



AGENDA

REGULATION COMMITTEE

Tuesday, 19th September, 2006, at 2.00 pm Ask for: **Andrew Tait**
Medway Room, Sessions House, County Telephone **01622 694342**
Hall, Maidstone

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

UNRESTRICTED ITEMS

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

1. Substitutes
2. Minutes - 23 May 2006 (Pages 1 - 4)
3. Future meetings of the Committee:-
 - Tuesday, 30 January 2007
 - Tuesday, 22 May 2007
 - Tuesday, 18 September 2007
 - Tuesday, 22 January 2008
 - Tuesday, 20 May 2008
4. Home to School Transport Appeal statistics (Pages 5 - 8)
5. Legislation affecting the registration of Town and Village Greens (Pages 9 - 10)
6. Update on recent Public Rights of Way cases (Oral report) (Pages 11 - 12)
7. Update on Planning Enforcement Issues (Pages 13 - 38)
8. Implementation of new powers to charge for the monitoring of mineral and landfill permissions (Pages 39 - 42)
9. Other Items which the Chairman decides are Urgent
10. Motion to exclude the Press and Public

That under Section 100A of the Local Government Act 1972 the public be excluded for the following business on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 5 and 6 of Part I of Schedule 12A of the Act.

11. Minutes - 23 May 2006 (Pages 43 - 44)
12. Update on Planning Enforcement issues at Larkey Wood, Chartham (Pages 45 - 48)
13. Update on Planning Enforcement issues at Woodgers Wharf, Upchurch (Pages 49 - 56)
14. Update on Planning Enforcement issues at Deal Field Shaw, Charing (Pages 57 - 60)

EXEMPT ITEMS

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

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

Monday, 11 September 2006

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

KENT COUNTY COUNCIL

REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held at Sessions House, County Hall, Maidstone on Tuesday, 23 May 2006.

PRESENT: Mrs P A V Stockell (Chairman), Mr F Wood-Brignall (Vice-Chairman), Mr A R Bassam, Mr T J Birkett, Mr C J Capon, Mr A D Crowther, Mr J A Davies, Mr J B O Fullarton, Mr T Gates, Mr C Hart, Mr I T N Jones, DL, Mr R L H Long, TD, Mr R A Pascoe, Mr K Sansum and Mr B P Wood.

OTHER MEMBERS: Mr R E King.

IN ATTENDANCE: The Principal Planning Officers, Mr R Gregory and Mrs S Thompson (with Mr R Maloney and Mrs H Mallett); the Solicitor, Amandeep Khroud; and the Democratic Services Officer, Mr A Tait.

UNRESTRICTED ITEMS

10. Minutes

- (1) The Committee agreed that it would receive a report on the application of the County Council's Public Rights of Way Policy on individual applications for diversion or extinguishment with particular emphasis on the decisions made by the recent Member Panel meetings.
- (2) RESOLVED that the Minutes of the meeting of the Committee held on 31 January 2006 and of the Member Panels (Public Rights of Way) held on 21 February 2006 and (Public Rights of Way/Town or Village Green) held on 16 March 2006 are correctly recorded and that they be signed by the Chairman.

11. Update on Planning Enforcement Issues

(Item 3 – Report by Head of Planning Applications Group)

- (1) The Committee agreed that a letter be sent to Southern Water recording its disappointment at the breaches of planning control that had occurred at the rear of Dunes Road, Greatstone, New Romney.
- (2) In the light of the failure of the Area Director for Kent Unified Courts to even acknowledge repeated correspondence from the Committee, it was agreed to invoke the formal complaints procedure, copying the letter to the Lord Chancellor and the Chairman of the Magistrate's Board.
- (3) RESOLVED that:-
 - (a) the actions taken or contemplated on the respective cases set out in paragraph 9 to 137 of the report be endorsed including the actions set out in (1) and (2) above.

12. Implementation of new powers to charge for the monitoring of mineral and landfill permissions

(Item 4 – Report by Head of Planning Applications Group)

RESOLVED to:-

- (a) note the introduction of Regulations that allow the County Council to charge for monitoring at mineral and landfill permissions at a prescribed fee;
- (b) support the introduction of an excellent level of service, which delivers good practice, using appropriate resources as set out in paragraph 15 of the report; and
- (c) support the development of the monitoring scheme and its introduction to operators by setting out interim guidance and agreeing initial visit frequencies with them in accordance with the provisional programme set out in paragraphs 20 and 21 of the report.

EXEMPT ITEMS

(Open Access to Minutes)

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

13. Update on Planning Enforcement issues at Larkey Wood, Chartham

(Item 8 – Report by Head of Planning Applications Group)

(Exempt under paragraphs 5 and 6)

- (1) The Principal Planning Officers reported on the latest enforcement position at Larkey Wood, Chartham.
- (2) RESOLVED that approval be given to:-
 - (a) the enforcement strategy outlined in paragraphs 4 to 6 of the report; and
 - (b) the seeking of an extension of the current restoration order to 30 September 2007 in order to secure a return of the site to agriculture.

SUMMARY OF EXEMPT ITEM

(Where Access to Minutes Remains Restricted)

14. Update on Planning Enforcement issues at Deal Field Shaw, Charing
(Item 7 – Report by Head of Planning Applications Group)
(Exempt under paragraphs 5 and 6)

Mr R E King was present for this item pursuant to Committee Procedure Rule 2.24 and spoke.

- (1) A supplementary report had previously been circulated. The written comments of Mr R E King were tabled.
- (2) The Principal Planning Officers reported on the latest enforcement position concerning the Shaw Grange former landfill site in Charing.
- (3) Mr A R Bassam moved, seconded by Mr A D Crowther that the previously agreed enforcement strategy, amended as suggested by Mr King, be recommended to the relevant Cabinet portfolio holder.

Carried 6 votes to 5

- (4) RESOLVED that the previously agreed enforcement strategy, amended as suggested by Mr King, be recommended to the relevant Cabinet portfolio holder.

By: Head of Democratic Services
To: Regulation Committee – 19 September 2006
Subject: HOME TO SCHOOL TRANSPORT APPEAL STATISTICS
Classification: Unrestricted

Summary: To advise Members of the Home to School Transport appeal statistics for the period between 1 September 2005 and 31 August 2006 and for the corresponding period in 2004/05.

Introduction

1. Transport Appeal Statistics – 2005/06

(1.1) For the period between 1 September 2005 to 31 August 2006 a total of 150 Home-to-School Transport appeals were submitted to 45 Transport Appeal Panel meetings. 55 (37%) were successful, at least in part (eg, time-limited assistance).

(1.2) 88 of the appellants had Local Member representation at their appeals and 21 different Members sat on the Transport Appeal Panels.

2. Transport Appeal Statistics – 2004/05

(2.1) Corresponding figures for the same period in 2004/05 were 88 appeals to 26 Panels with 53 (60%) at least partly successful.

(2.2) 50 of the appellants had Local Member representation at their appeals and 12 different Members sat on the Case Panels.

3. Statistic Details

(3.1) Details relating to the Admissions and Transport Home to School Transport appeals are set out in Appendix 1. Those submitted by the Additional Educational Needs Teams in respect of Statemented Pupils are shown in Appendix 2.

4. Costs

(4.1) Members may be interested to know that the total cost of mainstream transport for the academic year 1 September 2005 to 31 July 2006 was £14,067,897.

5. Recommendations

(5.1) Members are asked to note this report.

Geoff Rudd
Assistant Democratic Services Manager (Appeals)
Tel No: (01622) 694358
e-mail: geoffrey.rudd@kent.gov.uk

Background Information: *Nil*

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

1 SEPTEMBER 2004 - 31 AUGUST 2005

Grounds for Appeal	Upheld	Not Upheld	Total	% Upheld
Denominational	0	2	2	0
Distance	3	3	6	50
Not Attending NAS	37	26	63	59
Hazardous Routes	3	1	4	75
TOTALS	43	32	75	57

APPEALS BY AREA: WEST: 26 - MID: 19 - EAST: 30

1 SEPTEMBER 2005 - 31 AUGUST 2006

Grounds for Appeal	Upheld	Not Upheld	Total	% Upheld
Denominational	0	12	12	0
Distance	6	5	11	55
Not Attending NAS	43	71	114	38
Hazardous Routes	2	0	2	100
TOTALS	51	88	139	37

APPEALS BY AREA: WEST: 65 - MID: 36 - EAST: 38

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

1 SEPTEMBER 2004 - 31 AUGUST 2005

Grounds for Appeal	Upheld	Not Upheld	Total	% Upheld
Denominational	0	0	0	0
Distance	3	2	5	60
Not Attending NAS	7	1	8	88
Hazardous Routes	0	0	0	0
TOTALS	10	3	13	77

APPEALS BY AREA: WEST: 1 - MID: 1 - EAST: 11

1 SEPTEMBER 2005 - 31 AUGUST 2006

Grounds for Appeal	Upheld	Not Upheld	Total	% Upheld
Denominational	0	0	0	0
Distance	2	4	6	33
Not Attending NAS	2	3	5	40
Hazardous Routes	0	0	0	0
TOTALS	4	7	11	36

APPEALS BY AREA: WEST: 4 - MID: 1 - EAST: 6

Item 5

From: Divisional Director – Environment and Waste
To: Regulation Committee – 19th September 2006
Subject: Legislation Affecting the Registration of Town and Village Greens
Classification: Unrestricted

Summary: To update Members on the situation regarding a recent Judgement in The House of Lords that affects the registration of Town and Village Greens.

Recommendation: That Members take note of the judgment and its relevance to the registration of Town and Village Greens

Background

1. Under provisions contained within the Commons Registration Act 1965 the County Council has a duty to maintain a Register recording Town and Village Greens. The County Council also has the duty of ensuring this is kept fully updated and any person may apply to the County Council for the addition of areas of land where, in their view, a significant number of the inhabitants of a locality or a neighbourhood have indulged in sports and pastimes on the relevant land for the requisite twenty year period.
2. This has never been a straightforward task. One particular point that had been causing Registration Authorities concern related to the date up to which use of the land in question had to continue. Previous interpretation of the legislation meant that Registration Authorities could not register land unless use was continuing up until the date of registration.
3. This simply meant that in many cases upon becoming aware of an application landowners went out and erected fencing or notices which made it impossible for any continued use up until the date of registration despite the fact that in many cases the twenty year qualifying period had been attained.
4. However, the case of Oxford City Council v Oxford County Council ex parte Mrs Mary Robinson (known colloquially as the “Oxford” or “Trap Grounds” case) has given the judiciary the opportunity to untangle the legislation. This case was heard in the House of Lords and in May of this year a judgement was issued. It is felt therefore opportune to bring to Members attention some of the more salient parts of the judgement.
5. In summary, the Law Lords decided that in order for land to be registered as Town or Village green, use must be as of right, for a minimum of twenty years and the

inhabitants of the relevant neighbourhood or locality must be able to show continued use up until the *date of application*. So if an applicant can prove qualifying use for 20 years or more up to the date of the application and subject to all legal criteria being met, the applicant is entitled to succeed regardless of what happens after the date of application.

6. Another contentious point had been the extent to which Registration Authorities could deviate from the application plan or amend the application form. The House of Lords has confirmed that Registration Authorities are entitled, without any amendment of the application, to register only that part of the land which the applicant has proved to have been used for the necessary period.
7. Likewise, the date specified by the applicant on the application form as to when the land became a Village Green is also no longer binding upon the Registration Authority, which can proceed as if some other date had been inserted there. For example the date immediately before the date of the application.
8. Finally, Members may also be interested to know that the proposed Commons Act has now received Royal Assent and a further briefing note will follow in due course.

Recommendation

9. I RECOMMEND that Members take note of the recent House of Lords judgment and its relevance to the registration of Town and Village Greens.

Chris Wade
Public Rights of Way Principal Case Officer
Environment and Economy Division (Strategic Planning)
Tel. No: (01622 221511)
Email: chris.wade@kent.gov.uk

From: Divisional Director – Environment and Waste
To: Regulation Committee 19 September 2006
Subject: Update on recent Public Rights of Way cases
Classification: Unrestricted

Summary: To update Members on Public Rights of Way issues

Recommendation: That Members take note of recent cases and decisions relating to Public Rights of Way cases

Introduction

1. The purpose of this report is to update Members on various Rights of Way issues which have been before the Regulation Committee over recent months and inform Members of the outcomes and/or progress on these cases.

Diversion of Public Footpath SD260 at West Kingsdown

2. In 2004, an application was received to divert footpath SD260 out of the farmyard of Terry's Lodge Farm at West Kingsdown on the grounds of public safety and to overcome a longstanding obstruction issue on the path. A number of objections were received and the matter was put before a panel from the Regulation Committee in September 2006. Members decided to support the officers recommendation that a Public Path Diversion Order be made and, following the making and advertisement of the Order, a Public Inquiry was held in August last year by an Inspector appointed by the Planning Inspectorate.
3. Although following the Public Inquiry the Inspector confirmed the Order, a subsequent application was made to the High Court by the local Ramblers' Association representative on the grounds that, on a point of law, the Order should not have been confirmed. Counsel was instructed and advised that this was not correct. Following negotiations between lawyers acting on behalf of the Ramblers Association and those acting for DEFRA, the County Council has been informed that the application to the High Court has now been withdrawn and no further challenge to the Order can be made.

Diversion of Public Footpath SD283 at West Kingsdown

4. At the same Regulation Panel meeting as the above application was being considered, Members also considered an application to divert footpath SD283 from the grounds of a private residential dwelling. In this case, the property concerned had been the subject of

a significant number of burglaries and, despite the installation of CCTV, alarms and other measures to secure the property, continued to be targeted. With the footpath running immediately adjacent to the front door and ground-floor windows of the property, the landowners effectively had no legal right to challenge anyone acting suspiciously within a few metres of their front door. A Public Inquiry was held in April 2006 and the local Crime Prevention Officer from Kent Police attended the Inquiry to support the County Council's case. Once again, despite the objections received, the Inspector decided to confirm the Order. Very favourable comments were received afterwards from the landowners regarding the County Council's professional conduct and support throughout the case.

Extinguishment of Public Footpath ZU29 at Sittingbourne

5. Members may recall this case, which involves a footpath running through the grounds of Highsted School and Fulston Manor School in Sittingbourne, that was put before a panel of the Regulation Committee in February of this year. The case is being progressed using new legislation introduced under the Countryside and Rights of Way Act 2000 which allows the County Council to make an Order to divert or extinguish a footpath which passes through school premises on the grounds that there is a significant threat to staff and pupils from violence, harassment and other anti-social behaviour. It is the first case of its kind in the county under this new legislation.
6. Following the making and publication of the Order, a number of objections have been received from both local residents and user groups, including the Ramblers' Association and the Open Spaces Society. Due to the nature of this case, the Planning Inspectorate has decided to accelerate its determination and a Public Inquiry has been arranged to commence on Tuesday 31st October 2006 at Hempstead House in Sittingbourne. Members are most welcome to attend the Inquiry should they wish and the Inspectors decision will be reported to Members at the next Regulation Committee.

Recommendation

7. I RECOMMEND that Members take note of recent cases and decisions relating to Public Rights of Way cases.

Chris Wade
Public Rights of Way Principal Case Officer
Environment and Economy Division (Strategic Planning)
Tel. No: (01622 221511)
Email: chris.wade@kent.gov.uk

Update on Planning Enforcement Issues

Report by Head of Planning Applications Group to the Regulation Committee on 19th September 2006

Summary: Update for Members on planning enforcement matters.

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

Local Member: n/a

Unrestricted

Introduction

1. This report provides an update on enforcement and monitoring work carried out by the Planning Applications Group since the May 2006 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.

2. Since the January meeting of the Regulation Committee, resources have been focussed on 9 sites where formal enforcement action has been taken, 22 cases where investigations are underway and a further 11 cases which have been satisfactorily resolved. In addition, monitoring visits on permitted sites have been undertaken on 7 sites.
3. Members will be aware that enforcement casework is considerably complex requiring sound legal solutions. 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 environmental damage. These are investigated as a priority. Each case has to be considered on its own merits and in the context that enforcement action is a discretionary function. Action should only be taken as a last resort and only where it is expedient to do so. In delivering this part of the planning service, there is often an expectation to deliver results that fall outside the control of the planning authority, particularly with regard to timescales. Once formal action has been instigated the timescales and commitments involved are set by other parties i.e. the Planning Inspectorate or the Court Administrators.

Update on Enforcement Activities

Cases Where Formal Action has been Taken

Deal Field Shaw, Charing

4. This former landfill site is also the subject of an exempt report to these papers (Item 14).

Larkey Wood, Chartham

5. This site within a Special Landscape Area is the subject of an exempt report to these papers (Item 12).

Update on Planning Enforcement Issues

Detling Quarry, Detling

6. This is an active chalk quarry, which lies within an Area of Outstanding Natural Beauty. There have been a number of operational irregularities over the past 3-4 years, absorbing a great deal of officers' time. Allied to this has been non-quarry related breaches connected with the site occupier. Court action failed to secure the removal of articles, debris, buildings and vehicles remaining on site in breach of a confirmed Enforcement Notice. The need for any further litigation under existing authorisation from Members has been under regular review with the County Solicitor.
7. Meanwhile, the site occupier appealed the refusal of planning permission by Maidstone Borough Council for an independent residential and business use within the quarry. The appeal was heard on 23 and 24th May 2006. Maidstone Borough Council was the lead authority but my Group assisted the Inquiry by presenting background evidence including the full planning history of the quarry.
8. The appeal was subsequently upheld and a permission with tight conditions granted for a single residential use at the site. The 'deemed' application for a business use was dropped at the beginning of the Inquiry. The Planning Inspector in her summing up acknowledged that the appellant had lived at the site for over 25 years and a refusal, would make him homeless and be likely to adversely affect his health. It was concluded that dismissal of the appeal would have had a disproportionate effect upon the rights of the appellant under Article 8 of the European Convention on Human Rights.
9. A personal residential permission was granted, designed to expire when the appellant ceases occupation of the land. Further conditions negotiated during the course of the inquiry by County Council representatives, expressly preclude all other non-quarry related activities at the site. The permission further reflects and reinforces the main requirements of the County Council's Enforcement Notice. Breach of Condition Notices are now available to the Borough Council, under the new permission, allowing 2 planning authorities to exercise control and restraint over the breaches previously brought to court.
10. Although the appeal was upheld, in my opinion the net enforcement position has been clarified and strengthened. *I therefore propose to monitor the site with the Borough Council and arrange for joint enforcement action should that prove necessary in favour of continued litigation under the terms of this Council's Enforcement Notice.*

Russell Surfacing, Detling Aerodrome Estate, Maidstone

11. This case relates to a significant breach of planning control involving the unauthorised depositing of waste as an un-engineered and apparent precursor to the development of an aggregate recycling facility. The County Council successfully defended an appeal against an enforcement notice and against the Council's refusal of planning permission. The Council were also successful in prosecuting against the obstruction of a public footpath that crosses the site.
12. The confirmed Notice set out a number of requirements relating to the cessation of activities and various timescales for compliance. These were:
 - All importation of waste materials to cease and use of service equipment and containers within 1 day (ie 11/11/05)

Update on Planning Enforcement Issues

- The removal of all stockpiled materials including the material blocking the public footpath within 2 months (ie by 10/01/06)
- Removal of the deposited waste, storage bays, weighbridge, power unit and site accommodation units and cultivation to a tilth within 4 months (ie 10/03/06)
- Seeding to a Downland grass mix by 10/05/06.

13. These requirements were met save for grass seeding. I shall inform Members on this remaining compliance issue at the Meeting.

Coopers Waste Management (Speedy Gone Garbage), Detling Aerodrome Industrial Estate, Detling

14. I reported to the last meeting that following previous litigation, the contravening use had ceased and the operator was in the process of vacating the site. He has now left and the landowner has ensured through an arrangement with the adjoining lessee for the site to be effectively cleared. All of the unauthorised vehicles, plant & machinery and waste stockpiles have been removed. I am close to confirming final compliance with the Enforcement Notice, with regard to that industrial unit. The Notice as a charge on the land gives protection against any further waste related infringements on the site.

Brasted Sandpits, Sevenoaks

15. This 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.

16. 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.

17. 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.

18. 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.

19. The Environment Agency (EA) had uncovered an alleged and serious breach of the Waste Management License. Quantities of unauthorised material had been found within

Update on Planning Enforcement Issues

operational phase 6 of the backfill (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 potentially involve removing large quantities of waste material off site. Verification of the waste content of phases 3, 4 and 5 was also required by the EA. Such reassurances are still outstanding.

20. Notwithstanding these complications the County Council is still 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.
21. The position of the EA is pivotal to a successful restoration outcome. It is material to the form and timing of my own proposed actions. I have pressed them for a conclusive decision on the outstanding phases but the position is complicated by the lack of conclusive monitoring data on the range of deposited materials and the potential groundwater and related impacts from any wrongful tipping. A potential way forward would be for the landowners to restore the site at their own risk. That would be in the knowledge that should subsequent monitoring point to the need for pockets of waste (or even whole phases of tipping) to be removed, parts of the site would need to be reworked and restored at private expense.
22. Meanwhile, the EA have separately served a 'Site Closure Notice', under the Landfill Regulations. That requires the company to produce a Closure Plan and report, which in turn needs to include the outstanding restoration detail on waste inputs, groundwater monitoring and remediation measures. I understand that the consultants for the licence holder are currently undertaking a groundwater modelling assessment and complex risk assessment, which is to be submitted to the EA by the end of October. The County Council will be consulted on any submission and can assess at that point the enforcement position on site levels and final restoration. Once this has been reviewed by the EA I am informed that they may be able to advise further on whether phases 3, 4 and 5 of the site can be restored.
23. The Waste Management Licence remains in operation. Indeed, on 27 April 2006 the EA (with witness support from my Group) secured a conviction at Sevenoaks Magistrates Court, for site licence infringements. The company was fined £8,000 on two charges and ordered to pay costs of £1,500 to the EA. The operator was summonsed on 4 counts and has elected for trial by jury. An initial procedural hearing was held on 22 June 2006 at Maidstone Crown Court. The trial is set for 11 September 2006. My Technical Adviser has made himself available to give background evidence if required.
24. In summary, restoration has stalled and momentum is unlikely to resume until an assessment of the potential for groundwater pollution from alleged wrongful tipping has been made by the EA. Since the land interests have failed over a period of 2 years to provide the necessary monitoring data and analysis, despite prosecution the EA has had to contemplate conducting the work itself. *I have raised my concerns at the delays which have occurred in restoring the site with the EA (see paragraphs 129 and 130) and I am seeking to establish an agreed strategy with them which achieves the County Council's principle aim of securing restoration but also ensures to the acceptability of the EA that the risks to groundwater are minimal.*

Update on Planning Enforcement Issues

Raspberry Hill, Park Farm, Iwade

25. 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 until recently was being used for the circulation and parking of large goods vehicles, as part of an apparent commercial distribution use. Discussions have previously taken place with Swale Borough Council regarding the submission of a planning application for residential and business use. That failed to materialise. Nevertheless, 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 the Borough Council.
26. The Borough Council has 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 to agriculture and has been drafted to be read alongside the Borough Notices.
27. The County Council's Enforcement Notice has also been appealed, prompting the arranged hearing to be cancelled by the Planning Inspectorate in favour of a new co-joined public inquiry. An initial date of 24th to 26th October 2006 was offered at short notice but the proposed hearing could not be met by all the parties. A revised date will be advised shortly. All 3 appeals will be heard together in their full planning context. I have agreed joint Counsel with Swale Borough Council and both Authorities will present a consolidated case. That should ensure the most cost-effective and robust defence of the various Enforcement Notices.
28. Whilst awaiting a date for the combined appeals to be heard and their subsequent outcomes, 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.*

Lydd Skips, Lydd Commercial Park

29. I have previously advised Members of a series of planning breaches at this site and the delay in addressing this case through Shepway Magistrates Court. The planning breaches included waste transfer, minor incineration and the depositing of imported skip waste on the site in the form of a continuous mound along the road perimeter boundary, allied with some internal land raising. To protect the land and achieve restoration, an Enforcement Notice was served in 2004. This was not appealed and was confirmed. The Notice required the cessation of all breaches on site and the removal of all tipped and stockpiled waste by 27th December 2004. All caravans, plant and machinery and temporary site accommodation and office units were also to be removed from the site.

Update on Planning Enforcement Issues

30. In the absence of full compliance with the Enforcement Notice, court action was pursued against the landowner and operator. An initial hearing was held on 31st January 2005. Following further procedural hearings, a trial date was set for 15th July 2005. This was adjourned to 13th September 2005 because the defendant was unprepared and unrepresented. The County Solicitor attended a subsequent pre-trial meeting where the defendant was granted legal aid. The case was adjourned to 3rd February 2006 and a further pre-trial meeting took place on 21 December 2005. The case was again adjourned in favour of an urgent custody case and a new date set. The case was eventually tried on 10th July 2006.
31. During the 18 months it took for the case to be heard the unauthorised use had ceased, the site had allegedly changed hands and had been restored to a minimum acceptable level. The defendant admitted the initial breaches but mounted the defence that he had done all he reasonably could to comply with the Enforcement Notice. He was acquitted on that basis. No costs were awarded. Although there were aspects of the conduct of the trial capable of being challenged; on the balance of the issues and in relation to other priorities, an Appeal was not pursued. Bringing the case to court itself achieved the objective of full compliance with the Enforcement Notice. The site has since been redeveloped as a base for mobile homes.
32. Setting aside the case in hand, of greater concern to me is the failure of the Magistrates Court to hear the case within the time frame of the breach. This delay in my view had a bearing on the outcome of the case. Much of the defendants evidence of attempts to restore the site, what ever its merit, post-dated the initial alleged breaches as laid in court months earlier. They in turn followed the expiry of the completion time scales written into the confirmed Enforcement Notice. Had the case been heard when the breach was current, evidence of this sort '*after the event*' would not have been able to be used.
33. To reiterate, my concerns over the processing by the court of this case go beyond the terms of the case itself. Serial and allegedly spurious adjournments as repeatedly experienced here, are an expensive and time-consuming drain on already stretched resources. I am concerned that this practice particularly in cases involving the failure to restore will erode the County Council's ability to enforce such breaches, on a proportionate basis in the lower courts.
34. Members have already expressed their general concern to the head of the Magistrates Courts system in Kent (see paragraph 127 and 128) . *This particular case not only illustrates many of the concerns expressed it also warrants in my view a formal complaint over the administrative failings allegedly displayed here. I therefore recommend that the Council should pursue a complaint in those terms through the formal channels offered by the courts. I would do so in company with the County Solicitor and I would seek Members endorsement of this action.*

Hoath Wood, Lavenders Road, West Malling

35. This case relates to multiple contraventions including: the deposit of imported mixed waste materials (general skip loads), uncontrolled land raising, stone-crushing; waste transfer; waste burning; vehicle breaking, scrap metal handling & salvage; stationing of caravans; portable site accommodation buildings; skips; containers; plant & equipment; parking of large and private light goods vehicles and their associated haulage uses and the storage of waste, vehicle parts and scrapped vehicles.

Update on Planning Enforcement Issues

The site is the subject of a confirmed Enforcement Notice following a public inquiry.

36. Following confirmation of the Notice, a number of sequential compliance dates were agreed. The first required all waste imports to cease which apart from sporadic tyre burning and isolated fly tipped loads has been achieved. Overall restoration including re-planting was required by 31st March 2005. A multi-agency site inspection conducted in July 2005 to check the level of compliance revealed that further restoration had been carried out and that all the portable accommodation buildings had been removed, along with other miscellaneous items. There was no further evidence of waste disposal and processing.
37. Given this progress towards site clearance and the cessation of tipping, Members accepted my earlier advice that the outstanding works in terms of levelling, final reinstatement and re-planting could reasonably be achieved by negotiation, subject to the pursuing of further formal action including the use of a High Court Injunction should events on site indicate that this is necessary. No further tipping has taken place and I have not received any further complaints concerning this site. *I therefore intend to continue to resolve the outstanding matters via negotiation.*

Live Cases – Enforcement Response Under Consideration

Ripley's Scrapyard, Tennyson Road, Ashford

38. 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. No application has been received. Having been about to commence formal enforcement, the operator has now engaged a planning consultant to submit the outstanding and regularising application. *I shall shortly be meeting him on site to discuss the details of the planning application.*

Naccolt Brickworks, Wye

39. This case concerns a site that has the benefit of a temporary planning consent 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.
40. I previously advised the Committee that the operator had been advised through his Planning Aid consultant that should he wish to continue to trade from the site in 2007 he would require the benefit of a new planning permission. In considering any such proposal, he was informed that measures are required to address the current breaches and that my consideration will also have regard to policy W16 of the Kent Waste Local Plan, which considers the industry's past record in respect of the environmental management of comparable operations.

Update on Planning Enforcement Issues

41. *It was resolved at the last Meeting that as the planning permission was shortly to expire, the breaches were minor site management issues and that no recent complaints had been received concerning the use, that formal enforcement action would not be pursued at that time. I would seek Members support to maintain that position. However, should the development continue into 2007 without a new permission, then this decision would need to be reviewed.* I can report since the last meeting, that the applicant has submitted a planning application for the storage of recyclable/reusable materials and the composting of organic material on the site. Unfortunately, the application was of an insufficient standard to be valid and was therefore returned to the applicant with advice as to how to address the deficiencies. I shall inform Members at the Meeting on any further submission having been made.

Chapman's Scrapyard, Tenterden

42. Complaints have 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.

43. 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.

44. *The operator has agreed to make every effort to meet the concerns of local residents, within the context of a permitted site. However, I keen to ensure that full compliance is reached and maintained more formally. With that in mind I am conducting a review of work practices with the operator's planning consultant to see if improvements can be made.* Combining available powers between the various agencies should deal with any recurrence of the alleged noise, burning and odour amenity impacts.

Pilgrims Way Primary School, Canterbury

45. The County Council is currently considering a retrospective planning application for the relocation of a playground at this school. The matter was brought to my attention following a complaint from a neighbouring resident. Investigation established that the playground permitted as part of a proposal for a nursery on the site was not being constructed in accordance with the planning permission (CA/06/554). Further investigation established that the approved location, which was promoted to address the concern of Sport England about the loss of playing field proved to be operationally unacceptable to the school as it cut the playing field in two and was not in close proximity to existing outdoor hard play areas. An alternative site was therefore selected, which is closer to properties in Mount Road than the approved scheme. Work commenced in advance of the necessary planning permission so that the playground would be available for the start of the school term in September. The School advised that it would not be safe to have heavy machinery on the site whilst the school was operational. In addition, due to the shortage of playground space, the school advised that it would have had to remain closed until the new space was provided.

Update on Planning Enforcement Issues

46. No contact was made with the Planning Authority prior to the works taking place, although the applicant stopped working on the site as soon as they realised they were in breach of their planning consent. As a result the original playground has been backfilled to enable the school to open in September. The architect also wrote to and visited properties in Mount Road to explain the proposal. *The revised location is to be considered by the September Planning Applications Committee. Officers have recommended that permission be granted subject to conditions. I will update Members at the meeting on this case.*

F M Conway Site, Rochester Way, Dartford

47. This case has been reported to previous Committee meetings since 2004 and relates to the development of an unauthorised waste management facility on the site. A considerable number of complaints were received from the neighbouring residential development concerning noise, dust, odour, lighting impacts and that the development did not have planning permission.
48. Since these complaints, this authority has considered two retrospective planning applications, which enabled the planning merits of the development to be tested. The first related to the drainage treatment plant, aggregate washing plant and industrial and storage units (DA/04/770). Permission was granted in November 2005 subject to conditions and a legal agreement. The second application (DA/04/787) related to the use of part of the site for screening, crushing and processing of aggregates, construction and demolition waste and ancillary storage. The Planning Application's Committee refused planning permission for this development on the grounds that the application had failed to satisfactorily demonstrate that the proposal represented BPEO (Best Practicable Environmental Option) with regard to the proximity and self sufficiency principles, that it would have an unacceptable impact upon local amenity with regards to dust and in light of this it had failed to demonstrate an overriding need for the development.
49. At the June 2005 meeting, this Committee considered the circumstances of the case and whether to pursue enforcement action. In particular it took into account the outstanding Certificate of Lawful Use Development (CLUED) application (which contests that planning permission is necessary for the refused development) and the agreed working protocol which is in place and which safeguards amenity impacts. The Committee resolved to defer the taking of formal enforcement action until the uncertainty concerning the lawful use was resolved (ie once the CLUED appeal is determined) and that in the event that the CLUED appeal was dismissed (refused) or there was an unacceptable intensification of activity on site, contrary to the working protocol, then the need for enforcement action was supported. The informal working protocol sets limitations concerning the way the development is carried out including restrictions on stockpile heights, dust suppression measures and the adoption of good practice on the production of aggregates from inert waste
50. The Company has appealed both this Council's refusal of planning permission and Dartford Borough Council's failure to grant a Certificate of Lawful Use (CLUED) for the development. The Planning Inspectorate has co-joined the appeals, which are to be heard by way of a public inquiry. In light of the above, Members agreed to 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.

Update on Planning Enforcement Issues

51. By way of an update, I have monitored the site on an ad hoc basis and its impact on the adjacent housing area and found the working protocol to be in place. I have however received 6 complaints from local residents from the adjacent housing development since the last meeting. These related to dust (x 2), burning on site and smoke affecting the housing area (x2), the visual impact of plant on the stockpiles over night and operating hours. Each complaint has been investigated and insufficient evidence was found to establish that the Protocol had been breached, such that enforcement action could be successfully pursued. Officers established that the fire occurred on the adjacent Easyload site in the early hours of 20th August 2006 and according to the Fire Brigade was probably the result of discarded smouldering material that ignited waste on the site. Similarly, site visits have been unable to confirm that the dust was directly attributable to the Conway site, given other operations in the area. The Protocol does not cover operating hours, nor restrict plant being stored on the stockpiles, although the operator had previously agreed to remove the plant overnight. I have raised the issue of the plant with the operator and am awaiting a reply.
52. I am currently processing a further retrospective planning application for the screening, crushing, processing and storage of aggregate and construction and demolition waste on the site. The application specifically seeks to address the grounds of refusal imposed by the Council's Planning Application's Committee when it refused permission in March 2005. It has attracted objections from local residents who raise a number of concerns including noise, dust, odour and visual impacts and I am currently awaiting further information to address issues raised by consultees and local residents. This information is expected later this month. To take account of this and to allow the County Council time to consider the revised application, the Planning Inspectorate has suspended the planning appeal for the original application. A revised date is to be set for the new year.
53. *In light of the circumstances of this case, I would reiterate my earlier advice to this Committee and propose that we 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

54. 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.
55. 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. The Enforcement Notice has been appealed and I understand that the case is to be heard by public inquiry.
56. Having reviewed the case with the other two bodies it appears that unacceptable waste disposal may take place, particularly given the sea wall as a fixed containing bund. *I should therefore 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 potential for joint witness evidence. For Members information the EA have recently impounded several lorries engaged in*

Update on Planning Enforcement Issues

alleged unauthorised activities on the land.

Highview, Longfield Road, Meopham

57. I am currently processing an application for a Certificate of Lawful Use (CLUED) in connection with the storage of vehicles, vehicle parts, breaking /dismantling of vehicles, sale of vehicles and vehicle parts at the above site. An earlier application for similar development was refused by this Council. *In the event that the current application is refused, I will need to consider an enforcement strategy for this site. I will keep Members informed on this case.*

Tutsham Farm, West Farleigh

58. 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.
59. 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 precursor to the service of an Enforcement Notice. In reply to the Planning Contravention Notice, the operator asserted that the deposited waste materials were the result of operations on the farm and were therefore permitted development. In light of this and following a review of the planning history of the site and its environs, I find it difficult to believe that the quantities deposited could have been generated from within the general land holding.
60. 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. *In the context of other priorities and in the absence of a negotiated settlement I still intend to serve an Enforcement Notice to protect the field and return the natural contours as far as practically possible.* Three main considerations need to be weighed and considered, namely the integrity of this protected countryside setting, riverside drainage and pollution issues (which stands within the remit of the EA) and the highway implications for requiring any removal of waste off site. The EA will need to be involved in shaping the restoration requirements of the Enforcement Notice.
61. Each of these planning interests is being assessed and will be written into the restoration requirements of the Enforcement Notice. The EA of course have their own and immediate waste removal powers which they may wish to use, particularly given the close proximity of the River Medway. *On the more general protection of the wider landholding, Member's support is again sought for the further contingency of a court injunction should that prove necessary.*

Shepherds Farm, Lenham

62. A number of issues relating to non-compliance with the permitted scheme of working and plant details were reported to the previous Regulation Committee. The site is now owned by Brett Aggregates, who are reviewing site operations. Discussions with Brett Aggregates have revealed further issues relating to working at the site. Specifically, these relate to slope stability and side slope profiles. Brett Aggregates has been asked

Update on Planning Enforcement Issues

to make any necessary submissions to regularise matters as soon as possible. In the meantime, I am not receiving any complaints. Nevertheless, the breaches internal to the site are both serious and complex. Resolving them will require significant works and the potential need for further restoration materials to be imported to the site. Planning permission would be needed in that instance and a review of the licensing régime.

Poll Hill Gypsy Site, Halstead, Sevenoaks

63. This case has been reported to earlier meetings of this Committee and relates to the unauthorised deposit of a significant amount of spoil on land immediately north of the Poll Hill Gypsy site. The works were carried out throughout the summer of 2003 and have created a large mound some 5m + above the adjacent A224 Poll Hill Road. 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. The works are highly visible from the M25 motorway.
64. 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.
65. 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. Officers from the Gypsy Unit have been advised that the retention of any material here will require planning permission and that the scheme is not likely to be acceptable in its current form. Given the County Council's involvement, formal enforcement action under planning legislation is not a possibility. The Environment Agency can however prosecute breaches of Waste Licensing and Environmental Protection legislation.
66. *Members may recall that I advised that in order to prepare a resolution strategy for this case, further geo-technical information was required. An initial site investigation study was undertaken in 2005. This report 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 was commissioned in October 2005 and a copy of the findings of this work was submitted to the Planning Authority in April 2006.*
67. *I advised the Committee in May that the report was out to consultation with the Environment Agency and the landowner. Whilst I have yet to receive comments from the Highways Agency, the Environment Agency advised that it has a number of concerns regarding the methodology which highlights the need for a 3rd phase of investigation. This is particularly frustrating as prior to carrying out this second study discussion took place with the Environment Agency to agree the methodology. I have therefore arranged a meeting of all key parties with the Environment Agency later this month to urgently discuss this case. Once this discussion has taken place, I will be better placed to advise Members how best to resolve this case. I will keep Members*

Update on Planning Enforcement Issues

informed.

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

68. I recently 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. *I am currently considering what form of enforcement action is appropriate for this site, which will be influenced by whether the earlier decision is appealed or a revised application is made. I will keep Members informed on this case.*

Rear of Dunes Road, Greatstone, New Romney

69. At the last Meeting Members resolved that I write on behalf of the Committee Repeat conveying their dismay that breaches were occurring in relation to the main drainage works being undertaken by Southern Water Services in New Romney. Despite this the breaches have continued.
70. As background, a temporary site compound was permitted to help service the scheme. By necessity, this has been located close to the rear of a number of residential properties. The breaches once again largely relate to the inconvenience of traffic movements associated with the compound. Residents' latest concerns have been substantiated with wheel rut damage on the grass verge (despite the protective grasscrete), a blocked drain allegedly from mud deposits from vehicles entering and leaving the compound and a muddy surface which vehicles have been carrying onto Dunes Rd. The site compound has also been constructed closer to residential properties than on the permitted scheme and the footprint is incorrect. Open temporary fencing has also been used in parts of the site perimeter rather than the required wooden hoardings.
71. I have already reminded Southern Water of their duty to follow the agreed terms for the construction of the compound and the safeguarding of immediately adjacent residents. The fact that full compliance had not been reached and with further breaches Southern Water were given until 5th September 2006 to correct the site layout and conduct the use within the terms of the planning permission.

72. The company have responded saying that:

“Southern Water and Four Delivery apologise for the lack of proper compliance with the relevant conditions in the planning permission, and lack of compliance with the agreed Code of Construction Practice.

The developer and project manager/contractor wish to assure County Council members and officers (and local residents affected) that the current problems will be rectified and that the construction of this major infrastructure project will be carried out in ongoing compliance with the planning permission.

The various actions listed in your report following the most recent site visit have been addressed and the responses to the various points are set out in this letter. These responses and other documentation and plans submitted with this letter are circulated in advance of the planned site inspection of the Dunes Road site compound.”

Update on Planning Enforcement Issues

73. I shall be inspecting the site and reporting further at the Meeting. An application to erect 2.4 metre hoardings rather than the permitted 2 metre high fencing (and related outstanding operational details) has been received and is currently being processed.
74. *Should full compliance not have been reached by the deadline I have placed Southern Water on notice that a Breach of Condition Notice will be served. In that instance I should be grateful for Committee endorsement.*

Four Gun Field, Upchurch

75. 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.
76. There have been sporadic but temporary and minor uses of the site over the past 3 years. For instance, stone crushing 'noise trials' have been carried out and the importation of some waste materials to the site. The Environment Agency has in the meanwhile determined that the material is waste. A large consignment was derived from the cleaning out of an asphalt recycling plant. The Borough Council informed me that the operator intended the material to be used in the construction of a hardstanding. That however required planning permission. An application was invited by the Borough but the invitation was declined. In view of that the Borough served a Section 215 Notice on the land. That requires removal of the waste on amenity grounds.
77. Unfortunately however, the basis for serving the Notice was successfully challenged on a technicality at a hearing in Sittingbourne Magistrates Court on 12 May 2006. The EA however have committed to serving a Section 59 Removal Notice on the land in place of the Borough Council's action.
78. Meanwhile, the County Council's planning position is being vigorously asserted through the assistance of Counsel. It is maintained that planning permission is required for any waste-related use on the site. It has also been pointed out to the operator's solicitor that in the case of a difference of opinion with a local planning authority, there is the ability to apply for a Certificate of Proposed Lawful Use (a CLOPUD). That requires a formal decision on whether or not an Authority considers that a proposed use falls within an existing lawful use and attracts a right of appeal. The option of submitting a CLOPUD has so far been declined in this instance.
79. Instead, the land interests have made a proposal for housing on the land to the Examination in Public recently held into the Borough Local Plan Development Framework.
80. *In view of a potential use still developing at the site, this Authority has to remain alert in the public interest to the possible need to take enforcement action. As an ongoing*

Update on Planning Enforcement Issues

contingency I would therefore seek Member's continued support for the service of an Enforcement Notice. In addition to that I am also seeking support for any injunctive or joint action with the Borough Council and the EA which is deemed necessary under the advice of the County Solicitor and our retained barrister.

Woodger's Wharf, Upchurch

81. This case concerns the use of a marine wharf at Otterham Quay, Upchurch for the screening and crushing of largely inert materials. The planning history of the wharf is complex. Considerable has been undertaken to resolve this case and to ensure that all relevant parties, the local community and their representatives are kept informed of progress. An update on the case and enforcement strategy is the subject of an exempt item (Item 13).

Lime Kiln Wood, Wormshill, Sittingbourne

82. 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.
83. 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.
84. 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." The application has yet to be determined. I have entered an objection on behalf of the County Council on the following grounds:

"The application itself, in the opinion of the County Council is flawed. The plans are not too scale, quoting imperial and metric measurements. They fail to then properly link the proposed development to the site. Of more concern is that by not including the unauthorised waste deposit the full and true development has not been described. The development includes in the 3rd dimension the material deposited at the site upon which the applicant hopes to have his stables and related development. In the view of the County Council, a surface 'recreational / stabling use' cannot be entertained on an unauthorised land base, which of itself requires planning permission.

The County Council defers to your Authority on the proposed surface use. However, the unauthorised waste deposit would be a County matter. No justification for the waste being introduced to the site has been offered. This Authority has been poised to serve an Enforcement Notice to achieve a permanent end to tipping and to secure restoration. The aim is to have the site returned to its original wooded character. That accords with advice from the County Council's North Downs Way Team and is supported by the

Update on Planning Enforcement Issues

...serving of a Tree Preservation Order”.

85. *Given the circumstances and a recent report of further tipping I should seek Members continued support for the service of an Enforcement Notice, accompanied if necessary by injunction to secure restoration and prevent further tipping. Meanwhile, I intend to inspect the site with all 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.*

Church Marshes, Sittingbourne

86. I have been alerted to complaints of odours from green waste being deposited on the former Church Marshes waste landfill site from Civic Amenity sources. On investigation, this was being introduced as ‘land enhancement’ on the surface of the site by the contractors carrying out Swale Borough Council’s Country Park development. Planning permission was granted several years ago by the Borough Council for a public recreational project on their own land.
87. The contractors had previously been advised by me that the introduction of green waste onto the land for composting would require planning permission from the County Council. It transpired that the direct introduction of the material to the land was tried instead. That equally requires planning permission and that fact was brought to the immediate attention of all relevant parties. The practice ceased, pending the outcome of any potential application to supplement the land treatment in this way. The Borough Planning Officer agreed that permission was required and that this waste depositing element should properly fall within the County Council’s planning remit.
88. I have been assured by the Borough’s project manager for the Country Park that the scheme is not dependent, nor would its timetable for implementation be unduly affected by my intervention. *I have had a further meeting with relevant parties at the Borough Council offices and I was left with the impression that an application would be made. A submission has not as yet been received and a commercial soil dressing is being used. I am content that no pressing remedial works are necessary in relation to the material already brought onto site.*

Westwood Industrial Estate, Channel Road, Margate

89. I advised the previous Committee that a waste recycling centre was operating without the benefit of planning permission and that an application to regularise the activity had been returned to the applicant as invalid. *A further planning application was made and is to be considered at the September Planning Applications Committee. The officer recommendation is to permit, subject to conditions. I will update Members on this case at the meeting.*

Oast Park Farm Golf Club, Snodland

90. 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 the primary enforcement authority.
91. The complainants have been alleging that the site has been overtipped, some non-construction materials have entered the site, public footpaths are being obstructed,

Update on Planning Enforcement Issues

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.

92. 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. These are now the subject of a further survey.
93. Responding to a number of alleged waste management breaches, the EA has de-registered the exemption on the site from waste licensing control. The gates to the landfill site have therefore been closed while the various waste related infringements are tackled.
94. *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.* I am concerned on the alleged extraction of sand. I have no evidence of material leaving the site in terms of a mineral extraction breach. A position confirmed by the Borough Planning Officer, which in any event will be the subject of more detailed investigation during the follow up survey. *I shall continue to monitor this aspect with the Borough Council.*
95. *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.*

Whiteladies Gas Control Compound, Offham Landfill Site, Offham

96. Matters relating to the Whiteladies Gas Control Compound have been reported previously to the Regulation Committee. These relate to the lack of progress with the planning application (TM/04/3135) to regularise the equipment and layout and noise emissions from the plant, which has already been installed. In addition, there has been an issue in meeting existing noise limits at the nearest noise sensitive properties at night due to tonality / low level noise associated with the 'in-rock' gas flare. *This is a technical issue to resolve , however WRG is progressing works to address these concerns and further noise monitoring is being undertaken to assist with these works. In the meantime I have not received any complaints.*

Addington Sandpit, Addington

97. A number of issues relating to non-compliance with the permitted working and restoration of the site were reported to previous Committees. The issues primarily relate to the need to address the 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. *Hanson is preparing the necessary submission(s) to address the issues and an application is awaited. These technical breaches are not attracting complaints and the matter is not a high category to resolve in terms of the Enforcement Protocol.*

Stangate West Landfill Site, Borough Green

98. I advised the previous meeting that a number of technical breaches of planning control relating to noise monitoring, leachate control, landscape and aftercare requirements were being addressed with a retrospective planning application. (TM/06/2466. Delegated planning permission has now been granted for these works regularising the

Update on Planning Enforcement Issues

development.

Eglesden Farm, Mill Street, Iden Green, Benenden

99. 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. There has been no further disposal notified.
100. Permission (TW/96/73) to infill a small pond on the land was cited as justification for the tipping. This however lapsed in 1998 and in any event the tipping is over an extended area. A Planning Contravention Notice was served on the landowner to be followed by an Enforcement Notice to protect the land and secure appropriate sensitive restoration in this AONB setting. In the meanwhile, the EA have been taking independent action against the landowner and operator for the deposit of waste. I have asked them for further guidance on restoration given the water gathering sensitivity of the site.
101. 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.*
102. *I shall continue to monitor the site and prevent any resumption of tipping, pending reinstatement of the land.*

Resolved Cases:

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

Sevington Railhead

104. I have received a number of complaints from a local resident concerning the operations at the railhead. These related to noise, hours of working, visual impact and the operation of the site following the expiration of temporary planning permission. The complainant was seeking enforcement action to be taken. Investigation established that the County Council is currently processing two applications by Bretts Aggregates on the site to retain the rail sidings for the export and import of mineral, to screen and crush the material to produce recycled aggregate and the storage of material and engineering works to create a screening bund. A third application to renew the temporary planning permission to use the railhead has also been received, pending the determination of the other two applications. *In light of the live planning applications, formal enforcement action would be inappropriate at this stage.* I have nevertheless drawn Brett's attention to the concerns raised, requesting their comments and that they cease such activities.

Carlton Road, Ashford

105. I received a complaint that waste was being stored and sorted at a property on the industrial estate. Investigation established that the site had the benefit of planning permission.

Update on Planning Enforcement Issues

Kemberland Wood, Fox Hill, Sturry

106. I have previously advised Members of unauthorised waste activities at this woodland location. These operations have included the importation of waste materials and the crushing and screening of material on site, making use of an existing yard. Investigations established that the work was being undertaken with the benefit of exemptions from Waste Management Licensing by the Environment Agency (EA). The affected land was already protected by 2 Enforcement Notices as served by the City Council. Indeed, the occupiers had complied with the Notices by clearing buildings, scrap vehicles and scrap metals, under the supervision of those two authorities.
107. Members may recall that I advised the operator that no further waste material could be brought on site and that all unauthorised waste imports and screening plant needed to be removed and the site graded back to its natural contours and away from the perimeter tree line by 31st October 2005. Members supported this stance and authorised the serving of an Enforcement Notice in the event of any further importation of waste material or waste management development. Nevertheless, the main scope of the works were completed through negotiation. The item that remains is a large stockpile of hardcore, which the operator has agreed to remove. I shall monitor its removal to a conclusion.
108. The landowners apparent intention was to restore the land to a 'nature reserve' or similar recreational use; financing the work from the crushing and screening of waste on site together with the importation of waste materials to provide suitable top soil dressing and a resource to sell on. The imported volume of builder's rubble on site was intended to be used as hardcore for internal roads to the reserve. No planning permission exists for such uses, though the landowner/ operator's planning consultant is now advising on the planning future of the landholding. As part of this exercise he began investigating the extent of a Lawful Use Certificate on a related hardstanding for a '*concreting and skip business*' granted by the City Council in August 2004.
109. An application for Lawful Use and Development on the yard was submitted for: "The sorting, separation and re-use of inert and semi-inert waste materials, with associated storage, plant, machinery and parking". This has subsequently been approved. It assists in clarifying the uses on the yard and specifically excludes screening and crushing activities. I am hopeful that improved monitoring and enforcement will be possible, especially given that a Waste Management Licence will cover the detailed operational aspects of the waste management uses. *My intention is to revert to monitoring the site alongside Canterbury City Council and the Environment Agency.*

Community College, Whitstable

110. I advised previous meetings that concerns relating to security lighting had been raised, contrary to planning permission CA/04/539. The matter has now been resolved with the granting of retrospective planning permission to an alternative lighting solution that is less intrusive.

Dartford Heath Civic Amenity Site, Dartford

111. I investigated a complaint of odour coming from the treatment of green waste at the Council's Household Waste site. The issue was raised with the operator. Measures were in operation to prevent odour which were usually effective, but may have been influenced by the warm weather this summer. The concerns were noted. I have received no further complaint.

Update on Planning Enforcement Issues

St Edmund's School, Old Charlton Road, Dover

112. 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.
113. Since the last meeting, a retrospective planning application was submitted to regularise the work under construction. Officers considered that the revised application was unacceptable and recommended to the Planning Applications Committee to refuse planning permission. This resulted in revised details in the form of
- setting back the first floor closest to residential property by 1.8m,
 - pulling back the roof overhang by 1.1m,
 - the use of obscure glazing to floor level,
 - the removal of opening windows to this elevation
 - reduction in the external café area, and
 - a revised landscaping scheme.
114. Officers supported the revisions and the Planning Applications Committee resolved to grant planning permission subject to conditions at its July meeting. *I will monitor the site to ensure compliance with the permitted scheme.*
115. I am aware that several neighbours remain aggrieved at the breach of planning control and the process to resolve the matter. A number of complaints have been made via the County Council's Corporate Complaint system and may be pursued with the Local Government Ombudsman.

Hythe Plant Services, Hythe

116. I received a complaint from a adjoining business that whilst working in their yard, spray from the sprinklers on the Hythe Plant Services (HPS) site was drifting over the adjacent site. In addition, their employees were complaining of dust on their vehicles, which were parked on the public highway. There were also complaints concerning the parking of empty skips and customer's of HPS of placing full skips onto the public highway when it was too busy to off-load within the site.
117. Investigations into the dust and water complaints could not be verified at the time of my site visit. With regard to the empty skips complaint, this was upheld as at the time of my visit empty skips were on the highway. As a result of raising this with the operator, they undertook not to continue the practice. They categorically deny that any full skips were left or placed on the public highway. *Compliance against the planning permission will be monitored at this site*, but there have been no further complaints regarding this matter.

Minster Primary School, Sheppey

118. I verbally advised the May meeting that retrospective planning permission had been granted subject to condition for the installation of CCTV cameras and extensive re-modelling of the playing field at the 16th May Planning Applications Committee. Since the last meeting, I have issued the planning permissions and discharged landscaping

Update on Planning Enforcement Issues

details for the playing field. I have also met the contractor on site to confirm that the alignment of the new 1.8m boundary fence is being sited in accordance with the approved details. *I will continue to monitor the site to ensure compliance with the planning permission.*

119. In July 2006, the Chief Executive received a formal complaint about the applications that had initially been sent to the Local Government Ombudsman.

Belsom Plantation Lodge, School Lane, Iwade

120. Members may recall that I reported this case which relates to the deposit of unauthorised largely construction type waste materials on the site. Swale Borough Council have served an Enforcement Notice and the Environment Agency a Site Clearance Notice. Subsequent site visits confirmed that the site was being cleared and in light of the Borough and Environment Agency actions, *this Authority maintains a monitoring role.*

Foley Site, Plantation Lodge, School Lane, Iwade

121. This site adjoins the above site at this location in Iwade. It relates to an unauthorised skip business and related caravans and motor vehicles. These have attracted a Borough Council Enforcement Notice. The Borough Council and the Environment Agency have enforcement control of the site and again, *this Authority will continue to undertake a monitoring role. I shall keep Members informed of the progress towards restoration.*

Pearsons Sand pit, Addington Lane, Trottiscliffe

122. 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.

123. I have continued to keep Members informed at previous meetings on what progress has been made towards securing the final restoration of this site. In my last report to the meeting held in May 2006, I advised that with the exception of some plant awaiting relocation off site, the dismantling of the existing weighbridge and removal of part of the internal access road the site was close to final restoration. I confirm these works have now been carried out as agreed. I also advised that the operator had aspirations to use adjoining restored land to erect a stable block for horses, therefore an application would need to be submitted to Tonbridge and Malling Borough Council. In order to facilitate this use and to enable him to continue to meet the terms of the existing planning conditions he has submitted a section 73 application to the County Council seeking the retention of the access to the site along with the retention of an existing storage building. Whilst the application seeks to downgrade the existing access, including the reduction of the bell mouth along with new gates, to reflect the agricultural setting in the AONB the applicant has been advised to provide further information in support of the proposal before a formal determination can be made. *I will continue to keep Members informed of progress.*

Update on Planning Enforcement Issues

Site Monitoring

124. We have given a lower priority to our formal routine visits to permitted sites since the last Regulation Committee. This is because we have concentrated on work to implement new powers for chargeable monitoring.
125. Visits have been carried out to 7 permitted sites since the last Committee and the issues found are consistent with visits carried out earlier in the year, and predominantly minor layout differences. Issues have been reported to site operators and we are awaiting a number of formal submissions as a result.
126. It is expected that we will continue to give a higher priority to work required to implement chargeable monitoring at minerals and landfill sites.

Update on Members Concern regarding Court Procedures

127. Members may recall that the Committee resolved in June 2005 to inform the Chief Executive of the Court Service in Kent of the Committee's concerns 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. A letter was sent by the previous Chairman of this Committee to the Area Director for Kent in August 2005. I reported to the May Committee that despite both written and telephone chasers, the County Council had not received a reply. Members resolved at the last meeting to invoke the Court's formal complaints procedure, copying the correspondence to the Lord Chancellor and the Chairman of the Magistrate's Board.
128. Prior to sending the letter, the Committee Clerk received a copy of a reply from the Area Director's Office of Her Majesty's Courts Service addressed to Mr R Manning, the previous Chairman of this Committee. It was dated 23rd September 2005. It was accompanied by a letter to the current Chair of this Committee dated 31st May 2006. I attach a copy of the correspondence as an appendix to this report.

Proposed working protocols with the Environment Agency

129. Since the last meeting there have been discussions with the Environment Agency to consider a range of issues in respect of the day to day contacts between respective officers. The intention is to improve communication and develop improved systems of liaison and where necessary joint working. There have been occasions typified by the Brasted case (see paragraphs 15 to 24) where the principle aims of this Authority to secure compliance with restoration requirements has been frustrated by actions taken by the Agency which are targeted at protection of the Environment (in this case prevention of groundwater pollution). Both parties are keen to develop better working protocols to ensure that each organisations actions work wherever possible to complement each others activities.
130. I would seek Members endorsement to developing as a matter of priority protocols with the Agency as referred to above. Should Members accept this recommendation that I be requested to write to the Agency's Kent Area Manager formally confirming this Committee's Resolution to develop such protocols with an aim to agreeing a programme with the Agency within one month of this Committee.

Update on Planning Enforcement Issues

Summary

131. Since May, good progress has been made on a number of complex enforcement cases and 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 bring restoration and long term protection to sites. In devising appropriate restoration plans, input is required from other parties ie the Environment Agency and on occasions the District Councils. As a guiding principle, resources are targeted to those activities that have the potential to create the greatest environmental damage in accordance with the adopted Enforcement Protocol.

Recommendation

132. I RECOMMEND that MEMBERS

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 6 –123 and the establishment of working protocols with the Environment Agency as outlined under paragraphs 129 and 130, above.

Case Officer: R Gregory
S Thompson
Background Documents: see heading
S:DOCS/COMM/012004PEI

01622 221067
01622 696052

Update on Planning Enforcement Issues



APPENDIX TO PARAGRAPH 128

Update on Planning Enforcement Issues



APPENDIX TO PARAGRAPH 128

Update on Planning Enforcement Issues



APPENDIX TO PARAGRAPH 128

Item 8**Implementation of new powers to charge for the monitoring of mineral and landfill permissions**

Report by Head of Planning Applications Group to the Regulation Committee on 19 September 2006.

Summary: Progress in implementation of new powers to charge for the monitoring of mineral and landfill permissions. Work and resources required to introduce charging for our formal monitoring of mineral and landfill permissions in Kent

Recommendation: Note progress of this work and support prioritisation of work for the period to 31st March 2007.

Local Member: n/a

Unrestricted

Background

1. In May 2006 we reported to committee that new Regulations had come into force giving mineral and waste planning authorities (mwpas) the powers to charge for the monitoring of mineral and landfill waste permissions.

Update on work completed to date

2. We have prepared our own guidance explaining how we will administer the scheme and approach site monitoring in Kent. This has been issued as interim guidance for the period up to 31st March 2008. A copy has been sent to relevant operators and will be on our website. It sets out the procedures for invoicing, fee recovery and dealing with disputes and will be reviewed, taking into account operator comments that we receive and the findings from the first full 18 months of monitoring under the new regime.
3. From the initial categorisation of sites, there were 99 sites that were thought to fall within the regime. The initial assessment of sites has been revisited and as a result of more detailed investigation, this number has been reduced to 87 sites and site categorisations refined. These were split into the following categories:

	Nos of sites in each category	Estimated No of visits required
Category 1	17	17
Category 2	24	48
Category 3	12	36 to 48
Category 4	23	92 to 138
Category 5a & b	5	24 to 32
Further verification needed prior to initial contact	6	
Totals	87	Between 217 & 283

4. We have written to relevant site operators in order to introduce the system to them and in order to start the process of agreeing site categorisations and site visit frequencies. Operators have been told of our initial site categorisation and indicative monitoring frequency and have been asked for their views via completion and return of a site survey form to us.

Implementation of new powers to charge for the monitoring of mineral and landfill permissions

5. Initial chargeable visits to sites have not yet commenced.

Information received from site operators

6. We asked operators to return the site survey form to us by the 11th September and at that time we will be able to establish how many operators agree or otherwise with our initial site categorisation and site monitoring frequency. We will also be able to identify what further initial site survey work is required. This information will help us to further prioritise the work.
7. The indication from the survey forms received so far (representing approx 25% of the sites) suggests that some operators (mainly those in lower visit frequency site categories) clearly agree with our initial site categorisation. Others suggest that a lower site categorisation is more appropriate and we will need to consider these further. Some operators consider that they fall into a lower category than the information that they have provided to us in their survey form suggests they should be, and we will need to explain our categorisation to them. There are some sites where we need to do more to establish the most appropriate and the main operator to write to and we will need to re-send the survey form. Further correspondence will also be needed with those that sent back incomplete forms.

Proposals to further progress implementation of chargeable monitoring in the period to 31st March 2007

8. We do not currently have sufficient additional appropriately skilled staff in place, in order to carry out all of the visits that would be required in order to deliver an excellent monitoring service in the period up to 31st March 2007. We will therefore need to prioritise our visits to sites.
9. Our monitoring guidance stated that we would give a higher priority in our phased implementation, to carrying out the first chargeable monitoring visits, to those sites that we think, based on our initial site category and the site survey information, should be in site categories 5, 4 or 3. We indicated that we would also give a higher priority to carrying out the first visits to sites where we have no recent information about the activities being carried out at the site.
10. Based on the site numbers in paragraph 3, there are 40 sites within these three categories which would require monitoring in the period up to 31st March 2007. Using the suggested monitoring frequencies to these sites for the remainder of the year means that we will need to carry out between 13 visits per month and 18 visits per month. However, the workload associated with each visit indicates that we will not be able to complete a programme of visits to this frequency at all sites within categories 5, 4 and 3. It would be more realistic to give a higher priority to only those sites in category 5 and 4. This would mean that visits to sites in other categories would be delayed until after 1st April 2007.
11. However, if we have a large number of operators that do not respond to our site survey, we will need to reconsider this prioritisation.

Implementation of new powers to charge for the monitoring of mineral and landfill permissions

12. Where operators have returned a site survey form to us, and agree with our initial assessment of site category, regardless of the site categorisation, we may consider delaying the first chargeable monitoring visit until after 1st April 2007 in order to allow us to give a higher priority to sites where we did not receive a site survey form.
13. Alternatively, where operators do not agree with our initial categorisation and where we receive no survey response from the operator, we intend to carry out an initial site visit only, to each site, (irrespective of the site categorisation) in order to determine and agree the site category and site monitoring frequency for implementation in the 07/08 year. Members views are requested on this.
14. We will need to progress the recruitment of sufficient additional appropriately skilled staff in order to allow monitoring to frequencies that we agree with operators for the period 1st April 2007 to 31st March 2008. It is likely that the monitoring carried out will generate further case work in terms of securing full compliance, for case officers within the group, although this impact still remains difficult to quantify at this stage.
15. Improvements to our databases and systems will also be required, in order to be more efficient and effective. However, this work is unlikely to progress in isolation of other database improvements within the Planning Applications Unit.

Conclusion

16. In view of the need to be realistic about the level of monitoring that can be delivered, given that we do not currently have additional resources in place to do this work, chargeable visits for the period up to 31st March 2007 need to be prioritised in the ways set out above.
17. Resources will need continued diversion, from routine compliance monitoring at other types of permitted sites and also from other core planning work.
18. Continued flexibility will be needed in order to allow variation to the phasing of monitoring visits, according to resource availability. The view of members is requested on this issue.

Recommendation

19. I RECOMMEND that MEMBERS:
- 1) Note the progress made in implementation of Regulations that allow us to charge for monitoring at minerals and landfill permissions at a prescribed fee.
 - 2) Support development of the scheme in accordance with the provisional programme set out in paragraph 10, 12 and 13 above.

Case Officer: H Mallett
Background Documents: see heading
S:DOCS/COMM/012004PEI

01622 221064

Implementation of new powers to charge for the monitoring of mineral and landfill permissions

Appendix 1

Site category, description and indicative initial site monitoring frequencies.

Category & description	Indicative initial monitoring frequency for which fee may be charged per 12 month period	
	Minimum	Maximum
Category 1 - inactive because it has ceased operating, temporarily or otherwise and no restoration or aftercare is being undertaken to any substantial extent. Subject to a minimum monitoring frequency.	1	1
Category 2 – active sites subject to routine restoration and aftercare; small scale / minor operations with limited monitoring requirements; seasonal / sporadic operations with limited monitoring requirements. Subject to a below average monitoring frequency.	2	8
Category 3 – active sites in the early stages restoration; complex restoration within a sensitive location; sites considered to be compliant with planning permission and legal obligations and which do not warrant more than an average monitoring frequency. Subject to an average monitoring frequency.	3 or 4	8
Category 4 – active sites, planned activities in the next 12 months warrant closer monitoring; sites with satellite operations; several complex planning permissions / legal agreements; a range of activities being carried out on the site, which would warrant separate specialist monitoring; variations of conditions or amendments to working methods that require monitoring. Subject to above average monitoring frequency.	Between 4 and 6	8
Category 5a – active sites which are not operating in accordance with planning permission / legal agreement and where formal enforcement action has not yet commenced. Sites where there have been substantiated complaints. Subject to a maximum monitoring frequency.	Between 6 and 8	8
Category 5b – active sites which are not operating in accordance with planning / legal agreement and where formal action has commenced and is in progress, including follow up actions as a result of formal enforcement. Subject to a maximum monitoring frequency, which will be influenced by the requirements of the enforcement activity.	Between 0 and 8	8

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

Agenda Item 11

Document is Restricted

This page is intentionally left blank

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

Agenda Item 12

Document is Restricted

This page is intentionally left blank

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

Agenda Item 13

Document is Restricted

This page is intentionally left blank

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

Document is Restricted

This page is intentionally left blank

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

Agenda Item 14

Document is Restricted

This page is intentionally left blank