources permit or if the circumstances at the site require further visits.
55. This means that we will not go through a further process of agreeing site monitoring frequencies with operators when we do not have the resources to deliver the visits.
56. We will continue to prioritise site visits, active sites having greater priority than inactive sites and will retain flexibility to continue monitoring at a range of sites not falling within the chargeable monitoring regime if necessary.
57. Other options exist such as carrying out more visits but to fewer sites. However, we consider that it is more beneficial to have at least an annual review at each operational site. Inactive sites are those which are dormant or 'mothballed' and as such remain lower priority for monitoring.
58. We also need to review our interim guidance to operators in February 2008 ready for implementation from 1st April 2008 for the period to 31st March 2009.

Update on Planning Enforcement Issues

Resolved or mainly resolved cases requiring monitoring

59. Alongside the chargeable monitoring régime there is also a need to maintain a watching brief on resolved or mainly resolved enforcement cases which have the potential to reoccur. It is intended that cases in this category shall be continued to be removed from the reporting lists (now the appended schedules 1 to 3, to this and subsequent reports) on the understanding that officers will keep them under review. Any reoccurrence will be reported back under the *'new cases, especially those requiring Member endorsement for action'* section at the front of subsequent reports to Committee according to the new revised format.
60. The current and running list of sites which fall within this category include: Hoath Wood, Lavenders Road, West Malling; Russell Surfacing, Detling Aerodrome Estate, Maidstone; Wissenden Lane, Pluckley; Coopers Waste Management (Speedy Gone Garbage), Detling Aerodrome Industrial Estate, Detling; Whiteladies Gas Control Compound, Offham Landfill Site, Offham; Detling Quarry, Detling; Kemberland Wood, Fox Hill, Sturry and Foley Site, Plantation Lodge, School Lane, Iwade, Rear of Dunes Road, Greatstone, New Romney, Land near junction of Thames Rd/Burnham Rd/Clive Dunn Way, Dartford Marshes; Oast Park Farm Golf Club, Snodland; Chapman's Scrapyard, Tenterden; Durrants Farm, Maidstone Road, Paddock Wood; Meadows School, London Road, Southborough and Standford Bridge Farm, Pluckley.
61. I intend to transfer the list of sites onto an appropriate database, on an annual basis.

Working protocols with the Environment Agency

62. The Committee has previously endorsed the development of better working protocols between the County Council and the Environment Agency with regard to its enforcement work. Close dialogue with the Environment Agency has ensued including bi-monthly meetings to discuss cases and agree enforcement strategies. A closer understanding has also been achieved over our respective priorities and on ways to offer mutual support at Inquiry and in court.
63. Efforts to work more closely are continuing and notably there is an example in these papers (see Chalkwell Farm, Lydden case, paragraphs 23 to 25) of an exemption from Waste Management Site Licensing being de-registered by the EA to assist and reinforce the County Council's planning enforcement position. This has been in addition to the EA's sharing of available data on *exemptions* which has proved useful in helping to programme and prioritise our own enforcement workload. The EA were also invited to the County Council's hosting of the County Enforcement Officer Group's latest peer group meeting in 26th September 2007. The event itself was very well received and we were fortunate in attracting a government speaker on *exemptions* who is involved in drafting the proposed new tightened procedure.

Update on Planning Enforcement Issues

Conclusion

64. Since September 2007, successes and measurable progress has been made on a number of complex enforcement cases. That includes amongst others: Chalkwell Farm, Lydden; Ripleys Scrapyard, Ashford; Chapel Lane, Lower Halstow and even on the Woodgers Wharf case. Where possible we continue to resolve cases without the need for formal action. The most recent contravention at D&D Recycling on the Detling Airfield Industrial Estate is a good example of timely and decisive intervention. The sure knowledge that the County Council will not hesitate from taking any necessary formal action and our string of appeal wins such as Raspberry Hill Park Farm is a strong negotiating tool and can help achieve results in its own right. Nevertheless, Enforcement Notices are still required in some cases to secure the restoration of sites and afford permanent protection of land. As a guiding principle, resources are targeted to those activities that have the potential to create the greatest environmental damage in accordance with the adopted Enforcement Protocol.

Recommendation

65. I RECOMMEND that MEMBERS:

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 10 to 42 and 59 to 61 above and those contained within Schedules 1 to 3 of Appendices 1 to 3, on pages 8(i) to (xvi) and
- (ii) In relation to chargeable monitoring:
 - (a) NOTE the progress made in implementation of Regulations that allow us to charge for monitoring of minerals and landfill permissions at a prescribed fee; and
 - (b) SUPPORT the development of the scheme in accordance with the provisional programme set out in paragraphs 53 to 58.

Case Officers: Robin Gregory (Main report)	01622 221067
Hazel Mallett (Monitoring section)	01622 221064

Background Documents: see heading

Schedule 1: Contraventions on (part) unauthorised sites

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
1	Ashford DC3/AS/03/COMP/0090 Shaw Grange, Charing (Member: Richard King)	Multiple breaching of landfill permissions (q.v. No.1, Schedule 2, p 8(ix)). Enforcement Notices and High Court Injunctions	To prevent further breaching and secure restoration of the site	Breaching has ceased but restoration has proved protracted for complex legal reasons	This landfill site in need of restoration is the subject of an exempt report to these papers (see Item 12)
2	DC3/AS//06/COMP/0006 Standford Bridge Farm, Pluckley (Member: Richard King)	Waste management activities on site, in addition to the district permitted agricultural contracting uses	To investigate in combination with Ashford BC and the EA and check for any County Council breach	Full investigation has been carried out by all three bodies, including more recent waste-related allegations	No County Council breaches have been found. However, Ashford BC and the EA will continue to monitor
3	DC3/AS/07/COMP/0006 Parkgate Business Centre Park, Tenterden (Member: Mike Hill OBE)	Unauthorised recycling reported by Ashford BC	To investigate and see if the activity falls within the County Council's waste-related remit.	On investigation no material County waste related development was being carried out	The case has been referred back to Ashford BC

4	<p>Canterbury</p> <p>DC3/CA/03/COMP/0089 Larkey Wood, Chartham (Member: John Simmonds)</p>	<p>Unlawful deposit of construction spoil on SLA valley side and related waste processing.</p>	<p>A County Court Injunction requires removal of surplus materials and waste related items and a return to agriculture with original slope profiles.</p>	<p>Of the three original land parcels; the two larger areas have been restored to agriculture, leaving remedial works to the remaining smaller area.</p>	<p>Under the action of the injunction, the contravenor has fully returned to agriculture. He now has an incentive to complete the restoration of the land. [See main report para 29 -31].</p>
5	<p>Dartford</p> <p>DA/00/72 & DA/04/993 150a Lower Hythe Street, Dartford (Member: Tom Maddison)</p>	<p>Unauthorised extension to an existing permitted waste transfer station into adjoining area (with lawful use for vehicle dismantling), with related waste processing</p>	<p>To pull back the extended use to the original permitted footprint area.</p>	<p>Achieved. The immediate level of breaching has been successfully challenged by KCC</p>	<p>Operational breaches of the original permission will need attention when resources allow. Support for serving BCNs is sought (see also no 5, Sch. 2, p8(x))</p>
6	<p>DC3/DA/03/COMP/0029 Dartford Gun Club, Dartford Marshes (Member: John Muckle)</p>	<p>Apparent waste importation and depositing on confirmed County Council Enforcement Notice area, with a part lawful / district permitted Gun Club now resident on site.</p>	<p>The EA have taken the enforcement lead. An application to Dartford BC to retain the material is also anticipated. The County Council needs to reserve its enforcement position pending the outcome of both matters</p>	<p>The district council application is still awaited. The EA are continuing their investigation of the tipped material, its source and content</p>	<p>Should the EA decide not to intervene and the application to DBC fail to materialise, Members support is sought on a contingency basis (and subject to Counsel's advice), for prosecution under the confirmed Enforcement Notice.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
7	<p style="text-align: center;">Dover</p> <p>DC3/DO/07/COMP/0012 Chalk Wells Farm, Lydden (Member: Bryan Cope)</p>	<p>Unauthorised stone crushing, screening and stockpiling use in the open countryside.</p>	<p>To stop the use and have the plant & machinery and stockpiles removed off-site</p>	<p>All objectives achieved</p>	<p>Reported elsewhere in these papers (see paragraphs 23 to 25).</p>
8	<p style="text-align: center;">Gravesham</p> <p>DC3/GR/07/COMP/0019 Highview, Longfield Road, Meopham (Member: Michael Snelling)</p>	<p>Unauthorised vehicle breaking / dismantling and sale of parts</p>	<p>Cessation of use and site clearance</p>	<p>Under threat of Enforcement Action and following prosecution by EA (£15,000 with £3,,777), the use has ceased and the site is now practically cleared</p>	<p>The site will continue to be monitored with Gravesham BC and the EA.</p>
9	<p>DC3/GR/GR/07/COMP/13 Red Lion Wharf, Northfleet (Members: Leslie Christie /Ray Parker)</p>	<p>Unauthorised wood processing</p>	<p>Cessation of use and site clearance</p>	<p>Achieved.</p>	<p>No further action required.</p>

10	<p>Maidstone</p> <p>DC3/MA/05/COMP/0010 Riverfield Fish Farm, Staplehurst (Member: Paulina Stockell)</p>	<p>Alleged breaches of planning permission granted by Maidstone BC for a fish farm. There is concern at the quantities of waste materials entering the site</p>	<p>Maidstone BC has primary enforcement responsibility. It is being advised by specialist retained Counsel under the recommendation of County Officers.</p>	<p>The EA has issued an Exemption from Site Licensing but continues investigating the activity along with Maidstone BC</p>	<p>KCC holds no apparent remit on available evidence. However, I am maintaining 'a seat at the table' and offering enforcement and technical advice.</p>
11	<p>DC3/MA/04/COMP/0060 Tusham Farm, West Farleigh (Members: Jeffrey Curwood / Dan Daley)</p>	<p>Depositing of builders waste on the southern bank of the River Medway</p>	<p>Cessation of tipping and to secure restoration.</p>	<p>Tipping has been stopped. The EA has taken the enforcement lead given their waste, pollution control, river protection remit and waste removal powers</p>	<p>I am periodically reviewing the situation with the EA.</p>
12	<p>DC3/MA/06/COMP/0030 Longton Wood, off A249 Detling Hill (Member: Lord Sandy Bruce-Lockhart OBE)</p>	<p>Importation and depositing of construction spoil on site</p>	<p>Cessation and reinstatement</p>	<p>The breach has been stopped</p>	<p>Restoration will follow when resources allow.</p>
13	<p>DC3/MA/..... D&D Recycling, Detling Airfield (Member.....)</p>	<p>Unauthorised extension to permitted waste transfer station and alleged breach of Enforcement Notice</p>	<p>To halt further breaches and have waste stockpiles and processing plant & machinery removed by 11 January 2008.</p>	<p>Significant progress made with most of the unauthorised waste stockpiles removed</p>	<p>Reported in more detail in paragraphs 32 to 37 of the main papers.</p>

14	<p style="text-align: center;">Sevenoaks</p> <p>DC/SE/03/COMP/0085 Poll Hill Gypsy Site, Halstead, Sevenoaks (Member: Roger Gough)</p>	<p>Unauthorised deposit of significant quantities of spoil on land immediately to the north of the Poll Hill Gypsy Site, in the MGB and AONB</p>	<p>The original objective was to cover flytipping with soil but the quantities used were excessive and included spoil. The best form of restoration and resolution in the circumstances is sought under detailed guidance from the EA</p>	<p>No further tipping has taken place. A number of technical studies have been carried out concerning the content, integrity and stability of the tipped mass. The collected data is still being analysed</p>	<p>Analysis by the EA has still to be concluded before a restoration plan can be recommended. That may include part or complete removal of the material on site.</p>
15	<p>DC3/SE/07/COMP/0009 Leydenhatch Lane, Swanley (Member: Mark Fittock)</p>	<p>EA reported alleged unauthorised waste stockpiling</p>		<p>A confirmed Sevenoaks DC Enforcement Notice was found to cover the site.</p>	<p>Case referred back to Sevenoaks DC</p>
16	<p style="text-align: center;">Shepway</p> <p>SH/05/1425. A20 Scrapyard, Rear of Airport Café, Main Road, Sellindge (Member: Susan Carey)</p>	<p>Storage and breaking of disused vehicles without planning permission</p>	<p>To establish the planning status of the activity. If deemed to be unlawful to ensure removal of the use and restoration of the site.</p>	<p>A Certificate of Lawful Use Application was expected but has not been submitted.</p>	<p>For consistency with other cases enforcement will now need to follow. Members support is sought for the serving of an Enforcement Notice if required.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
17	<p>Swale</p> <p>DC3/SW/05/COMP/0016 Woodgers Wharf, Upchurch (Member: Keith Ferrin)</p>	<p>Unauthorised use of marine wharf for screening and crushing of imported spoil and alleged related waste management breaches</p>	<p>To arrest the alleged breaches and return the site to its lawful wharf-related use</p>	<p>An Enforcement Notice has been served and a Public Inquiry into the action is scheduled for 22 July 2008.</p>	<p>This case is report in slightly more detail in the main papers (see paras 38 to 39) and is the subject of Exempt Item 11 to these papers</p>
18	<p>DC3/SW/04/COMP/0059 Four Gun Field, Upchurch (Member: Keith Ferrin)</p>	<p>Alleged and sporadic waste-related use on a former brickfield with lawful use for industrial uses</p>	<p>To ensure that no waste-related use develops on site, particularly given its sensitivity close to housing</p>	<p>So far, no County Council breach has been identified.</p>	<p>Counsel has been retained given the legal complexity of the case. Continued support on a contingency basis for an EN/Injunctions is sought.</p>
19	<p>DC3/SW/04/COMP/0049 Raspberry Hill Park, Farm, Iwade (Members: Brenda Simpson / Roger Truelove)</p>	<p>Unauthorised importation, burning and depositing of mixed construction spoil, stationing of mobile homes and haulage distribution use on the waste deposit</p>	<p>KCC and Swale BC's 3 Enforcement Notices were recently upheld at Appeal (see paragraphs 10 to 19 of the main papers). They require all traces of the unauthorised uses to be removed from the site, within given timescales.</p>	<p>The Enforcement Notice deadlines for restoration have yet to expire. Removal is required by 22 May 2008 and restoration by 22 June 2008.</p>	<p>The operators are currently either in prison or on remand. However, in relation to the KCC EN, the landowners (if the terms are not met) would ultimately be pursued for removal of the waste deposit and full restoration.</p>

20	DC3/SW/07/COMP/0004 Chapel Lane, Lower Halstow (Member: Keith Ferrin)	Unauthorised importation and depositing of waste	To secure removal of a required quantity of waste according to road and site conditions	A figure of 20 vehicle loads to remove has been agreed with the landowner. Removal is required to take place by 31 st March 2008.	The case is reported in more detail in the main papers (see paragraphs 20 to 22)
21	DC3/SW/05/COMP/0023 Church Marshes, Sittingbourne (Members: Brenda Simpson / Roger Truelove)	Alleged waste related uses, including land raising connected with Swale Borough Council's Country Park development on the former Church Marshes landfill site	Swale BC owns the land and has employed contractors to carry out the development. Internal controls should be sufficient to ensure that the planning permission is adhered to and County Council waste related breaches do not occur	I understand that the development is in its later phases. Also Swale BC have apparently already adjudged that the recent tipping does not bring site levels above those already granted	There should be no need for the County Council to intervene in this type of publicly sponsored development. Nevertheless, I shall still be seeking more detailed assurance from SBC that land raising has not occurred. The County Council's enforcement position must be safeguarded
22	DC3/SW/05/COMP/0014 Lime Kiln Wood, Wormshill, Sittingbourne (Members: Lord Sandy Bruce-Lockhart OBE / Keith Ferrin)	Part-infilling of wooded depression with unauthorised residential use.	To assist Swale BC who are taking the enforcement lead to protect the remaining TPO'd trees and secure acceptable restoration	The breaches to date have been challenged largely by Swale BC with on-site support from County Officers	To reinforce the Borough Council's actions and to secure eventual restoration to woodland, the service of a KCC Enforcement Notice may eventually be necessary.

23	<p>Thanet</p> <p>DC3/TH/07/COMP/0005 Down Barton Road, St Nicholas at Wade, Margate (Member: C. Hibberd)</p>	<p>Tipping on farmland and creation of earthbunds reported by Thanet DC.</p>	<p>To investigate and check for any County Council remit</p>	<p>The primary use of the land and related engineering works were regarded on investigation to be district matters.</p>	<p>Case referred back to Thanet DC.</p>
24	<p>Tonbridge & Malling</p> <p>DC3/TM/07/COMP/0010 Fre Mel Farm, Offham, West Malling (Member: Sarah Hohler)</p>	<p>KCC Environmental Crime Team relayed a report from T&M BC of car breaking and waste disposal at this site</p>	<p>To investigate and check for any County Council remit</p>	<p>Only district operational breaches were found including the construction and use of a hardstanding</p>	<p>Case referred back to T&M BC</p>
25	<p>Tunbridge Wells</p> <p>DC3/TW/06/COMP/0011 Eaglesden farm, Mill Street, Iden Green, Beneden (Member: Roger Manning)</p>	<p>Importation of waste spoil into a small valley.</p>	<p>To ensure no further tipping and arrive at the best form of restoration in the circumstances, including the required quantities of material to be removed</p>	<p>The land has been shaped and contoured. The EA's advice is being sought on restoration options.</p>	<p>If negotiations fail an Enforcement Notice will ultimately be required to achieve and enforce the required level of restoration.</p>

Schedule 2: Alleged breaches on Permitted Minerals & Waste Sites

Appendix 2

	<u>Site & Case Reference</u>	<u>Details of Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
1	Ashford DC3/AS/03/COMP/0090 Shaw Grange, Charing (Member: Richard King)	Multiple breaching of landfill permissions, Enforcement Notices and High Court Injunctions (q.v. No.1, Schedule 1, p 8(i)).	To prevent further breaching and secure restoration of the site	Breaching has ceased but restoration has proved protracted for complex legal reasons	This landfill site in need of restoration is the subject of an exempt report to these papers (see Item 12)
2	DC3/AS/04/COMP/0003 Ripley's Scrapyard, Tennyson Road (Member: George Koowaree)	Unauthorised End of Life Vehicle facility on existing permitted scrapyards. Also, local complaints of noise and vibration	To regularise the building and use and help improve the level of local amenity protection	An application to incorporate the breach and further improve and rationalise the site layout and safeguarding has been granted permission under delegated powers.	As the breach has been regularised, I shall remove from this schedule but continue to monitor the site under normal arrangements. Reported in more detail in the main papers (see paragraphs 26-28)

3	DC3/AS/04/COMP/0013 Naccolt Brickworks, Wye (Member: C. Findlay)	Series of site managerial problems at this local neighbourhood recycling centre	To regularise the position through an updated application and close liaison with the EA	A revised application is to be further discussed shortly with the operator	
4	AS/04/2009 Waste Water Treatment Works, Reading Street, Tenderden (Member: Mike Hill OBE)	Outstanding landscaping scheme		Submitted and approved	
5	Dartford DA/00/72 & DA/04/993 150a Lower Hythe Street, Dartford (Member: Tom Maddison)	Unauthorised waste-related extension to existing permitted waste transfer station into adjoining area	To pull back the extended use to the original footprint area and then attend to less serious operational breaches under the original waste transfer permission	First objective achieved.	Secondary and operational breaches of the original permission will need attention when resources allow (see also No. 5, Schedule 1, p 8(ii))
6	DA/04/770 & DA/04/787 FM Conway site, Rochester Way, Dartford (Member: Tom Maddison)	Complaints concerning alleged breaches of stockpile heights attached to the relevant and retrospective planning permission at this waste recycling site received	This was not apparent from inspection.	The plant visible on top of the stockpiles was removed. No further complaints have been received	I now intend to remove from this schedule but monitor as required
7	Maidstone MA/08/TEMP/0065 Shepherds Farm, Lenham	Operational breaches at this permitted sand extraction site, including departures		A planning application to address these matters has now been received	

	(Member: Lord Sandy Bruce- Lockhart OBE)	from the working scheme and slope stability issues	To clarify the planning position		
8	N/A Aylesford Waste Water Treatment Works (Member: Geoff Rowe)	Alleged unauthorised works to the recycling plant on site		The planning judgement on the facts of the case has been that the works conducted are permitted development	No further action is required and I therefore propose to remove from this schedule
9	Sevenoaks DC3/SE/03/COMP/0071 Brasted Sandpits, Sevenoaks (Member: Richard Parry)	Breach of the planning permission to extract sand from this site in the MGB, AONB and SLA	To secure early restoration of the site within the scope of the materials already on site.	Phase 1 and 2 of the original 7 site phases has been made ready for final cover. However, the EA challenged the tipping of unlicensed waste types, effectively suspending final restoration. That has now been lifted with KCC able to progress restoration, again with the EA safeguarding pollution and public health interests.	A complicating factor is that the Company operating the site has been wound up, seemingly now unable to carry out the restoration. Legal advice will be required on available options from this point. Meanwhile, a revised scheme of restoration will be required within the scope of the remaining quantity of (re)usable restoration materials on site.
10	DC3/ SE/03/COMP/0049 Dunbrik Composting Facility, Sundridge, Sevenoaks (Member: Richard Parry)	Odour complaints.		Referred to EA to investigate under Licensing powers	No further complaints received.

11	<p>Shepway</p> <p>SH/05/53 Waste Water Treatment related kiosk, Spitalfield Lane, off Lydd Road, New Romney (Frederick Wood-Brignall)</p>	<p>As part of the New Romney and Greatstone –on- Sea Waste Water Treatment Scheme, a control kiosk has been placed marginally in the wrong location. There is sensitivity given the close proximity of housing</p>	<p>To see whether an acceptable and practical solution can be found, short of having the kiosk re-positioned</p>	<p>A proposed screening/landscaping scheme is being processed and evaluated</p>	<p>I shall keep Members informed.</p>
12	<p>Tonbridge & Malling</p> <p>DC3/TM/04/COMP/0019 Borough Green Sand Pit, Platt Industrial Estate, Borough Green (Member: Peter Lake)</p>	<p>Complaints of windblown sand, noise, extended hours of working and mud on the road</p>	<p>To ensure compliance with the relevant planning permission</p>	<p>Three planning applications pertaining to the site and in part covering these issues have been granted planning permission, subject to completion of a S106 Agreement.</p>	<p>The issues raised have been considered in the context of the applications, including a Members Site Visit and where possible further amenity safeguards have been introduced</p>
13	<p>TM/01/3081/MR95 Pearson Sand Pit, Addington Lane, Trottscliffe (Member: Sarah Hohler)</p>	<p>Delayed restoration of former and now backfilled sand quarry.</p>	<p>To secure an early completion of restoration</p>	<p>The site has now been largely restored with the exception of the remaining section of the access track. However, an application for its downgrade is expected.</p>	<p>I shall inform Members when the access issue has been resolved.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
14	TM/04/2028 Work house Quarry, Ryarsh (Member: Sarah Hohler)	Complaints from local residents of out of hours working and excavating outside of the permitted northern site boundary		The out of hours complaint was found to be an isolated incident and the works on site was slope profiling to achieve the best aesthetic result on site	The site is being monitored and I can report that restoration is progressing well.
15	DC3/TM/03/COMP/0005 Addington Sandpit, Addington (Member: Sarah Hohler)	A series of technical breaches on site, including slope stability and delayed restoration in part of the site	For the alleged breaches to be urgently addressed, with comprehensive remedial plans submitted for prior approval	The outstanding information and schemes are now overdue but need in any event to be considered in the context of the northern extension application, submitted under TM/07/2545	I shall report to the next Meeting on progress in dealing with these outstanding matters.

Schedule 3: Alleged breaches on Permitted County Council Developments

Appendix 3

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
1	<p>Canterbury</p> <p>CA/06/1187 Barton Court Grammar and Chaucer Technology Schools, Canterbury (Member: M.Northey)</p>	<p>Perimeter fencing partly erected without prior permission</p>	<p>To regularise the planning situation and agree appropriate specifications</p>	<p>Fencing has been completed in accordance with approved specifications</p>	<p>Landscaping works are yet to be implemented.</p>
2	<p>Dover</p> <p>DO/06/1424 Cartwright School and Kelsey Primary School., Ash (Member: L.Ridings)</p>	<p>Spoil from permitted works at the school has been retained and mounded on site close to housing. Retrospective permission has been refused</p>	<p>Complete removal of the mound of surplus material and restoration of the site</p>	<p>The mound has now been removed and the site restored</p>	<p>No further action needed</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
3	DO/05/729 St Edmund's School, Old Charlton Road, Dover (Members: K. Sansum / W.Nerwman)	Construction of Business Resource Centre, in part outside of permitted footprint area.	To correct the constructional error as far as practicable. Also, to respond to the Ombudsman's requirement for a review and tightening of KCC's internal enforcement procedures, so avoiding similar problems in the future.	The development has been completed in accordance with the retrospective permission designed to address the breach. However, the Ombudsman was critical of the time taken by the Education Authority to halt the unauthorised building and awarded some financial compensation to affected residents	Whilst the on-site issues have been resolved subject to routine points of detail, the review work required by the Ombudsman is still in progress. That includes recent discussions with Kent District Councils over alternative enforcement options, as well as with KCC Property and Education representatives.
4	Swale SW/02/221 Preston Depot, Canterbury Road, Faversham (Member: T.Gates)	Extension of site for waste aggregate recycling outside of the original permitted area	To regularise the position.	A retrospective planning application to address (amongst other matters) the breach has yet to be submitted.	I have required an updated statement of intention on the general site use. I also intend to inspect the site and report further to the Meeting on whether the unauthorised element has ceased or not.

5	<p>Tunbridge Wells</p> <p>TW/07/421 The Sunrise Childrens' Respite Centre adjacent to Meadows School, London Road, Southborough (Member: R.Bullock)</p>	<p>Access road through Southborough Conservation Area constructed in advance of planning permission</p>	<p>To regularise the planning situation and agree more appropriate specifications</p>	<p>Retrospective application has since been permitted but amended specifications have still to be approved</p>	<p>Reported in more detail under paragraphs 41 to 42 of the main report.</p>
6	<p>SW/07/1069 Minster College Minster-On-Sea Sheerness</p>	<p>Prior approval needed for timber fence on top of existing wall</p>	<p>To regularise the planning situation</p>	<p>Retrospective application refused on 6 November 2007. Fence removed to comply in December 2007</p>	<p>No further action required.</p>

By virtue of paragraph(s) 5, 6 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Agenda Item 11

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Agenda Item 12

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