



## AGENDA

### REGULATION COMMITTEE

**Tuesday, 22nd May, 2007, at 10.00 am**  
**Medway Room, Sessions House, County**  
**Hall, Maidstone**

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. Minutes (Pages 1 - 6)
  - (a) Committee: 23 January 2007
  - (b) Committee: 17 May 2007
  - (c) Member Panel: 30 April 2007
3. Gating Orders (Pages 7 - 36)
4. Update on Planning Enforcement Issues (Pages 37 - 56)
5. Other Items which the Chairman decides are Urgent
6. 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.

7. Update on Planning Enforcement issues at Deal field Shaw, Charing (Pages 57 - 60)
8. Update on Planning Enforcement issues at Woodgers Wharf, Upchurch (Pages 61 - 64)

#### **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 May 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**

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**REGULATION COMMITTEE**

MINUTES of a meeting of the Regulation Committee held at Sessions House, County Hall, Maidstone on Tuesday, 23 January 2007.

PRESENT: Mrs P A V Stockell (Chairman), Mr A D Crowther (Vice-Chairman), Mr T J Birkett, Mr A H T Bowles, Mr C J Capon, Mr J Curwood, Mr J A Davies, Mr J B O Fullarton, Mr M J Harrison, Mr C Hart, Mr I T N Jones, DL, Mr R A Pascoe, Mr K Sansum, Mr C T Wells and Mr B P Wood.

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

**UNRESTRICTED ITEMS**

**1. Membership**

The Committee noted the appointment of Mr M J Harrison in place of Mr T Gates.

**2. Minutes**

(1) In respect of Minute 23 (11)(b), the Acting Head of Planning Applications Group reported that improved joint working with the Environment Agency was already taking place and that an agreement would be reported to the next meeting of the Committee.

(2) In respect of Minute 23 (1)(d), the Acting Head of Planning Applications Group reported an assurance that future training for Magistrates would incorporate the question of breaches of planning control. This matter would also be an agenda item at the next meeting of the Justice Board.

(3) The Committee noted that the date of this meeting had been bought forward by 7 days to avoid a clash with a meeting of the Corporate Policy Overview Committees.

(4) RESOLVED that the Minutes of the meetings of the Committee held on 19 September 2006 and of the Member Panel held on 30 November 2006 are correctly recorded and that they be signed by the Chairman.

**3. Update on Planning Enforcement Issues**

*(Item 3 – report by Acting Head of Planning Applications Group)*

RESOLVED to:-

(a) endorse the actions taken or contemplated on the respective cases set out in paragraphs 5 to 97 and paragraphs 101 to 109 of the report and to note the work towards establishing working protocols with the Environment Agency as outlined in paragraph 112 of the report;

(b) endorse the actions set out in paragraphs 96 to 100 of the report concerning Pearsons Sand Pit, Trottiscliffe and to note that this is a live case with an enforcement response under consideration; and

(c) request that a letter be sent to the Environment Agency on behalf of the Committee expressing its appreciation for the contribution of the Agency towards enhanced working arrangements.

## **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)*

#### **4. Update on Planning Enforcement Issues at Deal Field Shaw, Charing** *(Item 7 – Report by Acting Head of Planning Applications Group)*

(1) The Acting Head of Planning Applications Group reported the latest enforcement position concerning the Shaw Grange former landfill site, Charing.

(2) The Committee noted that the date in paragraph 3 of the report should read 15 December 2006.

(3) RESOLVED that the enforcement strategy and actions be endorsed as outlined in paragraph 5 to 8 of the report.

#### **5. Update on Planning Enforcement Issues at Woodgers Wharf, Upchurch** *(Item 8 – Report by Acting Head of Planning Applications Group)*

(1) The Acting Head of Planning Application Group reported the latest enforcement position concerning the Woodgers Wharf site, Upchurch.

(2) RESOLVED that the enforcement strategy be endorsed as outlined in paragraphs 4 to 8 of the report.

## KENT COUNTY COUNCIL

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### REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held at Sessions House, County Hall, Maidstone on Thursday, 17 May 2007.

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

IN ATTENDANCE: The Democratic Services Manager, Mrs M Cooper.

#### UNRESTRICTED ITEMS

##### 6. Membership

The Committee noted the appointments of Mr F Wood-Brignall and Mr L Christie in place of Mr L B Ridings and Mr K Sansum respectively.

##### 7. Election of Chairman

Mr A R Bassam moved Mr J A Davies seconded Mr M J Harrison be elected as Chairman of the Committee.

*Carried*

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# KENT COUNTY COUNCIL

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## REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held at Sessions House, County Hall, Maidstone on 30 April 2007.

PRESENT: Mrs P A V Stockell (Chairman), Mr J A Davies, Mr I T N Jones and Mr R A Pascoe.

ALSO PRESENT: Mr M J Harrison.

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

#### **1. Application to register a Town or Village Green at Grasmere Pastures, Whitstable.**

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

*(Mr M J Harrison was present for this item pursuant to Committee Procedure Rule 2.24 and spoke)*

(1) A site visit Grasmere Pastures, Whitstable took place prior to the meeting. It was attended by Mr P Watkins of Kitewood Estates Ltd and Mr N Sands (tenant) and by the Local Members, Mr M C Dance and Mr M J Harrison.

(2) Mr J Spencer and Mrs E Watkins from the Grasmere Pastures Action Group spoke as representatives the applicants. Mr P Watkins of Kitewood Estates and Mr M Lewer of O V Prestland (the landowner) spoke in opposition.

(3) Mr J A Davies moved, seconded by Mr R A Pascoe that the recommendations set out in Paragraph 33 of the report be adopted.

*Carried unanimously*

(4) RESOLVED that the application to register the land at Grasmere Pastures, Whitstable be refused and that the applicant be informed accordingly.

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**Item 3**

By: Director, Environment and Waste  
To: Regulation Committee – 22 May 2007  
SUBJECT: GATING ORDERS  
CLASSIFICATION: Unrestricted

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SUMMARY: A report establishing County Council policy and practice for the making of Gating Orders and the potential resource implications.

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**Background**

1. (1) On the 1<sup>st</sup> April 2006 the Highways Act 1980 (Gating Orders)(England) Regulations 2006 came into force. The regulations brought into effect additional powers for the Highway Authority to make and revoke gating orders for a highway in order to prevent crime or antisocial behaviour on or adjacent to the highway.

(2) On the 17 May 2007 the County Council delegated the power to make, vary or revoke Gating Orders to the Managing Director of Environment and Regeneration. The terms of reference of the Regulation Committee were amended to include the making, variation or revocation of Gating Orders in circumstances where substantive objections have been received.

(3) The technical report (Appendix 1) sets out in greater detail the extent of the new power and a number of operational matters to be addressed to ensure its effective administration. The report also makes an initial assessment of the likely resource implications associated with the administration of the new powers which Members are asked to note.

**Recommendations**

2. Members are asked to note the following operational proposals for dealing with applications to make, vary or revoke Gating Orders:

- (a) Gating Orders that meet all of the necessary legislative criteria and are brought forward with the support and assistance of the Local Crime Reduction Partnerships will be sympathetically considered;
- (b) Gating Orders will be limited in extent to that which is necessary to address the problem, i.e. public use will as far as is possible be retained;

- (c) a review period will be set for any Gating Order made and is recorded with the Gating Order in the Register of Gating Orders;
- (d) consultation will as a matter of policy include all those organisations prescribed by legislation to receive copies of path orders;
- (e) representations will be invited from other individuals and bodies who wish to be notified of proposed Orders;
- (f) Planning Inspectorate Inspectors will be appointed to hear any Gating Order Public Inquiries; and
- (g) the resource impacts of Gating Orders will be kept under review and activity in this area will be limited to that which can be met within existing budget allocations.

*Background documents: None*

**Contact Officers:**

Graham Rusling	01622 69 6995
Alan Ash	01622 22 1392

## TECHNICAL REPORT

**Introduction.** On the 1<sup>st</sup> April 2006 the Highways Act 1980 (Gating Orders)(England) Regulations 2006 came into force. The regulations brought into effect additional powers for the Highway Authority to make and revoke gating orders for a highway in order to prevent crime or antisocial behaviour on or adjacent to the highway.

**Background:** Powers to divert or extinguish public highway rights for the purposes of crime prevention were first introduced in the Countryside and Rights of Way Act 2000. The powers could only be exercised in areas designated for the purposes of crime prevention by the Secretary of State or on school premises and were viewed as a measure of last resort. Any diversion or extinguishment using the powers was irrevocable. In effect the installation of alleygates on public highways was almost impossible to achieve lawfully within the legislative framework available.

Many of those schemes carried out nationally, despite having been demonstrated to reduce crime and improve the quality of life of residents, would not stand up to legal scrutiny. They may leave the relevant authorities open to challenge in the courts, through the Local Government Ombudsman or to complaint to the Audit Commission.

The new powers introduced under the Clean Neighbourhoods and Environment Act 2005 (appendix 2), and brought into effect by regulation (Appendix 3) on 1 April 2006, enable the Highway Authority to restrict access to a public highway by gating it in order to prevent crime and antisocial behaviour on or adjacent to the public highway. The highway does not need to be in an area designated by the Secretary of State.

Gating Orders while preventing or limiting the use of the highway do not remove the highway rights associated with it. The use of the highway may, if appropriate to the circumstances, be limited at certain times. Importantly Orders may be varied or revoked should the crime or anti social behaviour be reduced.

A Gating Order may authorise the installation, operation and maintenance of a barrier to enforce the restriction. A council may install, operate and maintain any authorised barrier.

Guidance relating to the making of Orders produced by the Home Office (Appendix 4) makes it clear that Gating Orders, while not a measure of last resort, should be seen as a temporary measure to be used as a deterrent. Before making an Order the Highway Authority must be satisfied that premises adjoining or adjacent to the highway are affected by persistent crime or anti-social behaviour and that it is facilitated by the existence of the highway.

The County Council have an obligation under Section 17 of the Crime and Disorder Act 1998, as an Authority for the purposes of that Act in exercise of its various functions to do all it can to prevent crime and disorder in its area.

The County Council are committed to creating stronger safer communities and improving the quality of life for Kent residents, working with partners. Towards 2010 – Stronger Safer Communities.

### **Operation in Kent.**

The procedure to be followed and the legal criteria to be met for Gating Orders are expressly dealt with in the Clean Neighbourhoods Act 2005 and the Highways Act 1980(Gating Orders)(England) Regulations 2006. Where set out by statute, as in this case, the legislative tests must be met and the process established through regulations rigorously followed. However there are matters associated with the making of Orders where a clear policy and process would be of benefit in enabling Officers and Members to: reach an informed decision on any application, report objections to Orders and administer the provisions effectively.

The power to make, vary or revoke Gating Orders was delegated to the Managing Director of Environment and Regeneration by full Council on the 17 May 2007. The terms of reference of the Regulation Committee were amended to include the consideration of Gating Orders and Orders to revoke or amend Gating Orders to which substantive objections are received at the same time.

### **Application**

In Order that the County Council may appropriately consider applications for Gating Orders, applications should be brought forward through the local Crime and Disorder Reduction Partnership. The Local Crime and Disorder Reduction Partnerships are active within Borough and District areas and involve the County Constabulary, Community Safety Officers and other interested parties.

The Crime and Disorder Reduction Partnerships are best placed to advise the County Council whether the premises adjoining or adjacent to the highway are affected by persistent crime and antisocial behaviour that it is facilitated by the highway: and to provide evidence in support.

Perhaps more importantly it should be clear in any application that in gating the highway a reduction in crime and antisocial behaviour should be achieved. There would be little point in gating a highway if other points of access were available to the public.

It should also be the case that as a matter of policy Gating Orders are limited in extent to that which is necessary to prevent the problem, i.e. if the crime or anti social behaviour is associated with the night time economy then there is no reason why the highway should be closed during the day time.

## **Consultation**

Notice of any proposed Gating Order must be given by the Council to all those bodies or individuals set out in the Highways Act 1980(Gating Orders)(England )Regulations 2006. Sections 4a to 4l. While most of the section is specific as to who should be consulted 4j,k & l are less specific. To ensure all views are properly considered in the process indication should be sought from those organisations that are normally consulted on public right of way change orders of any description as to whether they wish to be consulted. Representations should also be sought from any other groups or individuals who wish to be notified of any proposed Gating Orders by advertising on our website, KCC.gov.uk and in the local press.

## **Objections**

It is hoped that it will be possible to achieve a level of consensus around a proposal to make a Gating Order and that it will be possible to resolve many objections through constructive debate with objectors. However, a council may proceed to make a Gating Order, following notice, in the face of objection or representation; unless objection is received from the Chief Officer of a Police Force, the Fire and Rescue Authority, NHS Trust or NHS Foundation Trust for the area. If objection is received from the above a Public Inquiry must be held should the Council wish to proceed.

There is established policy for reporting objections to Orders that in some way amend the Definitive Map and Statement of Public Rights of Way. The policy requires that substantive objections be considered by the Regulation Committee. Substantive is defined in respect of objections as meeting the requirements of the legislation and being relevant to the circumstances of the Order. To ensure a level of consistency across the Authority it is recommended that this same piece of policy be adopted for Gating Orders with objections reported to Members through the Regulation Committee. Three decisions would be open to Members: not to make the Order, to make the Order in the face of objection or to place the matter before a Public Inquiry.

## **Public Inquiry**

Should it be necessary or appropriate to hold a Public Inquiry the Council must appoint a suitably qualified and fully impartial inspector to conduct it. PROW Public Inquiries are heard before Planning Inspectorate Inspectors familiar with the legislative requirements of the Orders they are being asked to reach decision on. They are entirely independent of the County Council. I recommend that Planning Inspectorate Inspectors be appointed to hear any Gating Order Public Inquiries.

## **Review**

Gating Orders, as made clear in the advice from the Home Office, are seen as a temporary measure. It would therefore be appropriate to set a review period for any Order made. A decision would then be made at review as to whether to continue with, vary or revoke the Order and a further period for review.

## **Register of Orders**

The County Council are obliged to maintain a register of Gating Orders which must contain all notices of proposals for Gating Orders and copies of all Orders made. The Register of Orders would be made available on the Kent.Gov.UK website and also Kent Gateway.

## **Resources**

### **Gating Orders**

The process of making an order is “resource hungry.” For instance public path diversion orders which follow a similar process to that set out for Gating Orders normally cost around £2500, excluding the cost of a Public Inquiry. The cost is met in normal circumstances by the applicant. Given the obligation on the County Council under Section 17 of the Crime and Disorder Act 1998 to do all it can to prevent crime and disorder in its area and the strong commitment to Stronger Safer Communities in Towards 2010, there may be an expectation that the County Council will meet the cost of any Order.

It should be noted that no additional resource has been made available to the County Council for this work in terms of either finding the necessary officer time to undertake the process or meet any of the associated costs such as advertising notices.

The regulatory impact assessment carried out by Government when introducing any new legislation identified a saving to local government in introducing the new measures. This was on the basis that the new provisions are more easily administered than those introduced under the Countryside and Rights of Way Act 2000 (CROW Act 2000) for crime prevention. The assessment indicates that additional resource was allocated to local government on the introduction of the CROW Act 2000 for the purposes of administering the crime reduction provisions. No account is taken of the costs involved in purchasing, installing, maintaining and operating gates.

Initially the County Council will meet the cost of making a small number of orders from existing budgets. The number of Orders made will however be strictly limited by the resource available although the numbers of Orders may be increased should partners be able to identify further sources of funding.

There is I believe the potential for significant numbers of applications to be received over a sustained period. Should this be the case it will be necessary

to identify on a priority need basis and commit additional resources to this area of work or set clear quotas for the number of Orders the Authority is able to make in any given financial year

The Countryside Access Group and Kent Highway Services are working closely to ensure common policy, practice and one point of contact is established for this area work so that all potential efficiencies are achieved and our customers receive the best possible service.

## **Gates**

Substantial gates are required to enforce Gating Orders. The estimated cost of providing and installing a gate is in the region of £2000. Gravesham BC estimates the true cost is nearer £5000 per scheme. Should a Gating Order relate only to certain times or days it will be necessary to ensure the gate is unlocked when the Order is not in operation. No additional resource has been made available or identified for the provision, maintenance or operation of gates and it would not be possible to meet this cost from existing allocations without impacting on other statutory elements of the Countryside Access Group and Kent Highways Services work. Practical implementation of Gating Orders will only be possible if partners are able to meet the costs of gate provision, maintenance and operation..

The accurate assessment of the resource required for administering Gating orders will not be possible until the provision is widely understood and applications are being received. It will however be kept under regular review and the impact reported to Senior Officers and the Portfolio Holder when more properly understood.

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## **Appendix 2: Clean Neighbourhoods and Environment Act 2005**

### **2 Gating orders**

In the Highways Act 1980 (c. 66), after section 129 insert-

#### **"PART 8A**

#### **RESTRICTION OF RIGHTS OVER HIGHWAY**

#### **129A Gating orders**

(1) A council may in accordance with this Part make an order under this section in relation to any relevant highway for which they are the highway authority.

(2) An order under this section is to be known as a "gating order".

(3) Before making a gating order in relation to a relevant highway the council must be satisfied that-

(a) premises adjoining or adjacent to the highway are affected by crime or anti-social behaviour;

(b) the existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour;  
and

(c) it is in all the circumstances expedient to make the order for the purposes of reducing crime or anti-social behaviour.

(4) The circumstances referred to in subsection (3)(c) include-

(a) the likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway;

(b) the likely effect of making the order on other persons in the locality; and

(c) in a case where the highway constitutes a through route, the availability of a reasonably convenient alternative route.

(5) In this section "relevant highway" means a highway other than-

(a) a special road;

(b) a trunk road;

(c) a classified or principal road;

(d) a strategic road, within the meaning of sections 60 and 61 of the Traffic Management Act 2004 (strategic roads in London);

(e) a highway of such other description as the appropriate person may by regulations prescribe.

### **129B Effect of gating orders**

(1) A gating order restricts, to the extent specified in the order, the public right of way over the highway to which it relates.

(2) A gating order may in particular-

(a) restrict the public right of way at all times, or in respect of such times, days or periods as may be specified in the order;

(b) exclude persons of a description specified in the order from the effect of the restriction.

(3) A gating order may not be made so as to restrict the public right of way over a highway for the occupiers of premises adjoining or adjacent to the highway.

(4) A gating order may not be made so as to restrict the public right of way over a highway which is the only or principal means of access to any dwelling.

(5) In relation to a highway which is the only or principal means of access to any premises used for business or recreational purposes, a gating order may not be made so as to restrict the public right of way over the highway during periods when those premises are normally used for those purposes.

(6) A gating order may authorise the installation, operation and maintenance of a barrier or barriers for the purpose of enforcing the restriction provided for in the order.

(7) A council may install, operate and maintain any barrier authorised under subsection (6).

(8) A highway in relation to which a gating order is made shall not cease to be regarded as a highway by reason of the restriction of the public right of way under the order (or by reason of any barrier authorised under this section).

(9) In subsection (4) "dwelling" means any building or part of a building occupied, or intended to be occupied, as a separate dwelling.

### **129C Procedure for gating orders**

(1) Before making a gating order in relation to a highway a

council must notify the occupiers of premises adjacent to or adjoining the highway, in such manner as the appropriate person may by regulations prescribe, of-

- (a) the proposed order; and
- (b) the period within which they may make representations about it.

(2) The appropriate person must by regulations make provision as to further procedure to be complied with by a council in relation to the making of a gating order.

(3) Regulations under subsection (2) must include provision as to-

- (a) the publication of a proposed order;
- (b) public availability of copies of a proposed order;
- (c) notification of persons (other than those referred to in subsection (1)) likely to be affected by a proposed order;
- (d) the making of representations about a proposed order.

(4) Regulations under subsection (2) may include provision-

- (a) requiring a council to hold a public inquiry in such circumstances as may be specified in the regulations;
- (b) permitting a council to hold a public inquiry at their discretion in such circumstances as may be so specified.

(5) The appropriate person may by regulations specify requirements as to form and content with which a gating order must comply.

### **129D Validity of gating orders**

(1) A person may apply to the High Court for the purpose of questioning the validity of a gating order on the ground that-

- (a) the council had no power to make it; or
- (b) any requirement under this Part was not complied with in relation to it.

(2) An application under this section must be made within a period of six weeks beginning with the date on which the gating order is made.

(3) On an application under this section the High Court may by order suspend the operation of the gating order, or any of its provisions, until the final determination of the proceedings.

(4) If on an application under this section the High Court is

satisfied that-

- (a) the council had no power to make the order, or
- (b) the interests of the applicant have been substantially prejudiced by any failure to comply with a requirement under this Part,

the High Court may quash the order or any of its provisions.

(5) A gating order, or any of its provisions, may be suspended under subsection (3) or quashed under subsection (4)-

- (a) generally; or
- (b) so far as may be necessary for the protection of the interests of the applicant.

(6) Except as provided for by this section, a gating order may not, either before or after it has been made, be questioned in any legal proceedings.

#### **129E Publication and availability of gating orders**

(1) The appropriate person may by regulations make provision imposing requirements on councils in relation to-

- (a) the publication of gating orders;
- (b) public availability of copies of gating orders;
- (c) the keeping and inspection of registers of gating orders.

(2) Regulations under subsection (1)(b) may provide that a council need not provide a person with a copy of a gating order otherwise than on payment of a reasonable charge.

#### **129F Variation and revocation of gating orders**

(1) A council may vary a gating order made by them so as further to restrict any public right of way over the highway to which the order relates, if they are satisfied that in all the circumstances it is expedient to do so for the purpose of reducing crime or anti-social behaviour.

(2) A council may vary a gating order made by them so as to reduce the restriction imposed by the order, if and to the extent that they are satisfied that the restriction is no longer expedient in all the circumstances for the purpose of reducing crime or anti-social behaviour.

(3) A council may revoke a gating order made by them, if they are satisfied that the restriction imposed by the order is no longer

expedient in all the circumstances for the purpose of reducing crime or anti-social behaviour.

(4) Before varying or revoking a gating order in relation to a highway a council must notify the occupiers of premises adjacent to or adjoining the highway, in such manner as the appropriate person may by regulations prescribe, of-

- (a) the proposed variation or revocation; and
- (b) the period within which they may make representations about it.

(5) The appropriate person must by regulations make further provision as to the procedure to be followed by a council in relation to the variation or revocation of a gating order.

(6) Regulations under subsection (5) must include provision as to-

- (a) publication of any proposed variation or revocation;
- (b) notification of persons (other than those referred to in subsection (4)) likely to be affected by a proposed variation or revocation;
- (c) the making of representations about a proposed variation or revocation.

(7) Regulations under subsection (5) may include provision-

- (a) requiring a council to hold a public inquiry in such circumstances as may be specified in the regulations;
- (b) permitting a council to hold a public inquiry at their discretion in such circumstances as may be so specified.

## **129G Interpretation**

For the purposes of this Part-

"anti-social behaviour" means behaviour by a person which causes or is likely to cause harassment, alarm or distress to one or more other persons not of the same household as himself;

"appropriate person" means-

- (a) the Secretary of State, in relation to England;
- (b) the National Assembly for Wales, in relation to Wales."

## **Appendix 3: Highways Act 1980 (Gating Orders) (England) Regulations 2006**

### STATUTORY INSTRUMENTS

2006 No. 537

### ENVIRONMENTAL PROTECTION, ENGLAND

The Highways Act 1980 (Gating Orders) (England)  
Regulations 2006

Made ----1st March 2006

Laid before Parliament 8th March 2006

Coming into force --1st April 2006

The Secretary of State makes the following Regulations in exercise of the powers conferred upon him by sections 129C, 129E and 129F of the Highways Act 1980(a).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Highways Act 1980 (Gating Orders) (England) Regulations 2006 and shall come into force on 1st April 2006.

(2) These Regulations apply to England.  
Interpretation

2. In this Order—  
“the Act” means the Highways Act 1980;

“communications provider” has the meaning given by section 405 of the Communications Act 2003(b);

“fire and rescue authority” means a fire and rescue authority under the Fire and Rescue Services Act 2004 (c);

“NHS trust or NHS foundation trust” means a National Health Service trust, Primary Care Trust or NHS foundation trust providing an emergency ambulance service;

“relevant highway” means the highway which is the subject of a gating order or a proposal for

a gating order (as the case may be); and

“statutory undertaker” has the meaning given by section 98(6) of the Environmental Protection Act 1990(d).

Publicity relating to a proposal for the making of a gating order

3. Before making a gating order under section 129A of the Act, a council shall—

(a) 1980 c. 66; sections 129A to 129G were inserted by section 2 of the Clean Neighbourhoods and Environment Act 2005 (c.

16).

(b) 2003 c. 21.

(c) 2004 c. 21; as amended by section 32(1) of, and paragraph 10(1) and (2) of Schedule 2 to, the Civil Contingencies Act 2004

(c. 36).

(d) 1990 c. 43.

(a) cause to be published on its website and in a newspaper circulating in its area a notice—

(i) identifying specifically or by description the relevant highway;

(ii) setting out the general effect of a gating order being made;

(iii) identifying alternative routes which would be available to pedestrians and vehicular

traffic if the proposed order were to be made;

(iv) setting out a draft of the proposed order; and

(v) inviting written representations, within such period as is specified in the notice, being not less than 28 days, as to whether or not a gating order should be made;

(b) cause to be erected on or adjacent to the relevant highway such notices as it considers

sufficient to draw to the attention of members of the public using that highway the effect

of a gating order being made.

4. Copies of the notice referred to in regulation 3(a) shall be given by the council to—

(a) all the occupiers of premises adjacent to or adjoining the relevant highway;

(b) every council through whose area the relevant highway passes;

(c) every chief officer of a police force through whose police area the relevant highway

passes;

(d) every fire and rescue authority through whose area the relevant highway passes;

(e) every NHS trust or NHS foundation trust through whose area the relevant highway passes;

(f) any local access forum through whose area the relevant highway passes;

(g) any statutory undertaker who maintains services in the locality in which the relevant

highway is situated;

(h) any provider of gas, electricity or water services in the locality in which the relevant

highway is situated;

- (i) any communications provider in the locality in which the relevant highway is situated;
  - (j) any persons who the council reasonably considers might have an interest in the proposed gating order;
  - (k) any person who requests a copy of the notice; and
  - (l) any person who has asked to be notified of any proposed gating orders.
- Representations as to the making of a gating order

5. A council shall consider any representations as to whether or not the proposed gating order should be made whether in response to a notice under regulation 3 or otherwise.

Public Inquiries relating to the making of a gating order

6.—(1) Subject to paragraph (2) the council may cause a public inquiry to be held in relation to a proposed gating order.

- (2) The council shall cause a public inquiry to be held if—
- (a) the chief officer of a police force through whose police area the relevant highway passes;
  - (b) a fire and rescue authority through whose area the relevant highway passes;
  - (c) a NHS trust or NHS foundation trust through whose area the relevant highway passes; or
  - (d) a council through whose area the relevant highway passes, objects to the proposed gating order.

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Making of a gating order

7. A council may not make a gating order before—
- (a) a period of 28 days, beginning on the day the notice referred to in regulation 3 is published, has elapsed; or
  - (b) any public inquiry held under regulation 6 has been concluded.
- Form and content etc. of gating orders

8.—(1) A gating order must contain—

- (a) a statement that the conditions set out in section 129A(3) of the Act have been met;
- (b) the dates and times that the public right of way along the relevant highway will be restricted;
- (c) details of any persons who are excluded from the effects of the restriction referred to in paragraph (b);
- (d) details of alternative routes which would be available to pedestrians and vehicular traffic during the period the relevant highway is restricted;



(e) contact details of the person who is responsible for maintaining and operating any barrier whose installation is authorised by the order.

(2) A council shall cause to be erected on or adjacent to the relevant highway such notices as it considers sufficient to draw to the attention of members of the public using that highway to—

- (a) the fact that a gating order has been made; and
- (b) the effect of the order.

Publicity relating to the variation and revocation of gating orders

9. Before varying or revoking a gating order under section 129F of the Act, the council shall—

(a) cause to be published on its website and in a newspaper circulating in its area a notice—

- (i) identifying specifically or by description the relevant highway;
- (ii) setting out the general effect of the proposed variation or revocation (as the case may be) of the gating order being made;
- (iii) where a variation of the gating order is proposed, setting out a draft of the order as it would be if the variation proposed was made; and
- (iv) inviting representations as to whether or not the variation or revocation (as the case may be) should take effect;

(b) cause to be erected on or adjacent to the relevant highway such notices as it considers sufficient to draw the attention to members of the public using that highway to the effect of the proposed variation or revocation (as the case may be) taking effect.

10. Copies of the notice referred to in regulation 9(a) shall be given to—

- (a) all the occupiers of premises adjacent to or adjoining the relevant highway;
- (b) every council through whose area the relevant highway passes;
- (c) every chief officer of a police force through whose police area the relevant highway passes;
- (d) every fire and rescue authority through whose area the relevant highway passes;
- (e) every NHS trust or NHS foundation trust through whose area the relevant highway passes;
- (f) any local access forum through whose area the relevant highway passes;
- (g) any statutory undertaker who maintains services in the locality in which the relevant highway is located;
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- (h) any provider of gas, electricity or water services in the locality in which the relevant highway is situated;

- (i) any communications provider in the locality in which the relevant highway is situated;
  - (j) any persons who the council reasonably considers might have an interest in the proposed gating order;
  - (k) any person who requests a copy of the notice; and
  - (l) any person who has asked to be notified of any proposed gating orders.
- Representations relating to the variation or revocation of a gating order

11. A council shall consider any representations as to whether or not a gating order should be varied or revoked (as the case may be) whether in response to a notice under regulation 9 or otherwise.

Public Inquiries relating to the variation or revocation of a gating order

12.—(1) Subject to paragraph (2) the council may cause a public inquiry to be held in relation to a proposed variation or revocation (as the case may be) of a gating order.

- (2) A council shall hold a public inquiry if—
- (a) the chief officer of a police force through whose police area the relevant highway passes;
  - (b) a fire and rescue authority through whose area the relevant highway passes;
  - (c) a NHS trust or NHS foundation trust through whose area the relevant highway passes; or
  - (d) a council through whose area the relevant highway passes, objects to the proposed variation or revocation (as the case may be) of a gating order.

Variation or revocation of a gating order

13. A council may not vary or revoke (as the case may be) a gating order before—

- (a) a period of 28 days, beginning on the day the notice referred to in regulation 9 is published, has elapsed; or
- (b) any public inquiry held under regulation 12 has been concluded.

Procedure relating to public inquiries held under regulation 6 or 12

14.—(1) A public inquiry held under regulations 6 or 12 shall be conducted by an inspector appointed by the council.

(2) An inquiry shall begin not less than 42 days after the first publication of the notice given under regulation 3 or 9.

(3) A council shall—

- (a) publish at least once in a local newspaper circulating in the area in which the relevant highway is situated a notice containing the particulars specified in regulation 15;
- (b) give notice in writing containing the particulars specified in regulation 15 to each person

who has made representations as to the making, variation or revocation (as the case may

be) of a gating order; and

(c) take such other steps as it may consider appropriate for ensuring that adequate publicity

about the inquiry is given to persons likely to be affected by the provisions of the order to

which it relates, and, without prejudice to the generality of this sub-paragraph, such other

steps may include—

(i) the display of notices in roads or other places affected by the order;

(ii) the delivery of notices or letters to premises, or premises occupied by persons, appearing to the council to be likely to be affected by any provision in the order.

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15. The particulars to be contained in the notice specified in regulation 14(3) are as follows—

(a) the title of the gating order or proposed order;

(b) the name of the council;

(c) the identity specifically or by description of the relevant highway;

(d) a statement which refers to the notice of proposals for the making, variation or revocation

(as the case may be) of the gating order and which indicates that a public inquiry will be

held in connection with the proposal;

(e) a brief statement of the general nature and effect of the making, variation or revocation

(as the case may be) of the gating order;

(f) the date, time and place of the inquiry and the name of the inspector;

(g) a statement that documents giving detailed particulars of the proposals for the making,

variation or revocation (as the case may be) of the gating order are available for inspection and of the addresses at which those documents can be inspected and of the times when inspection can take place at each address;

(h) the address to which any written representations for consideration by the inspector may

be sent by any person wishing to make such representations; and

(i) the time by which any written representations made under paragraph (i) or otherwise must

be received.

16.—(1) Subject to paragraphs (2) to (4), the procedure at a public inquiry shall be determined

by the inspector.

(2) Any person interested in the subject matter of the public inquiry may appear at the inquiry in

person or by counsel, a solicitor or other representative.

(3) Any person so interested may, whether or not he proposes to appear at the inquiry, send

written representations for the consideration of the inspector to the address given in the notice given under regulation 14(3)(a).

(4) The inspector may refuse to hear any person, or to consider any objection or representation, if he considers that the views of that person or the objection or representation are irrelevant or have already been adequately stated at the inquiry.  
Register of gating orders

17.—(1) A copy of a gating order must be displayed for at least 12 months from the date of the order in a council office.

(2) The council must publish a gating order on its website.

(3) A council must keep a register of gating orders which is open to inspection during normal business hours and which must contain—

(a) copies of all notices of proposals for the making, variation or revocation (as the case may

be) of gating orders; and

(b) copies of all gating orders made by the council.

(4) A council must supply a copy of a gating order to any person who requests a copy and pays a reasonable charge.

Home Office Hazel Blears

1st March 2006 Minister of State

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## EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to England, set out the procedures relating to gating orders made under sections 129A to 129G of the Highways Act 1980 and come into force on 1st April 2006.

Regulations 3 and 4 relate to the publicising of proposals to make a gating order. Regulation 5 obliges councils to consider representations as to the making of a gating order.

Regulation 6 enables councils to hold a public inquiry in relation to a proposed gating order and requires them to do so where the emergency services or a council object to the making of the gating order.

Regulation 7 prevents councils from making a gating order until at least 28 days have been allowed for representations to be made and any public inquiry has been concluded.

Regulation 8 sets out the content etc. of gating orders and requires them to be publicised.

Regulations 9 to 13 set out the procedure to be followed when it is proposed to vary or revoke a gating order.

Regulations 14 to 16 make provision relating to conduct of public inquiries.

Regulation 17 provides that councils must keep a register of all gating orders

**Appendix 4: Clean Neighbourhoods and Environment Act 2005, Guidance relating to the Making of Gating Orders. The Home Office.**

## **CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005**

### **GUIDANCE RELATING TO THE MAKING OF GATING ORDERS**

**March 2006**

## INTRODUCTORY

1. Section 2 of the Clean Neighbourhoods and Environment Act 2005 introduces a new power that allows councils to make, vary or revoke gating orders in respect of highways within their area. This is achieved by inserting new sections 129A to 129G in the Highways Act 1980 which will enable councils to restrict public access to any public highway by gating it (at certain times of the day if applicable), **without removing its underlying highway status**. Local authorities will be able to make “gating” orders on grounds of anti-social behaviour as well as crime.
2. Powers to close alleyways were first introduced by the Countryside and Rights of Way Act 2000 (CROW Act 2000); this enables alleyways, which are also rights of way, to be closed and gated for crime prevention reasons. But they do not enable alleyways to be gated expressly to prevent anti-social behaviour and they exclude many alleyways that are public highways but not recorded as rights of way. Also, under these provisions the removal of rights of passage is irrevocable.
3. The Clean Neighbourhoods and Environment Act 2005 provisions enable a council to gate a highway in a similar manner to the CROW Act 2000 power but it:
  - a) doesn't first require the highway to be designated by the Secretary of State,
  - b) enables gating to take place if highway suffers from crime and/or anti-social behaviour,
  - c) enables the council to continue with a gating order, even if objections are made (if it is considered in the best interests of the local community to do so).
4. The power to make a gating order will be commenced on 1 April 2006.
5. **This guidance is not statutory, but we recommend that local authorities read the guidance and use it where practicable as it will help avoid some operational difficulties. It has been written with the help of practitioners by the Home Office, the Department for Transport and the Department for Environment, Food and Rural affairs.**

## CONDITIONS FOR MAKING A GATING ORDER

### General principles:

6. In general, rights of way do not cause or facilitate crime. The provisions in the Clean Neighbourhoods and Environment Act are framed in a way that limits their use to alleyways where it can be shown that persistent crime and anti-social behaviour is expressly facilitated by the use of certain rights of way.
7. The Government considers that these powers will be particularly important in enabling the closure of those back (or side) alleys where they are demonstrably the source of crime in built up areas, particularly housing estates. The rationale behind the formulation of these powers was to assist in strictly urban areas and, in practice, if a footpath is the only means of access to the rear of a terrace of properties, it may well be easier to demonstrate whether the way itself is facilitating persistent crime, than in an open rural setting, where there might be a number of means of access to premises.
8. This provision is intended to be used as a deterrent for temporary closures while the crime or ASB is persistent. Following the reduction of the crime or the ASB, the highway restrictions can be varied or revoked.
9. If the intention is permanently gate the highway (i.e. removing the highway status), the provisions introduced by the Countryside and Rights of Way Act 2000 (CROW Act) should be used. However, given the longer timescales under the CROW Act, and that the condition of the highway may warrant quick action, you can use the Clean Neighbourhoods and Environment Act 2005 provisions to gate the highway while seeking a CROW Act order to revoke the highway status.
10. Section 129A of the Highways Act 1980 sets out these general principles, asserting that a council must be satisfied, before making an order, that the area surrounding the relevant highway suffers from crime or anti-social behaviour and would act as a useful crime/anti-social behaviour reduction measure.
11. Local authorities should also be satisfied that residents and members of the public who use the relevant highway would not be inappropriately inconvenienced by its gating, and should be satisfied that alternative access routes exist. However this should not restrict the gating of highways that are in such a dangerous condition, that gating it is in the best interest of all concerned.
12. The health implications of the order should also be considered as gating orders could potentially encourage the use of cars if the alternatives are too long or lack pedestrianised sections. This should be balanced against the health impacts facing pedestrians from the ongoing crime or ASB in the alleyway. In these situations a Health Impact Assessment could be



carried out if there is any doubt over the availability of alternate routes and/or the proposed times the gates will be closed.

### **Issues of Mobility:**

13. Special consideration should be given to the impact a potential order might have on disabled users of the highway to ensure that alternative routes are free from obstructions and are suitably paved. During the installation of the gates consideration should be given to the height of the locks and the ease at which they can be opened and closed

### **Consideration of other tools to tackle crime and ASB:**

14. Gating orders are not the only solution to tackling crime and anti-social behaviour on certain thoroughfares. Before proposing an order, local authorities should give consideration as to whether there are alternative interventions that may be more appropriate (and cost effective) for tackling the specific problems they are facing without having to gate the highway. Nevertheless, gating orders should not be seen as a last resort.

### **PUBLICITY**

15. Gating orders can have implications for various groups of people, such as walkers who may oppose the termination of certain rights of way. For this reason, it is essential that gating orders are satisfactorily publicised before they are made. Local authorities must publicise a notice to this effect in a local paper and on their website. In order to save costs, this notice does not need to be excessively large and does not need to include a lot of information. The legislation states that the notice should include the highway affected and the general effect of the order. However, in practise this information will be included in the proposed order itself, so the notice only needs to:

- include a draft of the proposed order:
- identify alternative routes that members of the public may take; and
- invite representations (in writing) as to whether or not an order should be made, within a period of notice that is at least 28 days.

16. A similar notice, including all the information stated above, should also be placed on or adjacent to the relevant highway at both ends, in order that people who want to use the highway can see that it is to be gated. These need to be visible enough to draw their attention, and make it clear what the implications of the order will be. The regulations do not specify a minimum time period that these notices should be up before the gating order comes into force. This is because local circumstances may make this difficult to achieve. However, wherever possible, these notices should be assembled to coincide with the notices published on the website and local paper, i.e. for a minimum of 28 days before the gating order is made. It is the responsibility of the council to ensure that notices are maintained in a condition that ensures they remain visible and legible.

17. It is not only necessary to make this notice available to the general public. Certain groups which may be directly affected should be specifically informed of the planned order through receipt of a copy of the order. These include:

- all occupiers of premises adjacent to or adjoining the relevant highway;
- any authority through which the gated highway will run including:
  - Any other council, including parish and town councils;
  - Police authorities (informing the chief of police);
  - fire authorities;
  - NHS Trusts;
- any Local Access Forum through whose area the relevant highway passes
- other public bodies and companies that do maintain or provide services on or around the locality in which the relevant highway will be situated including:
  - statutory undertakers;
  - gas or electricity services providers;
  - water services providers;
  - communications providers;
- anyone who requests a copy of the notice; and
- anyone who has asked to be notified of any proposed gating orders.

18. The council should also inform anyone they reasonably consider might have an interest in the proposed order. This could include a wide range of groups, and it is the responsibility of the applying council to decide who this might include. However, it is recommended that councils also notify a variety of groups that are likely to take an interest in the gating of a highway. The Department of the Environment Circular 2/1993 sets out organisations who should be contacted under other rights of way legislation and you may wish to consult this.

The majority of highways will be urban alleyways that suffer from ASB and crime, however rural highways can suffer from ASB and crime too. Therefore, it is important to ensure that any group who has a particular interest in the highway on which the order will be made is given an opportunity to comment. For example these may be the appropriate National Park, the Chiltern Society and the Peak and Northern Footpaths Society. In the majority of these cases you should be seeking to engage with these organisations early in the process in order to effectively consider all interventions to tackle the ASB and crime.

19. It is important that people who use these relevant highways understand why a gating order has been proposed. Therefore, it is recommended that Local Authorities provide a justification and evidence for the order before it is made. Ideally, this evidence and justification should appear on the notice in the newspaper, with details of where members of the public can find more information if necessary.

## **REPRESENTATIONS FROM INTERESTED PARTIES**

20. Before a gating order can be made it is essential that local authorities consider all representations as to whether or not an order should be made. If there is considerable objection to the order, it is necessary to be absolutely sure that there are sufficient grounds for the order to be made. Particular attention should be given to Section 129A of the Highways Act 1980, balancing crime and anti-social behaviour concerns against the impact it will have on users of the highway and local residents. Section 129D of the Highways Act 1980 allows individuals to challenge an order in the High Court if the conditions for making it have not been complied with. To ensure full impartiality, you may want to consider the use of an external evaluation, for example a Health Impact Assessment.
21. A full justification, with evidence should be something that local authorities have on file to provide to anyone who objects to this order, or who requests an explanation for the proposed order. Your responses to those who object should be comprehensive, and specifically address their concerns. It is in the interests of all parties to conclude this process promptly and without unnecessary delay. Ideally, consideration should be concluded 28 days (or less) after the final date in which written representations can be made.

## **PUBLIC INQUIRIES**

22. While it is important to consider all representations, certain authorities' representations as to whether a gating order should be made will bear more significance. Consequently, an objection from these bodies will automatically cause a public inquiry to be held, if the relevant highway passes through their area. These authorities include:
- the chief officer of a police force;
  - a fire and rescue authority;
  - any council (including parish councils); and
  - an NHS trust, NHS foundation trust or NHS primary care trust.
23. Objections from these authorities should be made in writing, giving reasons for their actions, within the prescribed period of notice (which is not less than 28 days).
24. If objections are received from other individuals, the council can still conduct a public inquiry where it is appropriate to do so.
25. A gating order should not be made until this public inquiry has been concluded and a decision has been made. Consequently, before proposing a gating order, it is highly recommended that you work in partnership with these authorities to ensure that the general consensus is positive. By taking these initial steps, it should be possible to make progress without the need for a potentially costly public inquiry. If objections are still received in writing, the council can avoid an inquiry if they make the requisite changes to the proposal. Public inquiries should

only be instigated as a last resort, when fundamental differences exist between authorities that discussion and negotiation have failed to alleviate.

26. If a public inquiry is inevitable, then the council must adequately advertise this fact. This may include the display of notices in roads or delivering letters to local premises. However, local authorities must publish a notice in a local newspaper (at least once) and write to those who have already made representations as to the making of the order. Again, this notice does not have to be excessively large, but it should include:

- The title and draft of the proposed order (including its general effect);
- the name of the council;
- the identity of the relevant highway, with enough detail, either by description or specification, so that people understand which highway is being referred to;
- A statement referring to the initial notice advertising the order, notifying people that a public inquiry is to be held;
- the date, time and place of the inquiry and the name of the inspector;
- information as to where further information can be found on the proposals for the relevant gating order. Opening and closing times of these premises should be included; and
- the address to which any representations for consideration by the inspector should be sent.

#### **Appointing an Inspector:**

27. It is the responsibility of the council to appoint an individual to conduct the inquiry. The council should ensure that this inspector is suitably qualified and fully impartial. Impartiality is essential because the applying authority must be able to defend their actions in court if the situation arises where the order is legally challenged. Any evidence of the authority compromising the independence of the inquiry would invalidate the order's existence. In order to ensure that independence is preserved, it is recommended that the council appoint someone from the Planning Inspectorate.

28. The procedure of the public inquiry is determined by the inspector, but should allow any person to make representations or appear at the inquiry if they wish. The inspector may refuse to listen to any representations if he feels they are irrelevant. After the inquiry has been concluded to his satisfaction, the inspector will then be in a position to make a decision, and all relevant agencies should comply fully with the verdict.

#### **FORM AND CONTENT OF A GATING ORDER**

29. In reality, gating orders are quite simple straightforward documents. Firstly, the order must include a statement asserting that the council have met the

conditions set out in Section 129A(3) of the Highways Act, 1980. In effect, this means that you must state that the council is satisfied that anti-social behaviour and/or crime exists in the area around the gating order, that the existence of such behaviour is exacerbated by the highway and that a gating order would be beneficial for tackling crime and anti-social behaviour in the area. You will not need to include large amounts of detail and so this initial statement should be kept fairly brief.

30. In addition to the initial statement, the order should include:
- the dates and times that the public right of way will be restricted;
  - The location where the gating order will be situated;
  - details of any persons who are excluded from this restriction; and
  - the name and contact details of the person who is responsible for maintaining any gate authorised by the order.
31. There is no statutory model, upon which gating orders should be based.

## **REGISTER OF GATING ORDERS**

32. After an order has been made, it is necessary that they continue to be exhibited in a manner that will draw people's attention to them. Prior to the making of the order a copy of the gating order should have been in place at each end of the highway for at least 28 days, inviting representations as to whether or not the order should be made. This should now be replaced by a copy of the gating order alone, in such a manner that it is still visible to members of the public. Therefore, it is recommended that this notice is again placed in a prominent position at each end of the highway. This notice should be in place for as long as the order is in force and the public's right to use the highway is suspended, and it is the council's responsibility to ensure that it remains visible and legible.
33. A copy of the order should also be placed in a prominent position in the council for at least 12 months from the date the order is made, and should also be published on the council's website as well.
34. A register of all orders and all proposed making, varying and revocation of orders should be kept and maintained by each council. This must be open between 9am and 5pm each day for inspection by members of the general public and councils must supply any copies of these documents to anyone who requests them and pays a reasonable charge, (decided by the council).

## **PROVISION OF KEYS AND MAPS**

35. A number of individuals and groups will have legitimate purpose or business to pass through gates. These can include, but is not limited to, property owners and occupants, statutory undertakers, such as telecommunication companies and utility companies, the emergency services and of course council officers on business.

36. Therefore, early in the process of developing these gating orders, councils should undertake an assessment of the likely number of individuals needing keys to enter the particular highway subject to the gating order.
37. It is important that maps are updated quickly, and it is important that they are issued to the relevant groups who will need them. **In particular it is very important that the emergency services have access to accurate maps. Failure to provide up to date information on the limited passage of gated highways may impact on the speed at which emergency services can provide their service.**

## **VARYING, REVOKING AND REVIEWING A GATING ORDER**

38. Once a gating order is in place, it is possible for the council who originally applied for the order to vary or revoke the order. However, any variation will need to comply with the key principles of reducing crime and anti-social behaviour while not excessively inconveniencing users of the gated highway. Consequently, to revoke or vary an order, it is necessary to follow the same procedure required for making the initial order, i.e. advertising the order in a paper, notifying relevant agencies and individuals, considering representations, and prompting a public inquiry when certain bodies object. In order to follow this correctly, the requirements set out in this guidance should be followed.
39. There is no maximum limit to how long a highway can be gated. However, it is recommended that councils review each of their orders on an annual basis. This review should evaluate whether the gating order is acting as a useful crime or anti-social behaviour reduction measure. It should also assess the impact it is having on the community and discussions should be held with local residents to gauge whether the limited access is causing excessive inconvenience.

## **VERSION**

40. This guidance is version 1 and was published on 24 March 2006.
41. It is important that this guidance remains up to date and relevant. To help us ensure this, if you have any comments on the content or suggestions for improvements please email them to [Andrew.Kerrigan@homeoffice.gsi.gov.uk](mailto:Andrew.Kerrigan@homeoffice.gsi.gov.uk) using the subject line "Alleygating guidance".

**Update on Planning Enforcement Issues**

Report by Head of Planning Applications Group to the Regulation Committee on 22nd May 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 January 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, 27 cases where investigations are underway and a further 2 cases has been satisfactorily resolved. In addition, 20 monitoring visits on permitted sites have been undertaken, including 17 chargeable visits. The majority of the time has been spent on a joint public inquiry with Swale Borough Council (the culmination of 2 years of work) preparation for a second public inquiry, Freedom of Information requests, the drafting of 2 further enforcement notices and the need for lengthy 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 7)

**Woodgers Wharf, Upchurch**

5. This site and waste management activity is the subject of an exempt report to these papers (Item 8). 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 30<sup>th</sup> 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 during the 'closed' season over the winter to remediate two parts of the Enforcement Notice area. The 'upper field' has been re-graded to original profiles and will be planted with maize this year. The 'lower' field comprises an unauthorised chalk track. The chalk has been pulled back and stockpiled ready for re-use. The main site area now requires 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 is all but complete, an agricultural use is returning 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 its original state and profile. I shall keep Members informed on this definite momentum towards restoration.



**Update on Planning Enforcement Issues****Brasted Sandpits, Sevenoaks**

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. Nevertheless an issue arose in autumn 2004 which had serious implications for restoration at the site and impacted upon the operator's ability to restore the site.
15. 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

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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. Recently, however, a groundwater modelling and complex risk assessment report has been submitted by the 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 26<sup>th</sup> February to 1<sup>st</sup> March 2007. My Technical Adviser gave background evidence to assist the case. The case unfortunately fell however on an evidential technicality and the EA is now considering its position.

**Raspberry Hill, Park Farm, Iwade**

21. 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.
22. 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.
23. 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 1<sup>st</sup> to 3<sup>rd</sup> May 2007. All 3 appeals were heard together with

**Update on Planning Enforcement Issues**

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. A decision is awaited.

24. Whilst awaiting the outcome of the impending Inquiry, the land will need to be protected from any resumption of the breach experienced when the waste depositing and apparent 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.

**Live Cases – Enforcement Response Under Consideration****Ripley's Scrapyard, Tennyson Road, Ashford**

25. 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. A valid submission has now been made offering a route to compliance. The application also seeks to rationalise the site use with a new composite building. There is also the opportunity to update the existing permissions and to make them clearer and in that way more readily enforceable. Pending the outcome of the planning application, I propose to take no further action at this stage.

**Naccolt Brickworks, Wye**

26. 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.

27. 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.

**Stanford Bridge Farm, Pluckley**

28. 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 are 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

**Update on Planning Enforcement Issues**

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internal track.

29. 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 are continuing on a regular basis.
30. 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.
31. In my opinion and on the available evidence the case remains a district matter. However, in view of local allegations and in particular the sensitivity of the access route, I shall continue for the time being in my supportive role with the Borough and EA enforcement teams.

**Barton Court Grammar and Chaucer Technology Schools, Canterbury**

32. A retrospective planning application (CA/06/1187) was received in November 2006 for the erection of a metal palisade fence at the above site to replace a weldmesh fence. The development affects St Augustine's and New Dover Road Conservation Area. A negotiated settlement followed a Members Site Visit and includes a realignment of part of the fence line and substitution for railings along the majority of its length. The outstanding detail on these matters is about to be approved. I shall keep Members informed on progress towards compliance on this case.

**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 in December. The situation was very much improved and formal planning enforcement action was not considered expedient at that stage.

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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. I will continue to monitor the site and consider the need for enforcement action should there be an unacceptable intensification of activity on site contrary to the working protocol.

**Land near junction of Thames Rd/Burnham Rd/Clive Dunn Way, Dartford Marshes**

39. This case concerns the unauthorised change of use of an area of marshland bounded on one side by a sea defence bund, to a mixed use including the tipping and storage of inert waste materials, including gravel for hardstandings; the parking and storage of large goods vehicles and various items of plant and machinery, apparently including at one stage a soil screener.

40. The case has attracted Borough Council and Environment Agency action. The Borough has already served a Temporary Stop Notice and an Enforcement Notice for the district range of alleged contraventions on site. It appears that waste depositing has also taken place taking advantage of the sea wall as a fixed containing bund. The District Enforcement Notice has been appealed and I understand that the case is to be heard by public inquiry. I have a verbal commitment from the landowner / operator that should the appeal be dismissed he would remove the stockpile of waste on site. Notwithstanding this commitment, I should appreciate Members' continued support for the service of an Enforcement Notice and for any required injunctive action, to prevent any further waste depositing, or related processing on the site. This would serve to consolidate the actions of the other two controlling bodies, with the expectation of joint witness evidence.

41. For Members information the EA Crime Team has maintained a presence at the site having formerly impounded several lorries engaged in alleged unauthorised activities on

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the land. I am unaware of any further tipping. I am therefore content at the moment to rely on the current enforcement of the Borough Council and the EA, to reserve time for other pressing cases within these papers.

**Highview, Longfield Road, Meopham**

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 has appealed against the latest refusal. An Inspector nominated by the Secretary of State will now determine the Appeal following a Public Inquiry to be held at Culverstone Community Hall on the 21<sup>st</sup> to 22<sup>nd</sup> August 2007.
43. The case is legally complex and in the meanwhile a barrister is advising on planning enforcement options. 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 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 I understand taken separate legal advice on the potential district breaches. The EA under its own legal advice has apparently determined that on current evidence the works remain within the exemption criteria. 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.
46. 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, enforcement and technical advice. I shall also keep Members informed of any developments concerning the site.

**Update on Planning Enforcement Issues****Longton Wood, off A249 Detling Hill**

47. 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.
48. The site has been visited in the company of the Environment Agency who are currently considering a prosecution against the landowner for waste related offences.

**Tutsham Farm, West Farleigh**

49. 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.
50. 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.
51. 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**

52. 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. Discussions with Brett Aggregates on how the various issues can be best resolved are ongoing; however, it is anticipated that submissions required to resolve them will be made later this year. The site recently had its first formal monitoring visit under the new chargeable monitoring régime.

**Update on Planning Enforcement Issues****Poll Hill Gypsy Site, Halstead, Sevenoaks**

53. 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.
54. 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.
55. 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.
56. 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 bore hole has been drilled and sample testing has taken place. Analysis of this data is currently being undertaken with the intention of the findings being submitted to the planning authority. Once this information is available, a resolution strategy can be developed with the Environment Agency. I will keep Members informed on this case.

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

57. 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 has been intimated but has not yet been received. Meanwhile, I am reviewing the County Council's enforcement options with regard to the site.

**Four Gun Field, Upchurch**

58. 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.



**Update on Planning Enforcement Issues**

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59. There have been sporadic but temporary and minor uses of the site over the past 3-4 years. For instance the importation of some waste materials to the site. The Borough Council served a Section 215 Notice on the land to effect removal on amenity grounds. Unfortunately however, the basis for serving the Notice was successfully challenged at a hearing in Sittingbourne Magistrates Court on 12 May 2006.
60. Recently, some 50 or so loads of apparent waste materials was brought to the site. I referred the matter to the EA for investigation. They researched the position and are continuing to evaluate their enforcement options.
61. Meanwhile, the County Council's planning position has been vigorously asserted through the assistance of Counsel. The imported materials on site have not been processed and there would not appear to be an immediate County remit. In any event the material stockpiles and related plant, machinery and site accommodation have now largely been removed, though in part they have been substituted by further imports of inert materials.
62. The land interests have separately made a proposal for housing on the land to the Examination in Public held last year into the Borough Local Plan Development Framework. An outcome is awaited.
63. 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**

64. 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.
65. 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 protect the site without the need for a lengthy planning appeal against an enforcement notice.
66. 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 since been appealed. Meanwhile, 2 District Enforcement Notices to reverse the various breaches have been confirmed. To reinforce these actions and to secure eventual restoration to woodland the service of a County Enforcement Notice will probably be necessary.

**Update on Planning Enforcement Issues**

67. The outstanding district planning appeal is to be heard by means of a public inquiry, with the date to be advised. 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.

**Oast Park Farm Golf Club, Snodland**

68. I am reporting this matter in response to periodic local complaints concerning a golf course development at Snodland. The scheme which has progressed in two phases was originally granted planning permission by Tonbridge & Malling Borough Council in 1990. For that reason, the Borough Council is regarded as the lead enforcement authority.

69. The complainants have been alleging that the site has been overtipped, some non-construction materials have entered the site, public footpaths are being obstructed, flooding and land drainage characteristics have been changed to the detriment of adjoining land interests, sand extraction has taken place with attendant noise and dust impacts and overall there is an haphazard approach to the scheme and poor site control.

70. I have reviewed these issues at a joint meeting with the Borough Council and the Environment Agency. The Borough Council had already conducted an initial site survey, which in their opinion revealed that the materials on site were mainly within the apparent permitted site levels. There were reservations on compliance however on some localised raised areas, which were the subject of a further survey.

71. The Environment Agency de-registered an exemption from the Waste Management Licensing Regulations in July 2006 following investigations into a number of alleged waste management breaches and is currently pursuing a prosecution case against the operator and landowner. The gates to the landfill site have therefore been closed since July 2006 and remain closed while the various waste related infringements and planning issues are tackled.

72. I am satisfied that the County Council has no central enforcement remit at this time. Nevertheless, I intend to contribute to the multi-agency effort here. The Borough Council has no apparent evidence of material leaving the site in terms of a mineral extraction breach. I shall continue to monitor this aspect with the Borough Council.

73. The only current and direct enforcement power available in this case to the County Council is to challenge any obstruction to the public rights of way network (PROW). I am aware that this is being monitored by the PROW group with a view to action if required.

74. In view of the absence of a direct County Council remit, the district lead, EA enforcement and otherwise unchanged circumstances on site, I propose to take this case from the papers but report further if there are any material developments in relation to the site.

**Addington Sandpit, Addington**

75. 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. It is anticipated that

## Update on Planning Enforcement Issues

Hanson will make the necessary submission(s) to address these issues within the next couple of months. These technical breaches are not attracting complaints and the matter is not a high category to resolve in terms of the Enforcement Protocol. The site recently had its first formal monitoring visit under the new chargeable monitoring régime.

### **Eglesden Farm, Mill Street, Iden Green, Benenden**

76. 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.
77. 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.
78. 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**

79. On 20 April 2007 it was established that 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 is being conducted with the Environment Agency.
80. A Land Registry search has identified the landowners. They have been notified in writing by this Authority 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) on the 27 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 PCN not be properly replied to, the Authority would have the option of prosecuting the site operator.

### **Church Marshes, Sittingbourne**

81. This case concerns Swale Borough Council's Country Park development on the former Church Marshes Landfill site. The project itself is of course well 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.
82. Clearly, the re-use and recycling of reject beams is welcome in principle, the activity

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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.

83. Enquiries continue on the planning status of the stone-crushing activity. Should it 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**

84. This is a site which had 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 of the red line area, and works on site appeared to be more intensive than as approved. The applicant (KCC Transport Operations) is aware of the apparent breach and is in the process of preparing to submit an application for permanent permission. 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.

**Waste Water Treatment Works, Reading Street, Tenterden**

85. 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.

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

86. 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 has been installed slightly in the wrong place and slightly larger than permitted. 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.

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**Resolved Cases:**

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

**Chapman's Scrapyard, Tenterden**

88. Complaints have previously been received of an alleged increase in traffic generated from lorries using this permitted scrap-yard site, along with accounts of excessive noise; odour and waste burning. Given the nature of these complaints I gathered together a multi-agency team, including Ashford Borough Council and the Environment Agency, to investigate the issues. Combining available powers between the various agencies should help deal with any recurrence of the alleged noise, burning and odour amenity impacts.

89. The site was granted planning permission in 1991 as a Scrap-yard & Waste Transfer Station, subject to conditions. These were monitored during a site inspection on 27 June 2006. I am satisfied that the site is operating within the original permitted area. However, there was evidence of some over-stacking of scrap metal. The operator was made aware of this and has agreed to comply with the relevant condition. There was no evidence of burning or odour and the noise from handling scrap metal on that occasion was what might be expected from this type of operation.

90. I am satisfied that the breaches uncovered on site are capable of being handled within the realm of normal permitted site monitoring. With this in mind I have negotiated a review of work practices with the operator's planning consultant. I intend to remove the case from these papers. Should there be a material change in circumstances at the site I shall of course report again to Members.

**St Edmund's School, Old Charlton Road, Dover**

91. 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. The matter was addressed via a retrospective planning application and officers are monitoring the site to ensure compliance with the permitted scheme. I advised the previous meeting that several neighbours remain aggrieved at the breach of planning control and were pursuing the matter via formal complaints procedures. I can confirm that 5 residents have lodged complaints with the Local Government Ombudsman. These are still under investigation and his findings are still awaited.

**Down Barton Road, St Nicholas at Wade, Margate**

92. On 24 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.

93. I arranged for the site to be visited on 26 April 2007 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,

## Update on Planning Enforcement Issues

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. They hold the necessary enforcement powers for this type of activity.

94. 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.
95. 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**

96. 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.
97. 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.
98. 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.

### **Durrants Farm, Maidstone Road, Paddock Wood**

99. I have been alerted to a case of unauthorised waste transfer, processing and stockpiling. The site has already attracted the attention of Tunbridge Wells Borough Council and the EA, given the waste handling element and further district related activities including haulage, storage and workshop uses.
100. The EA are bringing prosecutions for the alleged waste related breaches. Alongside this I have negotiated an end to waste processing and the operating yard has been tidied. With the improvement of the weather the existing stockpile of waste materials is being

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removed from the site. I inspected the site on 10 May 2007 and confirm that the land has now been reinstated. Having resolved the matter I now intend to remove the case from these papers.

**Meadows School, London Road, Southborough**

101. 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 center and the Meadows School. The site lies within the Southborough Conservation Area and affects Southborough Common. Final specifications for the road are expected shortly. I intend on that basis to now remove the case from these papers.

**Monitoring of permitted sites and update on chargeable monitoring**

102. As previously reported visits to mineral and landfill sites have taken priority over visits to other types of permitted sites since January 2007. As a result only 3 non-chargeable visits to permitted sites have been carried in order to follow up previously identified issues.

103. However, we have carried out a further 17 chargeable monitoring visits to mineral and landfills sites and thus have continued to implement the chargeable monitoring regime. These visits were to sites that we had identified as higher priority (in our initial categories 4 and 5) either because the operator had not responded to our original contact regarding chargeable monitoring or because they had responded but had differing views to us and a site visit was needed to determine. Each visit has been carried out by the Case Officer for the site as well as the Site Compliance Officer. A number of formal submissions have arisen as a result of monitoring carried out. Progress has been impacted on by lack of Case Officer resource available given other core work.

104. We now need to continue visits to sites to complete this first phase of visits. We also need to monitor within the next phase of visits which is expected to be those sites operated by companies that did not respond to our initial correspondence and those that did respond but whose views differed to ours, and which are in category's 3 or 2.

105. Generally, we do not intend to re-visit sites which have already had the first chargeable visit until we have progressed further with implementation of chargeable monitoring at all sites in the active site categories. This is unless particular circumstances indicate that it is appropriate to do so - for example, if the site is not compliant; where new permissions are issued or if there are complaints relating to the site.

106. It should again be noted that there is insufficient resource to carry out the work, and that whilst this situation continues we are unable to carry out the level of monitoring expected by the Government in their good practice guidance.

**Resolved or mainly resolved cases requiring monitoring**

107. 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.

108. The current and running list of sites which fall within this category include: Hoath Wood,

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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.

109.I intend to transfer the list of sites onto an appropriate database, on an annual basis.

### Update on Members Concern regarding Court Procedures

110.Members may recall that the previous chairman of this Committee wrote to the Chief Executive of the Court Service in Kent to draw attention to the Committee's concern over the substantial delays that are occurring within the Kent Court System in dealing with breaches of planning control. These breaches result in continued and unacceptable impacts on local residents and damage to the environment and reassurance was to be sought that such cases will, in future, be dealt with on an expedited basis. In its reply, the Courts Service advised that the Committee's concerns would be raised with the Bench Chairman.

111.I have written to the Magistrates Court to ask for an update on this matter and I have received a helpful reply. The matters were considered by the Area Judicial Forum on 17<sup>th</sup> April, 2007 comprising of the Liaison Crown Court Judge Carey, the Bench Chairmen and the Justices' Clerks.

112.They commented that the Committee are willing to investigate specific examples of unusual delays in court proceedings to see what lessons, if any, there are for Her Majesty's Court Service (HMCS) and the judiciary in terms of case management. They comment that: "pre-trial reviews (PTRs) often serve a valuable purpose in narrowing issues and limiting live witnesses to only those needed for trial. It would be of concern if the PTR system lengthened rather than shortened the trial process. Again the Committee wanted specific examples so that it could look at how the PTR system worked (or did not work) in the cases referred to in general terms.

113.On our suggestion of grouping environmental cases together in the Magistrates Courts to allow for their more efficient handling, it was pointed out that: "the main business of the current system is police initiated crime prosecuted by the Crown Prosecution Service. As a result most courts are assigned to this business. The number of non-CPS courts is limited. While efforts can be made to group certain kinds of cases together there are limitations given the limited number of courts and the need to list other non-CPS prosecutions. It would only be possible to have a 'specialist' court with the agreement of the Committee and of the Judicial Issues Group (which oversees Listing Policy). This would depend on the number and length of cases. For example agreement was reached to pilot a specialist domestic violence court in Maidstone because research showed there were sufficient cases and a sufficient need to justify such a court. Research on the numbers of environmental cases and the benefits of a 'specialist' environmental court would have to be done and put to the Judicial Issues Group."

114.The Committee read with concern our report of excessive waiting times in court for busy front-line officers in court. Again it asked for specific examples. It rehearsed the current ways and procedures to help reduce waiting times.



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115. Commenting on awareness training for magistrates it was made known that: "there are considerable pressures at the present time in relation to magistrates' training e.g. the need for magistrates to be trained in the nationwide CJSSS initiative for Simple, Speedy, Summary Justice". Nevertheless, our paper is to be referred to the Magistrates' Area Training Committee (who oversees the training of magistrates) so that they can respond as to what training provision can be made.

116. Overall, the response was helpful and it is clear that the relevant committee of the HMCS has taken our concerns seriously. They are prepared to investigate any particular short-comings in more detail and have responded in a fairly positive vein to our suggestions for improving the court service in relation to environmental matters. I shall take up their offer of researching particular cases and keep Members informed of the other potential improvement initiatives.

**Working protocols with the Environment Agency**

117. 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 a workshop attended by officers from both regulatory functions to consider a range of issues. This included providing a common understanding of each others respective roles and the basis for enhanced and closer working practices. The intention is to improve communication and develop improved systems of liaison and where appropriate facilitate joint working. Both parties are keen to develop better working protocols to ensure that each organisations actions work wherever possible to complement each others activities.

118. Further meetings have been held to more formally develop the protocols. In brief, we have agreed 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.

**Review of Planning Enforcement**

119. In late 2006, the Department for Communities and Local Government issued a 'Summary of Recommendations, in relation to the Government's Review of planning Enforcement. There are 25 recommendations. I had intended to report to this Meeting on the proposed changes and their implications for the planning enforcement service. Unfortunately however given a series of public inquiries, staffing changes within my Group and a re-setting of workload priorities there has been insufficient time to prepare a considered report for Members. I therefore intend to report to the next Regulation Committee on this paper.

**Summary**

120. Since January, progress has been made on a number of complex enforcement cases including appearance at public inquiry and joint action with Swale Borough Council and the Environment Agency. 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

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environmental damage in accordance with the adopted Enforcement Protocol.

### **Recommendation**

121.I RECOMMEND that MEMBERS

- (i) ENDORSE the actions taken or contemplated on the respective cases and monitoring work set out in paragraphs 4 - 109 above and note the work towards establishing working protocols with the Kent Courts and the Environment Agency as outlined under paragraphs 110 – 116 and 117 – 118 respectively.

Case Officer: R. Gregory 01622 221067; S. Thompson 01622 696052  
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 7

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

Agenda Item 8

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