



AGENDA

REGULATION COMMITTEE

Tuesday, 18th September, 2007, at 10.00 am Ask for: **Andrew Tait**
Council Chamber, Sessions House, County Telephone **01622 694342**
Hall, Maidstone

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. Membership: To note the appointment of Mr T Gates and Mr I S Chittenden to the Committee in place of Mr C T Wells and Mr S J G Koowaree.
2. Substitutes
3. Declarations of Interests by Members in items on the Agenda for this meeting.
4. Meetings of the Committee: These will be held in the mornings of:-

Tuesday, 22 January 2008	Tuesday, 21 January 2009
Tuesday, 20 May 2008	Tuesday, 19 May 2009
Tuesday, 18 September 2008	
5. Minutes (Pages 1 - 4)
 - (a) Committee: 22 May 2007
 - (b) Member Panel: 2 August 2007
6. Update on Planning Enforcement Issues (Pages 5 - 28)
7. Other Items which the Chairman decides are Urgent
8. 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.
9. Update on Planning Enforcement issues at Woodgers Wharf, Upchurch (Pages 29 - 34)

10. Update on Planning Enforcement issues at Deal Field Shaw, Charing (Pages 35 - 38)

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, 10 September 2007

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, 22 May 2007.

PRESENT: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr A R Bassam, Mr T J Birkett, Mr C J Capon, Mr J Curwood, Mr D S Daley (substitute for Mr S J G Koowaree), Mr J A Davies, Mr C Hart, Mr R E King (substitute for Mr A H T Bowles), Mr K Sansum (substitute for Mr L Christie), Mrs P A V Stockell, Mr C T Wells, Mr B P Wood and Mr F Wood-Brignall.

IN ATTENDANCE: The Head of Planning Applications Group, Mrs S Thompson (with Mr R Gregory); the Public Rights of Way Service Delivery Manager, Mr G Rusling; the Development Planning Manager, Mr A Ash; and the Democratic Services Officer, Mr A Tait.

UNRESTRICTED ITEMS

- 14. Membership: To note the appointment of Mr T Gates and Mr I S Chittenden to the Committee in place of Mr C T Wells and Mr S J G Koowaree**
- 15. Declarations of Interest by Members in relation to items appearing on the agenda for this meeting**
(Item 3)

- 16. Future meetings of the Committee: These will be held in the mornings of:-**
(Item 4)
Tuesday, 22 January 2008; Tuesday, 20 May 2008; Tuesday, 16 September 2008;
Tuesday, 21 January 2009; Tuesday, 19 May 2009
- 17. Minutes (a) Committee: 22 May 2007 and (b) Member Panel: 2 August 2007**

- 18. Update on Planning Enforcement issues**
(Item 6 – Report by Head of Planning Applications Group)

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)

- 19. Update on Planning Enforcement Issues at Woodgers Wharf, Upchurch**
(Item – Report by Acting Head of Planning Applications Group)

- 20. Update on Planning Enforcement Issues at Deal Field Shaw, Charing**
(Item – Report by Acting Head of Planning Applications Group)

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 2 August 2007.

PRESENT: Mrs M J Harrison (Chairman), Mr J A Davies, Mr I T N Jones, Mr S J G Koowaree and Mr F Wood-Brignall.

ALSO PRESENT: Mr C J Capon.

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

UNRESTRICTED ITEMS

2. Proposed withdrawal of application to register a Town or Village Green at Sandyhurst Lane, Westwell.

(Item 2 – Report by Director - Environment and Waste)

- (1) Mr S J G Koowaree made a declaration of Personal Interest as a Member of Ashford Borough Council.
- (2) Mr P Girling from Ashford BC addressed the Panel in support of the recommendation that the application be withdrawn.
- (3) RESOLVED to accede to the applicant's request to withdraw the application and to take no further action on this case.

3. Application to register land at Duncan Down, Whitstable as a new Village Green.

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

- (1) Mr M J Harrison informed the Panel that he was the local Member and a Board Member of the Whitstable Improvement Trust. He had not taken part in any previous discussion of the application, nor formed any prior opinion on it.
- (2) A site visit to Duncan Down, Whitstable took place prior to the meeting. It was attended by Mr A Clark and other representatives from "Friends of Duncan Down" as well as Mr L Eldridge from Devine Homes.
- (3) Mr A Clark spoke as the applicant. Mr L Eldridge from Devine Homes spoke as the Landowner.
- (4) Mr S J G Koowaree moved, seconded by Mr J A Davies that the recommendations set out in Paragraph 31 of the report be adopted.

Carried unanimously

(5) RESOLVED that:-

- (a) the application to register the land at Duncan Down, Whitstable be accepted and that the land subject to the application be formally registered as a Village Green; and
- (b) the applicant be informed accordingly.

4. Application to register land at South Road Recreation Ground, Hythe as a new Village Green.

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

(Mr C J Capon was present for this item pursuant to Committee Procedure Rule 2.24 and spoke)

(1) A site visit to South Road Recreation Ground, Hythe took place prior to the meeting. It was attended by Mr M Ross, the applicant and several Members from Hythe Town Council together with some half dozen members of the public and Mr C J Capon, the local Member.

(2) Mrs M McCormack, Clerk to Hythe Town Council addressed the Committee as the Landowner. Mr J Schoner from Hythe TC spoke as an objector. Mr M Ross spoke as the applicant. Mr C Paine from Shepway DC spoke as the Landowner.

(3) Mr F Wood-Brignall moved, seconded by Mr S J G Koowaree that the recommendations set out in Paragraph 12 of the report be adopted.

Carried unanimously

(4) RESOLVED to endorse the advice received from Counsel that a non-statutory Public Inquiry be held into the case in order to clarify the issues.

Update on Planning Enforcement Issues

Report by Head of Planning Applications Group to the Regulation Committee on 18th September 2007

Summary: Update for Members on planning enforcement matters.

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

Local Member: n/a

Unrestricted

Introduction

1. This report provides an update on enforcement and monitoring work carried out by the Planning Applications Group since the May 2007 Regulation Committee. The report is 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

The report also gives details of site monitoring and progress on the introduction of the chargeable site monitoring arrangements for minerals development and an update on developing working protocols with the Environment Agency.

2. Since the last meeting of the Regulation Committee work has been affected by staffing changes and has 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, 25 cases where investigations are underway and a further 12 cases has been satisfactorily resolved. In addition, 20 monitoring visits on permitted sites have been undertaken, including 16 chargeable visits. The majority of the time has been spent on a joint public inquiry with Swale Borough Council, preparation for a second public inquiry, Freedom of Information requests, the drafting of 2 further enforcement notices (one precautionary, one active) and the need for meetings with retained Counsel on the more complex cases.
3. 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.

Update on Enforcement Activities

Cases Where Formal Action has been Taken

Deal Field Shaw, Charing

4. This former landfill site is the subject of an exempt report to these papers (Item 10).

Woodgers Wharf, Upchurch

5. This site and waste management activity is the subject of an exempt report to these papers (Item 9). 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

Update on Planning Enforcement Issues

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 are kept informed of progress.

Larkey Wood, Chartham

6. 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. A confirmed Enforcement Notice requires restoration to a standard, which reflects its protected status. An uncontested injunction required restoration by the 30th September 2005. Canterbury City Council have also served 2 enforcement notices (ENs) against residential and related buildings on site, together with a Section 215 (site clearance) Notice to support the County's own injunction requiring removal of 'non-agricultural' items from the site. The ENs were upheld on appeal. The s215 Notice was also confirmed in court.
7. Progress has been made in reinstating the land to agriculture but further works are required. On last inspection practically all surface items had been removed off-site. That is a pre-requisite for reducing site levels to original contours and effecting final restoration. In the context of the case, the work achieved is notable but does not represent full compliance with the Injunctive Order. Nevertheless, forward momentum has been established and rapport with the former contravenor has improved dramatically. An agricultural use of the site is returning with a range of livestock and straw bailing activities.
8. The current Injunctive Order has secured a rationalisation of the site ready for staged removal of deposited waste and re-contouring. Compliance has not been achieved within the strict terms and timescales laid down in the Order. However, severe sanctions remain and I am confident that the means to achieve eventual restoration is in place. I am further confident that given these controls, further waste-related contraventions should not occur.
9. Attempts have been made to remediate two parts of the Enforcement Notice area. The 'upper field' has been re-graded to original profiles and has been successfully planted with maize this year. A former slurry pit near the permitted agricultural barns has been dug out and spread as a fertilizer. The void created will helpfully absorb some of the surplus material on site. The 'lower' field comprises an unauthorised chalk track. The chalk has been pulled back and stockpiled ready for re-use. The field has been stock fenced and livestock left to graze. The main site area has received focussed attention and a programme of site inspections and help from my officers concerning authorised outlets for the surplus material is in train.
10. Patient litigation in this case has started to pay real dividends. Site clearance of surface items has largely been achieved, an agricultural use has returned and a screener is ready to be employed (under strict control) to help accelerate restoration. Progress on site has been made but full compliance is still awaited. On balance however, I believe that a will to complete the work is now evident since the deposited waste materials are inhibiting the full agricultural use of the land. That gives a self-generating motive for the land to be returned to its original state and profile. *I shall keep Members informed on this definite momentum towards restoration.*

Brasted Sandpits, Sevenoaks

Update on Planning Enforcement Issues

11. This is an ongoing complex case. Resolution has been hampered by separate and potentially contrary requirements arising from breaches of the waste management licence and enforcement action taken by the Environment Agency. The case concerns a former sand extraction site within an Area of Outstanding Natural Beauty (AONB), the Metropolitan Green Belt and a Special Landscape Area (SLA). The site operated for many years as a joint mineral extraction and inert waste landfill site. Permission for extraction expired at the end of 2002. Waste material for the landfill was derived in part from a temporary Waste Transfer Operation, the planning permission for which expired in December 2004.
12. In summary, the principal ongoing breaches of planning control at the site relate to:
- phasing of the infilling not in accordance with the permitted scheme;
 - tipping of waste material above permitted heights;
 - restoration not in accordance with the permitted scheme; and
 - failure to erect tree protection fencing.
13. By way of background, the operator company and directors of Brasted Sand Pit were successfully prosecuted in March 2004 for non-compliance with a Breach of Condition Notice and an Enforcement Notice. These Notices related to the above breaches plus other matters including an oversized waste transfer function and unauthorised plant, buildings and machinery. Following the outcome in court, the operator agreed to comply with certain timescales contained within a draft injunction for infilling and restoration of the site.
14. The timescales have not been met, despite some attempt to re-profile the tipped waste to achieve approved levels. Given the extent of the works required to complete the site the County Solicitor has placed the landowner and former operator on notice that they are exposed to further legal action from the County Council.
15. Nevertheless an issue arose in 2004 which had serious implications for restoration at the site and impacted upon the operator's ability to restore the site. Members may recall that the Environment Agency (EA) had uncovered an alleged and serious breach of the Waste Management Licence. Quantities of controlled waste not permitted under the terms of the waste management licence had been found within operational phase 6 of the landfill (there are 7 areas / phases of the site requiring restoration). The Agency served a Compliance Notice requiring the operator to address the situation. This could have potentially involved removing large quantities of waste material off site. Further investigations by the EA confirmed similar unpermitted waste deposited in phases 3, 4 and 5. Verification of the waste content of those phases was also required by the EA.
16. Notwithstanding these complications the County Council had been pressing for the restoration of phases 1,2 and 7, which are unaffected by the EA's actions. Some progress was being made on these defined areas but unfortunately progress has now stalled.
17. The position of the EA is pivotal to a successful restoration outcome. It is material to the form and timing of the County Council's proposed actions. The Agency informs me that it has had its own difficulties with the site. That in turn stems from a lack of groundwater monitoring data by the Company. As a result the EA has, to date, been unable to make an informed decision on whether further remedial actions are required. However, a groundwater modelling and complex risk assessment report has been submitted by the

Update on Planning Enforcement Issues

licence holder and has been evaluated by the Agency. In evaluating the report, the Agency has to be mindful that any remedial works are dependent on the licence holder's available funds and proportionate to the potential impact on the area and sensitive local residents.

18. As a result despite the indication of some deterioration in groundwater quality, the Environment Agency does not consider at this stage that the potential environmental impact is sufficient to warrant the removal of any of the placed waste. The Environment Agency will therefore be requiring ongoing groundwater monitoring to be undertaken either by the operator or another party. The Environment Agency does not consider restoration of phases 3-6 should be delayed any further. However, the Agency has stated that any significant deterioration of future monitoring results may require some form of investigation into the future remediation of the site in phases 3-6.
19. In light of the recent groundwater modelling and risk assessment and the EA's relaxation of its precautionary stance, the County Council can now pursue final restoration. Details of how best to achieve this are currently under review but are expected to make use of materials already on site.
20. The EA has carried out its own prosecutions on this site. The Company was successfully prosecuted in 2006. A further prosecution culminated in a Trial by jury at Maidstone Crown Court between 26th February to 1st March 2007. My Technical Adviser gave background evidence to assist the case. The case unfortunately fell however on an evidential technicality.
21. The EA is keeping its legal options open. However, I have recently been informed by them of an important further twist in the case. The Insolvency Examiner has confirmed that Brasted Sand Pits Limited was wound up by the High Court on 11 July 2007. The significance is that an insolvent waste management licence holder is likely to be considered to have ceased to be "fit and proper", lacking the necessary funds to continue waste management work on site. That has implications for achieving the remaining restoration work.
22. I understand that the EA have requested that the insolvency examiner does not disown the licence as there is a need for ongoing monitoring. However, they do not know what potentially might happen. They apparently have no powers to prevent the licence lapsing if this is decided by the insolvency examiner, nor would they want to revoke the licence in this set of circumstances.
23. I shall clearly need detailed talks with the EA and the Insolvency Examiner on the planning restoration issue. However, it should be remembered that planning enforcement powers run with the land, so whoever owns the land at the point of any formal action holds a proportionate responsibility for meeting the obligations under the confirmed Enforcement Notice. If funding is an issue then ultimately the land could be sold to balance the cost. In this case, the County Council has the procedural option under a confirmed enforcement notice to take direct action to complete the restoration. However, that option in my opinion should only be entertained by Members if all other viable avenues have been exhausted. I shall update Members on any new material information at the Meeting.

Raspberry Hill, Park Farm, Iwade

Update on Planning Enforcement Issues

24. This case 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 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.
25. 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 has been drafted to be read alongside the Borough Notices.
26. The County Council's Enforcement Notice was also appealed, prompting the arranged hearing to be cancelled by the Planning Inspectorate in favour of a new 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 has ensured the most cost-effective and robust defence of the various Enforcement Notices.
27. 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. 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.
28. It is possible that the upheld Borough Council Notice given its impact on the appellants living arrangements and the potential precedent it might set will be appealed in the High Court on a point of law. Whilst awaiting the outcome of a potential High Court challenge, the land will 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. *Nevertheless, as a contingency, I would request 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.* In that event, I should look to the Borough Council and the EA to take an active evidential part in any proceedings.
29. There has been insufficient time at the point of drafting to give a full account of this

Update on Planning Enforcement Issues

important and welcome decision and its implications for other cases. Consequently, I shall prepare a fuller report for the next Meeting.

Live Cases – Enforcement Response Under Consideration

Ripley's Scrapyard, Tennyson Road, Ashford

30. 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 the necessary planning permission. In accordance with the Enforcement Protocol the operator was invited to submit a retrospective planning application. An application was eventually made and has been granted, subject to conditions under delegated powers. The scheme involves a wider rationalisation of the site and its use with several dilapidated buildings earmarked for demolition to be replaced by a new composite and better safeguarded building. The opportunity has been taken to update the existing permissions and to make them clearer and in that way more readily enforceable.

Naccolt Brickworks, Wye

31. This case concerns a site that had the benefit of a temporary planning permission until the end of 2006 for a local neighbourhood-recycling centre. I have reported a number of breaches of planning control at the site along with a number of breaches of other legislation to previous committees. I should stress however that in the context of the Planning Enforcement Protocol these on-site managerial problems represent a low priority in relation to other more serious cases, including large scale and potentially irreversible landscape damage. Furthermore I am not receiving complaints from local residents concerning the operation.
32. An application has been received to continue the use. There are some remaining validation issues which have yet to be resolved by the operator and his Planning Aid consultant. The current breaches will further need to be addressed within the context of the application. *I would therefore seek Members continued agreement to reserve the County Council's enforcement position until the outcome of the current application.*

150a Lower Hythe Street, Dartford

33. This case came to our attention via routine compliance monitoring at a permitted site. It concerns the unauthorised extension of a permitted small scale waste transfer site into an adjoining area (with lawful use for vehicle dismantling) and use of that land for storage of large quantities of both inert and degradable controlled waste.
34. Following a site visit in May 2006, the operator was required to remove the waste forthwith from the area in question and to cease using the area for waste storage and transfer. We reviewed compliance again in September 2006 and found that the situation at the site had not improved. The operator and landowner were informed that enforcement action would follow.
35. Meanwhile, it became apparent that the Environment Agency also had a number of compliance issues in relation to the site and we have worked closely with them. A joint meeting was held with the EA and the landowner in November 2006 to highlight the serious concerns of both Authorities regarding the lack of compliance. A site meeting was also held with the landowner and operator last December. The situation was very much improved and formal planning enforcement action was not considered expedient

Update on Planning Enforcement Issues

at that stage.

36. To update the position, a planning application for a new enclosed waste transfer facility was submitted but remained invalid and has now been returned. In the meanwhile the EA have maintained their own compliance checks and served appropriate notices to keep the level of waste in check. I shall now need to review the level of contravention at the site with the EA and whether any complementary planning action is required. *I would seek Member support for any proportionate action at the discretion of officers. Any action required would most probably involve in the first instance the service of breach of condition notices.*

F M Conway Site, Rochester Way, Dartford

37. Members may recall that this site had been developed for waste uses without the benefit of planning permission as the operator considered that the site benefited from permission(s) granted by Dartford Borough Council. The County Council did not share this view and a lengthy planning process has been pursued culminating in the granting of two planning permissions. The screening and crushing development currently on site is not however the approved scheme, which requires new, bespoke plant and mitigation measures. Given the circumstances of this case, the Committee previously resolved that the site be allowed to operate within the terms of an agreed working protocol pending the implementation of the recent permission for aggregate screening and crushing.
38. The works have been monitored against the protocol on an ad hoc basis. I have also investigated some complaints from local residents. The first related to a crane left on the site. This was found to be related to maintenance work and therefore not a breach of the protocol. The second complaint related to over stacking of stockpile heights. Upon investigation this was found to be in excess of the levels set out in the protocol and the operator took urgent steps to address the matter. A more recent and similar complaint has been received and investigated. The allegation was that the stockpile heights were being exceeded and a machine left on top in breach of the relevant planning permission. An intensification of site activities and dust and noise complaints were also made and sanctions demanded.
39. Firstly, there are a number of outstanding details to be submitted under the two operative planning permissions on site. A dust monitoring protocol and noise monitoring scheme were submitted in July 2007 to address the requirements of conditions 6 and 7 of planning permission DA/06/417. These submissions are currently being considered and, subject to being acceptable, would provide further means to assist in assessing potential adverse impacts and to secure appropriate mitigation.
40. On the latest site issue, an enforceable breach of the stockpile heights was not apparent from inspection. I am informed by the operator that the plant seen on the stockpile had broken down and could not be moved, it was subsequently vandalised, breaking all the windows and lights. It is now fixed and has been removed.
41. *I shall continue to monitor the site. Meanwhile, I shall consider the need for enforcement action should there be an unacceptable intensification of activity on site contrary to the current working protocols.*

Highview, Longfield Road, Meopham

Update on Planning Enforcement Issues

42. I previously reported to Members the refusal of two applications for a Certificate of Lawful Use (CLEUD) in connection with the use for storage of vehicles, vehicle parts, breaking / dismantling of vehicles, sale of vehicles and vehicle parts. The landowner / operator appealed against the latest refusal. An Inspector nominated by the Secretary of State was due to determine the Appeal following a Public Inquiry to be held at Culverstone Community Hall, Meopham on the 21st to 22nd August 2007. However, the appeal was withdrawn at a late stage, potentially in favour of a further lawful use application to Gravesham Borough Council.

43. The case is legally complex and in the meanwhile I have arranged for a barrister to advise both planning authorities jointly on planning enforcement options for the remaining alleged breaches and any lawful use issues on site. That helps to cover the 'cross-over' nature of the case and to ensure that a robust enforcement front is maintained. The site has also attracted the attention of the Environment Agency who has recently prosecuted the landowner / operator for waste related offences, which resulted in a guilty plea and fines amounting to £15,000 with £3,777 in costs. The action taken by the Environment Agency has resulted in a major clearance of the site. The EA have also consulted this Authority on the landowner / operator's application for a Waste Management Licence. I have entered an objection to the issuing of any such Licence in the absence of any planning basis for the use. *I shall keep Members informed on this case.*

Riverfield Fish Farm, Staplehurst

44. The Environment Agency has drawn the County Council's attention to the construction of an extension to the Riverfield Fish Farm, Staplehurst. The development has been granted planning permission by Maidstone Borough Council who have primary enforcement responsibility. The EA for their part have issued an exemption from site licensing to allow waste materials onto the land for construction purposes. However, the quality and quantities of waste materials arriving on site suggested to them that the scope of the original exemption was being exceeded. It was at this stage that a meeting was convened between Maidstone Borough Council, the EA and officers from my Group. The terms and conditions of the original planning permission were carefully scrutinised. On the face of the EA's site inspections it was apparent that there were breaches of the base permission.

45. Subsequent to the meeting, the Borough has taken Counsel's opinion on the alleged district breaches. This has now been received and the Borough is calling for a meeting with the County Council and the EA on 11 September 2007 to discuss its findings.

46. The EA under its own legal advice has apparently determined that on current evidence the works remain within the exemption criteria. However it is currently looking at compliance with the Reservoir Act and undertaking flood modeling work. The County Council has no immediate remit. For this Authority to have any locus, it would have to be conclusively demonstrated that there were a separate waste depositing use on site, unconnected with the need to construct the fish farm. If the site is allegedly being 'over-developed' with material the permitted contours and levels should be enforced under the Borough permission bringing a halt to any surplus materials which may be entering the site.

47. *Given the scale of the development and sensitivity of the site, I shall continue in dialogue with the Borough Council and the EA and assist where I can in terms of planning,*

Update on Planning Enforcement Issues

enforcement and technical advice. I shall also keep Members informed of any developments concerning the site.

Longton Wood, off A249 Detling Hill

48. I have previously informed members of the unauthorised importation and deposit of construction spoil on this site. The landowner / operator has been challenged and has ceased the activity. He is now required to remove the surplus material and to return the land to its original state. A Planning Contravention Notice has been drafted ready for service. This would be a precursor to the service of an Enforcement Notice (supported by a Temporary / Full Stop Notice as required) to assure reinstatement and protection for the land.
49. The site has been visited in the company of the Environment Agency who have been considering a prosecution against the landowner for waste related offences. The site has been monitored on a regular basis and no further breach has taken place.

Tutsham Farm, West Farleigh

50. I have previously advised this Committee of the unauthorised deposit of builder's waste (soil, stones, metal, plastic and kitchen appliances) on the southern bank of the River Medway. Investigation with the Environment Agency (EA) established that the land had been raised by several metres and that the EA were considering actions under the Environmental Protection Act 1990, especially given potential pollution to the River Medway. This was to include possible clearance of the site.
51. I earlier advised that the Environment Agency were taking the lead on this case but I had served a Planning Contravention Notice (requiring by statute, the submission of relevant information from the alleged contravenor) as a potential precursor to the service of an Enforcement Notice. The EA have continued their investigations of the landowner and the alleged waste related activities. Under this level of scrutiny, no further tipping has taken place, allowing attention to turn to the restoration of the affected field and the protection of surrounding land from similar damage. The EA have their own and immediate waste removal powers which they may wish to use, particularly given the close proximity of the River Medway. A confirmed Enforcement Notice would achieve the same result but would invariably involve a public inquiry.
52. On the basis that no further damage has occurred to the land, that the EA have carried out detailed investigations around the circumstances of the tipping and that they hold the powers to correct the land, that they maintain the enforcement lead on this particular case. That would reserve time for dealing with other enforcement priorities. *The option to serve an Enforcement Notice or Temporary Stop Notice to effect restoration (or halt any further breaches) should still be exercised if the EA is unable to achieve removal of the tipped material. On the more general protection of the wider landholding and notwithstanding the unchanged circumstances on site, Member's support is still sought for the further contingency of a court injunction should that prove necessary.*

Shepherds Farm, Lenham

53. A number of issues relating to non-compliance with the permitted scheme of working, plant details, slope stability and side slope profiles and the potential need for restoration materials to be imported to the site have previously been reported to the Regulation Committee. Whilst no complaints have been received, some of these matters are complex and potentially serious. Although revised plant details have been approved and

Update on Planning Enforcement Issues

hence resolved, discussions with Brett Aggregates on how the various issues can best be resolved are ongoing. It is understood that a planning application to address these matters is being prepared and will be made later this year.

Poll Hill Gypsy Site, Halstead, Sevenoaks

54. This case relates to the unauthorised deposit of a significant amount of spoil on land immediately north of the Poll Hill Gypsy site. Whilst no complaints are being received the site is a sensitive protected location within the Metropolitan Green Belt, an Area of Outstanding Natural Beauty (AONB), Special Landscape Area (SLA) and Ancient Woodland. The tipped land is within the ownership of the Highways Agency.
55. Investigation established that the site had a history of fly-tipping and burning which had resulted in the Fire Brigade being called out on regular occasions. In addition, smoke would travel across the neighbouring M25 creating a hazard for motorists. As a result, the Council's Gypsy Unit sought informal advice from the Environment Agency to over-tip the fly-tipped material and to create a barrier to prevent further tipping. No planning permission exists for the works, nor was advice sought from the Planning Applications Group before the works took place.
56. This Committee has been previously advised that the scale of works carried out appeared to be far in excess of that required to address the problem and that the works had been poorly engineered and are over-steep in places which may create future stability problems.
57. Members may recall that I advised that in order to prepare a resolution strategy for this case, further geo-technical information was required. Site investigation work identified the need for further work with regard to risk to groundwater, human health and landfill gas. This view was supported by the Environment Agency, whose role will be pivotal in resolving this case. A second investigative study highlighted the need for an additional bore hole to be sunk and further monitoring data. An additional borehole has been drilled and sample testing has taken place.
58. Analysis of the derived data has been undertaken and the findings submitted to this Authority. I have passed the report onto the Environment Agency and received an initial reply. No major concerns have been identified but some of the computer modelling will need to be re-worked and validated. Also, Sevenoaks Environmental Health Officer will need to be consulted on the data to cover some of the human health issues not covered by the EA. On completion of this second round of consultation and analysis a resolution strategy can then be developed with the Environment Agency. *I will keep Members informed accordingly.*

A20 Scrapyard, Rear of Airport Café, Main Road, Sellindge

59. I have previously refused to issue a Certificate of Lawful Development – Existing Development (CLUED) for the use of land for the purpose of storage and breaking of disused motor vehicles. Permission was refused on the basis that there was insufficient evidence to demonstrate that the use had been carried out on the site at the same scale and intensity for the minimum period of 10 years. A further submission is imminent. Meanwhile, *I am reviewing the County Council's enforcement options with regard to the site.*

Update on Planning Enforcement Issues**Four Gun Field, Upchurch**

60. This case concerns a waste related use on a former brickfield site, next to housing, on the Swale Borough/Medway Council border. The site benefits from a lawful use certificate for industrial uses. The Borough Council has an interest in terms of the industrial element and in enforcing a Noise Abatement Order, which pertains to the site. The County Council has a potential interest in relation to the waste elements. I am in close and on-going contact with the Borough Planning and Environmental Health Departments concerning the implications of any potential development that might take place under claimed cover of the Lawful Use Certificate. That includes a readiness to enforce under each authorities respective remit, should unauthorised and pre-emptive development occur on site.
61. There have been sporadic but temporary and minor uses of the site over the past 3-4 years, including the importation of some waste materials to the site. The Borough Council served a Section 215 (site clearance) Notice on the land to effect removal on amenity grounds. Unfortunately the basis for serving the Notice was successfully challenged at a hearing in Sittingbourne Magistrates Court on 12 May 2006.
62. Sporadic loads of apparent waste materials have since been brought to the site, then removed on a recurring basis. There appears to be little operational logic to this cyclical activity. I have referred the matter to the EA on each occasion, who are reserving their enforcement options.
63. Meanwhile, the County Council's planning position has been vigorously asserted through the assistance of Counsel. None of the imported materials to site have been processed and there would appear to be no immediate County remit. Nevertheless, the latest spate of activity is being closely watched on the possibility that the operator strays into the County Council's enforcement remit.
64. The land interests have separately made a proposal for housing on the land to the Examination in Public held last year into the Swale Borough Local Plan Development Framework. An outcome is awaited shortly.
65. *Given recent activities on site and as an ongoing contingency I would seek Member's continued support for the service of an Enforcement Notice, together with any required injunctive or joint action with the Borough Council under the advice of the County Solicitor and our retained barrister.*

Lime Kiln Wood, Wormshill, Sittingbourne

66. I have previously been alerted to tipping of largely inert construction waste in an area of woodland at this location. The Environment Agency had been taking the lead but the breach continued unabated. I therefore served a Planning Contravention Notice but found the landowner to be untraceable. In the interim, I arranged for the involvement of the Police given alleged vehicular irregularities. I also arranged for monitoring by the County Council's Environmental Crime Team, in an attempt to trace the responsible parties. This again proved inconclusive.
67. Eventually, I made contact with the apparent landowner and brought a halt to the tipping. I also arranged through Swale Borough Council for the service of a Tree Preservation Order on the undamaged parts of this Downland copse. Any damage to the protected trees carries a potential fine of up to £20,000 on conviction and is an effective tool to

Update on Planning Enforcement Issues

protect the site without the need for a lengthy planning appeal against an enforcement notice.

68. Tipping ceased but the alleged contravenors then began using the new and raised surface area for the stabling of horses and related development. The Borough Council served two Temporary Stop Notices to arrest the breaches. This prompted a planning application for "Change of use of the land for the keeping of horses and the erection of a stable block on a concrete base." This was refused and has been appealed. Meanwhile, 2 District Enforcement Notices to reverse the various breaches have been confirmed. A third against the presence of a wooden chalet-type structure on site was again appealed. Following a public inquiry on 17 August 2007, this latest Notice was upheld and the structure now has to be removed.
69. *To reinforce these actions and to secure eventual restoration to woodland the service of a County Council Enforcement Notice may be necessary.* Meanwhile, the Group's Planning Contravention Officer will help inspect the site with the other agencies and authorities to ensure that all available powers are being used to tackle any breaches and in particular damage to the remaining trees. If that is the case, joint evidence can be taken for possible prosecution under the Tree Preservation Order.

Addington Sandpit, Addington

70. A number of issues relating to non-compliance with the permitted working and restoration of the site have previously been reported to the Regulation Committee. The issues primarily relate to the need to address slope stability of the restored landform and the associated need to temporarily store silt and overburden materials in the base of part of the site which have delayed restoration on parts of the site. Despite submitting a new planning application for a northern extension to the site, which partially addresses some of these issues (TM/07/2545), Hanson has still failed to make the necessary submission(s) to address all of them. *Although these technical breaches are not attracting complaints and the matter is not a high category to resolve in terms of the Enforcement Protocol, determination of the new application would be premature whilst these issues are outstanding.*

Borough Green Sand Pit, Platt Industrial Estate, Borough Green

71. A number of complaints have been received from local residents living to the south of the site and main railway line about dust / windblown sand, noise and hours of working since May 2007. It is believed that the worst dust / windblown sand impacts have resulted from inert landfill / restoration operations in that south western part of the site closest to these properties during certain wind directions in periods of dry weather and the temporary failure of the operators' water bowser, exacerbated by the fact that large areas of the site remain to be fully restored and grassed. Officers have sought to minimise these impacts via discussions with the site operator (Borough Green Sand Pits Ltd) and a number of measures have been taken or are planned (e.g. improvements to water bowser and imminent grass seeding of parts of the site). The current planning permissions contain no specific noise limits and careful consideration will need to be given to noise issues in the context of the three planning applications currently being considered at the site (including a proposed northern extension – TM/07/512). The operator has also been reminded of the need to comply with the permitted hours of working and has given assurances on this.
72. A number of other complaints were received in March 2007 about HGV numbers using

Update on Planning Enforcement Issues

the site, the timing of such movements and mud, debris and dust impacts on the Platt Industrial Estate access road and its junction with the A20. These complaints were investigated, however, it was difficult to be certain where the problem originated as the same access road is used for the Clay Pit at Park Farm, Wrotham (Cemex) and various business users on the estate. Borough Green Sand Pits Ltd has measures in place to address potential mud, debris and dust issues (e.g. wheel wash and road sweeper) and has been reminded of the need to take any necessary measures to minimise impacts. Further monitoring is required to assess compliance with all the planning permissions at the site.

73. My Group has yet to examine weighbridge details to assess HGV numbers and there must therefore remain some doubt about compliance. The operator has been asked for this information in a recent letter. It is also possible that other non-quarry / restoration vehicles are using the site for storage / parking, and so forth. I shall need to consider these issues further prior to a Planning Applications Committee Members' Site Visit in September 2007 and reporting the applications to Planning Applications Committee.

Eaglesden Farm, Mill Street, Iden Green, Benenden

74. This case concerns the importation of builders waste & hardcore at a site located within the AONB. An inspection established that large volumes of waste materials had been tipped in a small valley not visible from the highway. The landowner was challenged and told to cease further operations pending a decision on restoration. No further disposal occurred. However, there has been a recent complaint of further tipping. This has been directed to the EA who have been taking action against the landowner and operator for the deposit of waste.
75. The alleged contravenor has already shaped the land to marry in with adjoining contours. However, a decision is required with the EA and with reference to the capacity of local roads on the level of removal of waste that may be required and practically achievable. I am working on that aspect at the moment, which will inform the restoration section of the Enforcement Notice. There is some sensitivity because the site is within a water gathering area.
76. *Given the alleged further tipping, I shall now give priority to the serving of an Enforcement Notice as a means to achieve restoration and permanent protection of the land and to support the stance of the EA.*

Chapel Lane, Lower Halstow

77. In this case, a large area of marshland to the north of Chapel Lane, Lower Halstow has been subjected to waste disposal through the importation and tipping of construction materials, including road planings. A joint investigation has been conducted with the Environment Agency.
78. A Land Registry search has identified the landowners. They have been notified in writing of this alleged breach of planning control and required to cease the importing of any further waste materials immediately. To establish further information the landowners were also served with a Planning Contravention Notice (PCN) in April 2007, requiring them to notify this Authority of the full circumstances surrounding this alleged breach. The Notice allows 21 days for a reply following which a formal visit to the site, in the presence of the landowners, will be arranged. There is provision within that time frame for a formal meeting between this authority and the alleged contravenor. Should the

Update on Planning Enforcement Issues

PCN not be properly replied to, the Authority would have the option of prosecuting the site operator. The PCN was answered in a fashion but the explanation was still vague and illogical in accounting for why the waste materials were tipped on the land in the first place.

79. *I have now instructed the landowners to remove all the deposited waste materials spread on the land to a permitted and licensed site. Should they fail to do so then I seek your endorsement to serve an Enforcement Notice to secure restoration. Clearly, if tipping resumes 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.*

Church Marshes, Sittingbourne

80. This case concerns Swale Borough Council's Country Park development on the former Church Marshes Landfill site. The project itself is of course supported by the County Council as a new community facility. In its construction however, I have received reports and witnessed a mobile stone crushing machine being used. It has been established that concrete beams rejected by a local manufacturer, Supreme Concrete have been crushed and recycled on the site to lay footpaths.
81. Whilst the re-use and recycling of reject beams is welcomed in principle, the activity however requires planning permission. I am seeking confirmation from the Borough Council but my understanding is that the planning permission granted by them for the Country Park does not include stone crushing activities on-site. Should that be the case, permission would be required from the County Council as a discrete waste management activity. This becomes particularly important, given that the County Council has already had to take planning enforcement action against the unauthorised storage and crushing of concrete beams from the same source at Deacons site on the Eurolink Estate, Sittingbourne and Woodgers Wharf, Upchurch. Members will appreciate that a consistent and even-handed approach is one of the cornerstones of the County Council's Enforcement Protocol.
82. *Enquiries continue on the planning status of the stone-crushing activity. A joint site meeting with the EA is also planned. Should the activity be confirmed as unauthorised I should require it to cease, pending the outcome of any planning application for the (temporary) use.*

Preston Depot, Canterbury Road, Faversham

83. This is a site which had the benefit of a permission for the 'temporary use of land for recycling aggregates from waste material' but which has recently expired. The permission requires the site to be cleared of related stockpiles and plant and machinery at expiry. The applicant's contractor Ringway Highway Services Ltd (KCC Transport Operations) had been working outside the extent of the planning permission area and appeared to be more intensive than as approved. The applicant is aware of the apparent breach and is in the process of preparing to submit an application for permanent permission shortly. The operator of the site has been reminded that it is their responsibility to comply with the requirements of the planning permission, and any other legislation that is relevant to the activities undertaken at the site and advised that the appropriate planning permission needs to be in place for any continuation of waste processing activities at the site.

Update on Planning Enforcement Issues

Waste Water Treatment Works, Reading Street, Tenterden

84. Permission has been granted (AS/04/2009) for an upgrading to Reading Street, Waste Water Treatment Works. A condition required the submission of a landscaping scheme, which is now overdue. I have required this to be urgently addressed by Southern Water Services, who recognise the breach and has commissioned Kent Landscape Services to produce the programme. A meeting has been arranged on site to finalise the content of the required scheme.

Waste Water Treatment related kiosk, Spitalfield Lane, off Lydd Road, New Romney

85. As part of the New Romney and Greatness-On-Sea Waste Water Treatment Scheme, a control kiosk has been installed, near to housing. However, acting on complaints it has been established that the facility is slightly larger than permitted and not strictly in accordance with the permitted location. The difference is marginal but has to be fully addressed. Southern Water Services again accept the breaches and are proposing a landscape scheme as the best practical solution. That is currently being assessed. *I shall keep Members informed on the case.*

Ash Cartwright and Kelsey Primary School

86. This case concerns non-compliance with a Planning Applications Committee refusal back in February this year. A retrospective planning application (DO/06/1424) was received in November 2006 for an earth mound and slide at Ash Cartwright and Kelsey Primary School. The School has recently enjoyed a complete new-build and was subsequently opened in 2005. As part of the excavations of the new school buildings, spoil was deposited on the south-western corner of the site and has since been formed into a mound with a slide down one side. The development currently sits adjacent to residential property gardens, and for reasons of its scale, massing and visual intrusion, was refused planning permission at the Planning Applications Committee on 15 February 2007.
87. Following a refusal notice the applicants have been advised of the requirement to remove the unauthorised development from the site, but despite numerous attempts have failed to provide any details stating their intentions to remove this development. *I shall inform them of my reporting this matter to you and try one last time for their commitment to comply, before the Meeting. Should they not do so the County Council's internal enforcement procedure will need to be invoked.*

Chalkwell Farm, Lydden

88. This case 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 planning history attracting 3 Enforcement Notices from that Authority. In summary, I am informed that the following breaches remain to be complied with:
- Conditions relating to the erection of a farm building and construction of an access road and the requirement to demolish the building and remove the road;
 - The use of the land for storage of equipment associated with equestrian events;
 - The creation of an earth bund and access road.
89. The District Council was particularly concerned about the content of the bund and whether contaminants might be present, concrete rubble and builders' waste was being

Update on Planning Enforcement Issues

stored on part of the site and that there were two mobile homes, apparently used for residential purposes, with a cesspool under construction nearby. Nevertheless, competing with other Borough priorities the issues on site have been left largely unresolved. I am still awaiting details of the various notices, which could prove crucial to any subsequent action.

90. Addressing the current set of breaches, I have identified the landowner and operator through a Land Registry search. Both have been instructed in writing to cease the unauthorised waste related activities. However, their Agent maintains that an Exemption from the Waste Management Licensing Regulations currently registered with the Environment Agency precludes any need to seek planning permission from the County Council. That is wrong in law, since the need for planning permission presides over all other legislation. This has been explained to the agent on numerous occasions.
91. The Environment Agency has carried out investigations on the site. It advised in early September that whilst the material and quantities appear to be acceptable under the Exemption to the Waste Management Licence, as the end use to which the material is being put is neither for agricultural or ecological improvement benefit the terms of the exemption are being breached. As a result the site's exemption is to be de-registered by the Environment Agency. Dialogue between the operator and the Environment Agency have indicated that the material will be removed and disposed of legitimately.
92. In view of the lack of response from the landowner and site operator this Authority served a Planning Contravention Notice on them on 24 August 2007 to establish what actual uses are taking place on the land. They are under remit to reply by the 14 September or be liable to prosecution in the Magistrates Court. That has provoked a short reply from the landowner of 2 years. She claims that the materials left from previous contraventions have been gathered together and crushing has been used to ready the material for export off-site. The EA Exemption is quoted (incorrectly) as giving legitimacy to the activity, a common ploy in County Council enforcement cases.
93. Quoting the landowner: *"This is a one-off operation and if we have breached any planning laws we apologise. We have now ceased the crushing operation, and the excavator/loading shovel has been taken away, unfortunately the crusher has a major mechanical fault, and as soon as this can be rectified this machine will also be removed from the site."*
94. If that is the case, it is welcome news. *Nevertheless, should the alleged breach resume, your endorsement is sought to serve a Temporary Stop Notice. Similarly, should the breach persist, an Enforcement Notice, followed by a further Temporary Stop Notice if necessary.*
95. To complete the case, I intend to carry out a detailed site inspection with Dover District Council, in order to finally resolve all remaining breaches.

Dartford Gun Club, Dartford Marshes

96. In 2003 this site was the subject of enforcement action following the breach of a confirmed County Council Enforcement Notice, originally served in 1987. Waste materials were being imported and deposited to raise the land in order to enhance the facilities of the permitted Gun Club. At the time the landowner claimed that he was carrying out the action to comply with restoration terms of the Enforcement Notice. That

Update on Planning Enforcement Issues

was challenged and the breach was finally resolved on an informal basis with the removal of waste materials to the satisfaction of the County Council.

97. In 2006, without referral to this Authority, Dartford Borough Council refused an application for a Lawful Development Certificate submitted by the landowner to extend the existing footprint of the Gun Club. On refusal they served an Enforcement Notice on the landowner to prevent the extended footprint being used for sport shooting. The landowner appealed against both the refusal of the Lawful Development Certificate and the service of an Enforcement Notice. The Appeal was upheld and the Enforcement Notice quashed. The Inspector appointed by the Secretary of State granted a Certificate of Lawful Use to extend the footprint of the existing gun club.
98. Dartford Borough Council have now notified this Authority that waste materials are again being imported and deposited on the land in the form of a large earthbund. The claimed reason is to screen the activities of the Gun Club members from public view. Members of the public walking along the high ground of the river embankment to the north of the site were apparently alarmed to discover that they were in the 'firing line' of the shooters targeting clay pigeons. This equally and apparently proved a distraction to the Gun Club members firing at these targets, as members of the public appeared to be in the line of fire.
99. The importation and depositing of waste materials on the land is an apparent and direct breach of the County Council's confirmed Enforcement Notice. The landowner, when challenged, has denied this believing that the recent Borough Council related appeal decision offers sufficient grounds to overcome the terms of the confirmed 1987 Enforcement Notice.
100. *Whilst I refute that argument and consider that the Notice has been breached to an extent which warrants enforcement action, I am first seeking Counsel's opinion. In the event of a positive response from Counsel I would seek your approval to progress the case to the Magistrates Court to prosecute the landowner if this action is considered appropriate or to serve a Temporary Stop Notice or seek Injunctive relief to arrest any further alleged breach of the Notice.*
101. The EA have been conducting their own investigations and have I understand traced some of the imported material to source and otherwise challenged the waste inputs.

Aylesford Waste Water Treatment Works

102. A complaint has been received from Aylesford Parish Council concerning apparent works to the recycling plant at Aylesford Waste Water Treatment Works. The need for planning permission is queried and the attendant and potential increase in lorry movements through Eccles.
103. I am researching the position with Southern Water but I would make the initial point that waste water treatment works enjoy extensive permitted development rights in terms of meeting their operational duties. The works described would seem to fit into that category. Nevertheless I shall confirm the planning status as soon as possible.

Resolved Cases:

Update on Planning Enforcement Issues

104. Complaints relating to breaches of planning control at the following sites have been investigated and are now resolved.

St Edmund's School, Old Charlton Road, Dover

105. Members may recall that construction work on a business resource centre for the school was not carried out in accordance with planning permission reference DO/05/729. Investigation established that due to a setting out error, the works were some 3m closer to residential properties than permitted. I have previously advised that several neighbours remained aggrieved at the breach of planning control and were pursuing the matter via formal complaint procedures. The Local Government Ombudsman has now responded to 5 individual residents and I understand that he is considering offering them some modest financial compensation. Indications from the Ombudsman suggest payment of £750 to one resident and £300 to 4 other residents. The County Council is recommended to meet 2/3 of the compensation costs with Dover District Council meeting the remaining 1/3. Education have agreed to meet the costs.

106. In particular, whilst the Ombudsman found no fault with the planning procedures followed on this particular case, he was concerned with the length of time it took for the developers to stop the construction work once the breach was identified and pending the outcome of the planning application seeking to remedy the siting discrepancy. Instigating formal enforcement action against the County Council is not possible by the County Planning Authority because it is the same legal entity. However, the Ombudsman queried whether there were other enforcement tools such as a breach of condition notice that could have been used by the Planning Authority to halt the works sooner. This is a matter upon which I am seeking Legal advice on, and on which I will advise this Committee further should any such powers be identified.

107. In addition, the Ombudsman recommended that the County Council review its procedures for dealing with breaches of planning control when the Council is the applicant and planning authority to prevent similar problems occurring again. Once Legal has clarified on the scope of enforcement tools available, the County Council's current protocol for addressing breaches of planning control for County Council development will need to be reviewed. Given the importance for potentially other cases, I will report this matter to a future meeting.

Down Barton Road, St Nicholas at Wade, Margate

108. In April 2007 it was reported by Thanet District Council that waste materials were being imported and tipped on to agricultural land north of Down Barton Road, St Nicholas at Wade. The land had been screened by large earthbunds and a large pit had been dug for the burning of imported waste materials.

109. I arranged for the site to be visited and it was established that a small area of land, about 150m x 40m, had been screened by scraping the existing surface to form unengineered linear earthbunds. The intention being to screen the alleged unauthorised activities taking place within. The area included 4 large containers, vehicles, plant and stored building merchant supplies. There were also two small loads of tipped hardcore and subsoil. There was no evidence of any waste processing or major waste-disposal taking place. A large hole had been excavated for burning activities & contained metal radiators, which appear to have been discarded following building works in the local vicinity. The District Council were advised to bring the burning to the attention of their own Environmental Health Officer and the Environment Agency, as they hold the

Update on Planning Enforcement Issues

necessary enforcement powers for this type of activity.

110. It was apparent that the primary use of the site appeared to relate to a business use comprising groundworks and a builder's merchant and as such any enforcement would in my view fall to the District, as would the large earthbunds which were clearly an engineering activity integral to the site.
111. Thanet District Council has been advised of these findings and has agreed to take any further enforcement action to help remedy the breaches.

Pearsons Sand pit, Addington Lane, Trottiscliffe

112. This site is a former sand quarry, which has since been fully worked out. It is located in the Metropolitan Green Belt, Area of Outstanding Natural Beauty and Special Landscape Area, subject to which development plan policies seek to protect the interests of such areas in the long term. Under the terms of previous planning permissions, provision was made for the importation of waste materials upon completion of extraction in order to secure restoration back to original levels with the final reinstatement of the site to agriculture.
113. I have informed Members at previous meetings on progress towards securing final restoration of this site. Remaining plant has now been relocated off-site, the weighbridge has been dismantled and part of the internal site access road has been removed as agreed. The operator has also had aspirations to use adjoining restored land to erect a stable block for horses. This would need permission from Tonbridge & Malling Borough Council and amendments to the County Council permission for retention of the access and an existing storage building.
114. Permission for downgrading of the access and related development has been refused on the grounds of inappropriate development in the Green Belt and an Area of Outstanding Natural Beauty. In addition, the applicant had failed to demonstrate the special circumstances necessary to override the presumption against permitting such a proposal at this location. Since that time, the applicant has intimated that a further application may be submitted in due course, attempting to address the grounds of refusal. As yet, this has not been submitted. I shall continue to keep Members informed on progress.

Meadows School, London Road, Southborough

115. The January Planning Applications Committee granted retrospective permission (TW/06/3473) for the widening of an existing access road and the addition of a pedestrian pathway. The access serves a Children's centre and the Meadows School. The site lies within the Southborough Conservation Area and affects Southborough Common. Final specifications for the road are expected to be submitted shortly to meet the requirements of the Planning Applications Committee. Once received, I intend on that basis to now remove the case from these papers.

Barton Court Grammar and Chaucer Technology Schools, Canterbury

116. Planning permission was granted on 17 May 2007 for the erection of fencing around the shared school playing field following negotiations on the appropriate fencing style and alignment along Pilgrims Way. The fencing is currently being erected around the site, and is soon due to be completed in accordance with the approved plans.

Update on Planning Enforcement Issues**Stanford Bridge Farm, Pluckley**

117. Alleged waste management activities at this site continue to be brought to my attention by nearby local residents. There is an Ashford Borough Council planning permission for use of a yard for agricultural contracting purposes. There are concerns that this has developed into general contracting, which the Borough Council have been investigating as a District Matter. The Environment Agency has also been investigating the alleged movement of waste materials on and off the site. A stockpile of inert waste has also been crushed and retained on site, awaiting the outcome of a district application for an internal track.
118. A meeting has been held between the Borough Council, the EA and the County Council, in the presence of representatives from nearby residents. This reviewed the range and intensity of activities at the site. A watching brief has been maintained by all parties in order to unravel the planning and Waste Management Licence status of each element occurring on site. Objections from nearby local residents concerning increased site activity and alleged waste management have continued on a regular basis.
119. I have written to the landowner / operator on the County Council's behalf who maintains that the activities fall within the scope of his planning permission and that the inert waste was generated from developments within the site. To back this up, the site has also been inspected on an unannounced basis. No 'County Matter' breach was found. I have also been assured by the landowner / operator that although he holds a planning permission at Ridham, near Sittingbourne for an inert recycling and composting permission, related activities are not and would not take place at his Pluckley location.
120. In my opinion and on the available evidence the case remains a district matter. Ashford Borough Council for their part has now concluded that no material breach of the planning permission on site is occurring. However, they and the EA will maintain a monitoring presence. I see no further issues for the County Council to address at this site, apart from ensuring that the crushed material is re-used or properly dispensed with.

Dunbrick Composting Facility, Sundridge, Sevenoaks

121. A complaint was received from a local resident living at Chipstead in June 2007 and again in July 2007 about odour from the composting facility. Since the Environment Agency is best placed to take action on odour under the waste management licence, it was informed appropriately and undertook its own investigations. The complainant was additionally asked to call the Environment Agency to log a formal complaint and was happy to do so. No further complaints have been received since July 2007.

Leydenhatch Lane, Swanley

122. A visit has been made to this site following reports made by the Environment Agency that unauthorised waste materials are being stockpiled on the land.
123. The County Council has granted no planning permission to this site, which is operated by a local haulage company. Research has established that in the early 1990s, Sevenoaks District Council served an Enforcement Notice on the land. Following complaints from local residents regarding noise, dust and odour the apparent aim of the Notice was to regularise the land uses. Its terms permit the north of the site to stockpile waste materials for use in the preparation of topsoil and compost. Any breach of these terms of the confirmed Enforcement Notice would fall to Sevenoaks District Council to deal with.

Update on Planning Enforcement Issues

124. In this case I shall defer to Sevenoaks District Council as the lead planning enforcement Authority.

Red Lion Wharf, Northfleet

125. A report was received from Gravesham Borough Council that an unauthorised wood recycling operation was taking place at the former power station site at Red Lion Wharf. The activity was described as old timber being brought on to the site to be shredded and then moved onwards. The site operator claimed to have obtained an appropriate licence from SEEDA but was operating under the auspices of an Environment Agency Waste Management Licence granted to British Nuralite, Canal Rd, Higham.

126. On inspection, small deposits of shredded wood were stockpiled on the site. There was no evidence of any waste processing through shredding taking place at the time of the visit. The site has been acquired by SEEDA as part of their project - *'Working in partnership to regenerate the Thames Gateway'*. The Wharf is a large area and this particular site is only a small parcel of land under the sponsorship of SEEDA.

127. The operator of the shredding activity advised me that wood and timber was being shredded by a mobile shredder and then stored on the site in preparation for its export to Belgium. I advised him that this required planning permission from the County Council as the Waste Planning Authority. Following this the operator agreed to cease the shredding activities immediately as he has access to authorised facilities located elsewhere. However, he will still continue to store shredded wood on the site to facilitate his export business. As this use falls within the remit of Gravesham Borough Council he was steered to them for planning advice.

Parkgate Business Centre Park, Tenterden

128. Ashford Borough Council reported that plastic was being recycled at this location, without planning permission. The site is located in a rural location and well screened from public view. A number of small businesses rent ex-farm outbuildings in the working farmyard of Parkgate Farm.

129. It was established on inspection that no mechanical device or machine was in use to recycle plastic products and it is apparent that a small amount of plastic materials in their original form were being stored in sacks before being sent to an appropriate waste recycling facility.

130. There is insufficient waste related activity to warrant the attention of the County Council and I intend to refer the case back to Ashford Borough Council.

Fre Mel Farm, Offham, West Malling

131. KCC Environmental Crime Team notified me that Tonbridge and Malling Borough Council had reported potential contraventions to them. The allegation was that car breaking and waste disposal was being carried out at this site whilst a commercial vehicle business activity was taking place at the alleged contravenor's residential address in Mereworth.

132. No relevant planning permissions are in place for this site. I found an unauthorised hardstanding on site but there was no evidence of any waste processing. A small amount of waste had been generated from the unauthorised operational development

Update on Planning Enforcement Issues

but this would fall to Tonbridge and Malling Borough Council to handle in the form of incidental development. The enforcement of any unauthorised business use at a place of residence would also fall to the Borough Council. I intend to take no further action.

Workhouse Quarry, Ryarsh

133. A number of complaints were received from local residents and via Mrs S Hohler, the Local Member for the Ryarsh area, in relation to current restoration activities at this former sand quarry. Reports were received that the operators had, on one occasion, been operating outside of the permitted hours. In addition, further concerns were raised that they were 'excavating' in an area which falls outside the planning permission boundary (permitted under planning ref: TM/04/2028), referred to hereafter as the 'top field' along with the establishment of a large soil stockpile.

134. With regard to the hours of operation, the operator was reminded of the permitted hours, i.e. between 0700 hours and 1800 hours on Monday to Friday and between 0700 hours and 1300 hours on Saturdays, with no works permitted on site on Saturday afternoons, Sundays or Bank Holidays. I have received a response from the operator, reassuring me that this was a one-off event and that permitted working hours would be observed in future.

135. With regard to complaints associated with reported excavations and the large soil stockpile being stored outside the permitted planning permission boundary, officers visited the site to fully establish whether any breach of planning control had taken place. Following the visit, it was ascertained that phases 2 and 3 were being progressively restored in accordance with the planning consent. Following its restoration, the operator was removing an existing topsoil bund located behind Chapel Close in order to relocate it to the western side of the restored phases to provide continued screening of infill activities in the remainder of the site. All in accordance with the approved restoration and phasing scheme.

136. However, in order to improve the overall appearance of the restored section of the site, some re-grading works were also taking place in the 'top field', immediately adjoining the permitted site boundary. However, given the field in question falls within the control of Gallagher Aggregates Limited, I am satisfied that regrading for agricultural purposes falls within their permitted development rights and in my opinion represented an overall improvement to the sites natural contours. The only element which lead to any breach on site was the storage of a small amount of the topsoil taken from the original bund (to the rear of Chapel Close) which was temporarily stored in the stockpile located in the 'top field' and which fell outside the planning permission boundary, before regrading took place.

137. Having regard to the County Councils 'Planning Enforcement Protocol' and given in this particular case, the volume of topsoil included in the stockpile, was a relatively minor amount, the matter was quickly resolved through negotiation between the County Council and the operator. I am therefore satisfied that significant progress has been made towards restoration on this site in accordance with their approved plans and that no further action is required. Progress on site, in accordance with the planning permission, will continue to be monitored.

Monitoring of permitted sites and update on chargeable monitoring

138. Since the last committee report and up to 31st August 2007, a further 24 formal monitoring visits have been carried out of which 16 were chargeable monitoring visits.

Update on Planning Enforcement Issues

139. Since the introduction of the regime, we have continued to implement the chargeable monitoring regime and have now carried out a total of 33 chargeable visits to mineral and landfill sites. Visits have generally been carried out by the Case Officer for the site, together with the Site Compliance Officer.
140. We now need to continue monitoring of sites to ensure that we complete the first chargeable visit to all of the sites subject to chargeable monitoring at least once. Progress is limited by lack of Case Officer resource available given other core work. There continues to be insufficient resource to carry out the work, and whilst this situation continues we are unable to carry out the level of monitoring expected by the Government in their good practice guidance.
141. The regime requires us to agree in advance with a site operator a chargeable monitoring frequency for their site for a 12-month period. This means that we are agreeing a visit frequency when we do not have the resources to carry out the frequency of visits. It has become apparent that a significant review of the way in which we had originally intended to implement chargeable monitoring is required if there continues to be insufficient resource to carry out the work. The review needs also to look at how we monitor across the range of sites that we have, with the resources available to do the work. We intend to carry out this review prior to 31st March 2008.
142. Our monitoring to date has indicated that a variety of issues arise from our routine monitoring, each of which can be addressed in a number of ways. It is apparent, that we need to further develop the monitoring and enforcement protocol specifically in relation to our formal chargeable monitoring at permitted sites such that appropriate formal responses are used. We intend to carry out this review prior to 31st March 2008.

Resolved or mainly resolved cases requiring monitoring

143. 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. The cases are being removed from the reporting lists on the understanding that officers will keep them under review. Any reoccurrence will be reported back.
144. 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
145. I intend to transfer the list of sites onto an appropriate database, on an annual basis.

Working protocols with the Environment Agency

146. The Committee has previously endorsed the development of better working protocols between the County Council and the Environment Agency with regard to its enforcement

Update on Planning Enforcement Issues

work. Close dialogue with the Environment Agency has ensued including a workshop attended by officers from both regulatory functions to consider a range of issues and an agreement to meet on a bi-monthly basis 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. These emerging protocols, including assistance from the EA in drafting these papers, is developing.

147. A residual issue of concern and one, which I am seeking further advice from the EA upon, is whether under the new set of regulations, *exemptions* from waste management licensing can still be issued in the absence of planning permission? The companion question is whether existing *exemptions* can be de-registered in the knowledge that planning permission was originally required for the activity. I have had very useful discussions on the subject with EA officers but now need the definitive position for operational reasons. I shall report to the next Meeting on my findings. At the more general level, the EA have been sharing their available data on *exemptions* which has proved most helpful and presents an example of the way shared working can bring enforcement dividends.

Summary

148. Since May, progress has been made on a number of complex enforcement cases including the successful appeal outcome at the Raspberry Hill, Iwade public inquiry and negotiations leading to the withdrawal of the appeal at Highview, Meopham. Where possible we continue to resolve cases without the need for formal action. We have had a number of successes halting unauthorised waste disposal activities by negotiation, although Enforcement Notices are still required in some cases to restore sites and afford long term protection. 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

149. I RECOMMEND that MEMBERS

- (i) ENDORSE the actions taken or contemplated on the respective cases and monitoring work set out in paragraphs 4 - 145 above and note the work towards establishing working protocols with the Environment Agency as outlined under paragraphs 146 to 147.

Case Officer: Robin Gregory 01622 221067
Background Documents: see heading

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

Agenda Item 9

Document is Restricted

This page is intentionally left blank

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

Agenda Item 10

Document is Restricted

This page is intentionally left blank