



## AGENDA

### REGULATION COMMITTEE

**Tuesday, 19th May, 2009, at 10.00 am**  
**Council Chamber, Sessions House, County**  
**Hall, Maidstone**

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

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

#### **UNRESTRICTED ITEMS**

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

1. Membership: To note that Dr T R Robinson has replaced Mr A R Pascoe as a Member of the Committee
2. Substitutes
3. Declarations of Interests by Members in items on the Agenda for this meeting.
4. Minutes (Pages 1 - 14)
  - (a) Committee: 27 January 2009
  - (b) Member Panels: 6 February 2009  
12 May 2009 (To Follow)
5. Gating Orders (Pages 15 - 16)
6. Update on Village Green issues (Pages 17 - 22)
7. Update on Planning Enforcement Issues (Pages 23 - 42)
8. Other Items which the Chairman decides are Urgent
9. Motion to Exclude the Press and Public

That under Section 100A of the Local Government Act 1972 the press and public be excluded from the meeting 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 1 of Schedule 12A of the Act.

#### **EXEMPT ITEMS**

*(During these items the meeting is likely NOT to be open to the public)*

10. Update on Planning Enforcement issues at Four Gun Field, Upchurch (Pages 43 - 46)

11. Update on Planning Enforcement issues at Deal Field Shaw, Charing (Pages 47 - 48)

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

**Monday, 11 May 2009**

*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 in the Council Chamber, Sessions House, County Hall, Maidstone on Tuesday, 27 January 2009.

PRESENT: Mr M J Harrison (Chairman) Mr A D Crowther (Vice-Chairman) Mr A R Bassam, Mr T J Birkett, Mr C J Capon, Mr I S Chittenden, Mr L Christie, Mr J A Davies, Mr T Gates, Mr C Hart, Mr W A Hayton, Mr R E King (Substitute for Mr R A Pascoe), Mr I T N Jones, DL, Mr R J Parry (Substitute for Mr A H T Bowles), Mrs P A V Stockell and Mr F Wood-Brignall

IN ATTENDANCE: Mr S Bagshaw (Head of Admissions & Transport), Mrs A Hayward (Manager for Primary Admissions & Transport), Mr G Rudd (Assistant Democratic Services Manager), Mr C Wade (PROW Team Manager (definition)), Mrs S Thompson (Head of Planning Applications Group), Mr R Gregory (Principal Planning Officer Enforcement) and Mr A Tait (Democratic Services Officer)

**UNRESTRICTED ITEMS****1. Minutes**  
*(Item. 3)*

RESOLVED that the Minutes of the meetings of the Committee held on 18 September 2008 and of the Member Panels held on 31 October 2008 and 12 November 2008 are correctly recorded and that they be signed by the Chairman.

**2. Proposed amendment to a Regulation Committee Member Panel Procedure**  
*(Item. 4)*

RESOLVED that Paragraph 7 (i) of the Marriage Premises Review Procedure be amended as set out in Paragraph 5 of the report (set out in Appendix 1 to these Minutes).

**3. Transport Appeal Panels Procedures**  
*(Item. 5)*

(1) The Committee agreed to minor amendments to the draft procedure for clarification purposes and to the inclusion of a new Paragraph 4 in the "Reaching A Decision" section of the draft Procedure.

(2) In considering the report, the Committee agreed on the desirability of appointing a permanent Chairman of the Transport Appeals Panels.

(3) RESOLVED that the Procedure set out in Appendix 2 to these Minutes be adopted for future use by the Transport Appeals Panels.

**4. Transport Appeal Statistics**  
*(Item. 6)*

RESOLVED that the report be noted.

**5. Update on Village Green Issues**  
*(Item. 7)*

(1) The PROW Team Manager (Definition) gave an oral update on progress with the DEFRA Pilot Project. He informed the Committee that a seminar for District and Parish Councils was being arranged to take place in Spring 2009 and that County Councillors would also be invited. He also updated the Committee on progress on a number of PROW and Village Green cases which had been considered by the Member Panels and on the latest legal position in respect of "Deference."

(2) The Committee agreed that it wished for a Schedule of outstanding Village Green and PROW cases to be included in the agenda papers for its future meetings.

(3) RESOLVED that:-

(a) the report be noted; and

(b) a Schedule of outstanding Village Green and PROW cases be included in the agenda papers for future meetings of the Committee.

**6. Update on Planning Enforcement Issues**  
*(Item. 8)*

(1) Mr W V Newman was present for this item pursuant to Committee Procedure Rule 2.24 and spoke.

(2) The views of Mr R Gough, Mr A J King and Mr R Tolputt were reported to the Committee.

(3) RESOLVED to endorse the actions taken or contemplated on the respective cases set out in paragraphs 15 to 29 of the report and those contained within the Schedules in Appendices 1 to 3 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 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)*

**7. Update on Planning Enforcement issues at Deal Field Shaw, Charing**  
*(Item. 11)*

(1) The Head of Planning Applications Group reported the latest enforcement position concerning Deal Field Shaw (Shaw Grange), Charing. This included the County Council's confirmed ownership of the site.

(2) RESOLVED that the Officers of the Planning Enforcement Team and Legal Services be thanked for their efforts and achievements in relation to the site and that the enforcement strategy outlined in paragraphs 5 to 10 of the report be endorsed.

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**APPENDIX**

**KENT COUNTY COUNCIL**

**REGULATION COMMITTEE**

*PROCEDURE FOR CONSIDERING APPLICATIONS FOR THE  
REGISTRATION OF A PREMISES FOR THE SOLEMNIZATION OF  
MARRIAGES AND THE REGISTRATION OF CIVIL PARTNERSHIPS*

- 1) Normally, the decision as to whether to approve an application for the registration of a premise for the solemnization of marriages and the registration of civil partnerships is taken by the Director of Community Safety and Regulatory Services and/or the Proper Officer for the Registration Service, exercising powers delegated by the County Council.
- 2) If, however, the local elected Member (s) objects to a proposed officer recommendation, it will be referred to a Panel of Members of the Regulation Committee. At any such meeting the Council will permit members of the public and other interested parties to speak to the Panel Members.
- 3) The purpose of allowing people to speak is to enable them to add any information that they feel may be missing from the report, or which they feel has been insufficiently emphasized in it. They will not normally be allowed representation by solicitors or other professional agents.
- 4) If a Panel of Members needs to consider an application, the following procedure applies:-
  - (a) A Panel of Members is selected, consisting of 3 Conservative, 1 Labour and 1 Liberal Democrat Member of the Regulation Committee (this conforms proportionally to the overall number of political Group Members in the Council as a whole). The Chairman of the Panel will normally be the Chairman or Vice-Chairman of the Regulation Committee.
  - (b) The Clerk of the Panel writes to all parties who have previously corresponded on the application 5 clear working days before the meeting, enclosing the report which the Panel will be considering and advising them that if they wish to speak about the application they MUST contact the clerk as follows:

<b>DAY OF PANEL MEETING</b>	<b>Contact Clerk by 12.00 Noon on the preceding</b>
Monday	Thursday
Tuesday	Friday
Wednesday	Monday
Thursday	Tuesday
Friday	Wednesday

(c) Normally, the Panel will listen to representations from up to four parties. These WILL include:-

- one local Parish or Town Council representative;
- two individuals or group representatives; and
- the applicant, who has the right of reply to any of the points made.

Where there are more than four parties who wish to speak, the Clerk will encourage them to agree amongst themselves as to who can best represent their point of view. If no such agreement proves possible, the Chairman of the Panel will decide which members of the public may speak.

(d) The Panel will normally meet in public unless the Panel resolves to exclude the press and public under the provisions set out in Section 100A of the Local Government Act 1972. At the Panel meeting, the Chairman will explain the procedure for the meeting and then ask the Director of Community Safety and Regulatory Services and/or the Proper Officer for the Registration Service to introduce the report and explain the reasons for its recommendations.

(e) Each speaker will be allowed up to five minutes to address the Panel about the application. Speakers should bear in mind the following:-

- (i) The Committee will listen to what each speaker says but will not debate the merits of their opinions with them;
- (ii) The Chairman will inform the speakers when they have one minute left to speak and when their time is over;
- (iii) The speakers should concentrate on explaining the points they have already made in writing. They should not attempt to surprise the Panel with new information. Any such information should already have been given to the Proper Officer for the Registration Service in time for it to have been evaluated professionally.



- (e) The applicant has the right to be the last of the public speakers. There is no further right for the public to speak during the remainder of the meeting.
  - (f) The Panel will then discuss the report and its recommendations and will also offer the local Member the opportunity to make representations. The application will then be determined.
5. In the event that the decision is to refuse the application or to attach conditions to an approval, the applicant has the right to seek a review of that decision by another Panel (comprising five different Members of the Regulation Committee and meeting on a separate date). There is a separate procedure for any such review.

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## KENT COUNTY COUNCIL

### REGULATION COMMITTEE

#### *PROCEDURE FOR CONSIDERING HOME TO SCHOOL TRANSPORT APPEALS*

- (1) Parents and pupils are entitled to appeal against decisions by the Local Authority in respect of Home to School Transport.
- (2) The request for an appeal shall be made in writing to the Head of Democratic Services or his nominated representative, setting out the grounds and the preferred outcome of the appeal.
- (3) The Head of Democratic Services shall arrange for the appeal to be considered by an ad-hoc Regulation Committee Panel. The following procedure applies:-
  - (a) The Panel of Members will consist of 3 Conservative, 1 Labour and 1 Liberal Democrat. The Panel must be chaired by a member of the Regulation Committee and include at least one other Member of the Regulation Committee. No Member of the Panel will have had any previous connection with the matter under consideration.
  - (b) A Democratic Services Officer nominated by the Head of Democratic Services and Local Leadership will clerk the Panel and arrange a date for a meeting of the Panel in consultation with the parties concerned, setting a deadline for any additional papers to be provided.
  - (c) At least 5 clear working days before the Panel meeting, the agenda papers are sent to the appellant, the nominated officer for the Head of Admissions and Transport and the Panel Members (mainstream home to school transport or the Head of Additional Educational Needs (if applicable) hereafter referred to as the presenting officer, and the Panel Members.
- (4) The Panel will normally meet under the provisions set out in Section 100A of the Local Government Act 1972, whereby the press and public (apart from the appellant) are excluded. The meeting procedure is set out below:-

- (a) Introductions by the Chairman, including an explanation of the procedure to be followed.
- (b) The presenting officer explains the reasons that have prevented the Local Authority from meeting the appellant's wishes up to this stage.
- (c) The appellant and Panel Members can ask questions of the presenting officer.
- (d) The appellant and/or his/her representative (who can be a Member of the County Council) explain the grounds for the appeal and its desired outcome.
- (e) The presenting officer and the Panel Members can ask questions of the appellant.
- (f) When the Chairman is satisfied that all parties have completed their representations, the presenting officer is invited to summarise the case for the Local Authority.
- (g) The appellant is invited to sum up, (the appellant has the final word).
- (h) The appellant and the presenting officer leave the room. A decision is reached by the Panel. This decision will be set out in writing to all parties by the Clerk, who will also set out the reasons for it.

## REACHING A DECISION

- (1) In reaching its decision the Panel must have due regard to the Local Authority's policies in respect of free home to school transport. The Panel will need to satisfy itself that the policies have been correctly applied.
- (2) The Panel must then go on to look at the specific circumstances of the case to determine whether they are sufficiently strong enough to justify the Panel exercising its discretion to disregard the Local Authority's policies.
- (3) There is a responsibility on the Panel to consider the most cost effective and appropriate mode of home to school transport taking into account the family circumstances at the time of the appeal.

## THE DECISION

- (1) The Panel may decide to uphold the appeal in all respects.
- (2) The Panel may decide not to uphold the appeal in any respect.

(3) The Panel may decide to partially uphold the appeal. This can include meeting the appellants' wishes wholly or in part for a time-limited period. At the end of the time specified for the provision of home to school transport the Panel can review the circumstances of the case again. The Panel can also specify that additional information be made available at the review. This might include such things as up to date medical reports and school attendance records.

(4) If a parent requests a cash allowance, the Panel should consider this, taking into account the availability of alternative modes of transport and the personal circumstances of the appellant or parent. Mileage will normally only be paid for one return journey from home to school per day.

#### VARIATION TO THIS PROCEDURE IN RESPECT OF APPEALS FOR THE LOCAL EDUCATION AUTHORITY TO DESIGNATE A ROUTE FROM HOME TO SCHOOL AS HAZARDOUS.

1) For the purposes of considering an appeal that the nearest available route from home to school is hazardous *in itself*, the meeting will be open to the public, following the procedure set out above in all other respects.

2) The Appellant may also ask the Panel to consider his or her personal circumstances in the event that the Panel decides that the route is not hazardous *in itself*. This part of the appeal will be held under the provisions set out in Appendix 100A of the Local Government Act 1972, whereby the press and public (apart from the appellant) are excluded. The procedure set out above will be followed in all other respects.

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## KENT COUNTY COUNCIL

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### REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held at Medway Room, Sessions House, County Hall, Maidstone on Friday, 6 February 2009.

PRESENT: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr I S Chittenden and Mr J A Davies

IN ATTENDANCE: Mr C Wade (PROW Team Manager (definition)), Miss M McNeir (Public Rights Of Way Officer (Definition Team)) and Mr A Tait (Democratic Services Officer)

### UNRESTRICTED ITEMS

**1. Application to register land known as "The Market Square" at Aylesham as a new Village Green.**

*(Item 3)*

(1) A visit to the site at "Market Square" (formally known as Market Place), Aylesham had taken place prior to the meeting. It was attended by the applicant, Mrs E Madden; representatives from Aylesham Parish Council and some half dozen members of the public.

(2) A letter from Mr G Mandry, Principal Solicitor of Dover District Council was tabled. Also tabled at the request of Aylesham Parish Council was a copy of the Lords of Appeal Judgement in the Regina v. City of Sunderland (Respondents) ex parte Beresford (FC) Appellant case.

(3) Mr D Falconer and Mr R Oliver addressed the Committee in support of the application, as did Mrs E Madden, the applicant and Dr L Keen, the Clerk to Aylesham Parish Council. The texts of the speeches given by Mr Falconer, Mrs Madden and Dr Keen were made available to the Panel.

(4) During her presentation, Dr Keen challenged the view of the Director of Environment and Waste that the lease granted by Dover District Council to Aylesham Parish Council was conclusive evidence that use of the land had been with permission. She considered that the Parish Council had been given responsibility by the District Council to maintain the land and stated that there was no record of the Parish Council ever challenging or permitting use of the land by local people. In her view, use of the land had therefore not been with permission.

(5) The Panel considered that it did not have the required legal expertise to reach a safe conclusion in respect of Dr Keen's views with regard to the lease. It was agreed to defer consideration of the application to enable KCC Officers to seek a qualified legal view.

(6) RESOLVED that consideration of the application to register land known as “The Market Square” at Aylesham as a Village Green be deferred to enable qualified legal view to be sought.

**2. Application to register land at Montefiore Avenue, Ramsgate as a new Town Green.**

*(Item 4)*

(1) A visit to the site at Montefiore Avenue, Ramsgate had taken place prior to the meeting. It was attended by the applicant, Mr M Matthews; Mr J Thomson, Mr P Verrall and Mr C Tull from Thanet District Council; Mr W A Hayton, the Local Member; and two members of the public.

(2) Mr C Tull, Senior Leisure Officer of Thanet District Council, presented an affidavit declaring that to his personal knowledge, fencing had been erected around the application site and that sections of it had been stolen on numerous occasions during the 1990s.

(3) Mr M Matthews, the Local Member addressed the Panel in support of the application. Mr C Tull and Mr J Thompson (Asset Manager of Thanet District Council) spoke in reply as the Landowner’s representatives. Copies of the text of Mr Thompson’s speech were made available to the Panel.

(4) RESOLVED that a non-statutory Public Inquiry be held into the case to clarify the issues.



By: Director – Environment and Waste

To : Regulation Committee – 19 May 2009

Subject: Gating Orders

Classification: Unrestricted      District: All

For information

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**Summary:** A report updating the Regulation Committee on Gating Orders in Kent.

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### **1. Background:**

(1.1) On the 1 April 2006 the Highways Act (Gating Orders) (England) Regulations 2006 came into force. The regulations brought into effect amendments to the Highways Act 1980 providing the County Council, as the Highway Authority, with the power to make, revoke or vary gating orders. The powers may be exercised in order to prevent crime or antisocial behaviour on or adjacent to the highway, if the Highway Authority are satisfied that premises adjoining or adjacent to the highway are affected by the persistent commission of crime or anti-social behaviour, and that it is facilitated by the existence of the highway.

(1.2) On the 17 May 2007 the County Council delegated the power to make, vary or revoke Gating Orders to the Managing Director of Environment and Regeneration. The terms of reference of the Regulation Committee were amended to include the making, variation or revocation of Gating Orders in circumstances where substantive objections have been received to proposals. The County Council Constitution was then further amended to enable a Regulation Committee Member Panel to consider Gating Orders.

(1.3) To date one application has been received by the County Council and one Gating Order successfully made and implemented for a footpath at St Michaels, Tenterden.

(1.4) Guidance has been provided to Community Safety Officers including information for publication on web sites. A standard application form has also been provided for Community Safety Officer and Police use.

(1.5) Although there have been a number of enquiries from Community Safety Officers and the public no further applications have been received. I believe that this results from two factors:

- I. The need to demonstrate that there is persistent criminal and antisocial behaviour that is facilitated by the highway.

While it is often possible to demonstrate criminal and antisocial behaviour it has frequently been part of a bigger picture of such activity in the area and therefore not easily related to a specific highway.

- II. The cost of the provision and installation of gates is prohibitive. In the case of Henley Fields the gates have only recently been installed at a cost of approximately £6K; the cost to be met by Kent Police and Homewood School.

(1.6) I shall continue to keep Regulation Committee Members informed of any applications received and the resource implications of this area of work.

**2. Recommendation**

Members are recommended to note this report.

Graham Rusling  
PROW Service Delivery Manager  
Tel No: 01622 696995  
e-mail: [graham.rusling@kent.gov.uk](mailto:graham.rusling@kent.gov.uk)

Background Documents: None

**From:** Director – Environment and Waste

**To:** Regulation Committee – 19th May 2009

**Subject:** Progress report on applications to register Town and Village Greens and the Commons Act 2006 DEFRA Pilot Project.

**Classification:** Unrestricted

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**Summary:** Update Members of the current position relating to applications received by the County Council to register land as a Town or Village Green and the Commons Act 2006 Pilot Project .

## FOR INFORMATION

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### Introduction

1. At the Regulation Committee meeting of 27<sup>th</sup> January 2009, Members requested that a summary of the current position of applications to register Town and Village Greens be provided at future meetings of the Regulation Committee.
2. I therefore attach (at **Appendix A**) a copy of the Register of current applications received by the County Council showing the present situation with regard to the investigation and decision making process. Members may wish to have verbal updates at Committee on particular sites within the Schedule. Prior notice of this would be helpful.
3. The number of Village Green applications received by the County Council for consideration continues to increase year or year. In 2005, the County Council received five applications; in 2008 this figure increased and the County Council received eleven applications. Many applications appear to have been prompted by the threat of development and this appears to be a particular problem in Kent compared with other counties.
4. There are currently twenty two applications outstanding. Of these, seven are under investigation and a further three are the subject of separate Public Inquiries later this year.
5. There is currently a waiting time of approximately six months before we are able to begin working on an application. This is due not only to the increasing volume of applications received, but also to the fact that applications to register land as a new Village Green are by their nature very complex and time-consuming to resolve. Unlike Public Rights of Way cases where there are appeal mechanisms via the Planning Inspectorate or the Secretary of State, the only means of appeal against the County Council's decision in relation to a Village Green application is by way of a Judicial Review action in the High Court. Additionally, Village Green applications are often extremely emotive locally, particularly where planning issues are involved.

### Other Village Green issues

6. In addition to the above, the County Council is looking to resolve one further outstanding issue that has previously been before the Committee.

### The Booth Field at Harrietsham

7. The County Council received an application in 2001 to register an area of land known as the Booth Field at Harrietsham as a Village Green. A non-statutory Public Inquiry was held in 2003. In May 2004, following submission of the Inspector's report, Members agreed with the Inspector's conclusion that this land should be added to the Register. In December 2004, the Attorney General sought proceedings in the High Court seeking removal of the land from the Register.
8. On the 24<sup>th</sup> January 2006 the matter was heard in the High Court by Justice Lightman. On the 27 January 2006 he ordered that the Village Green at the Booth Field, Harrietsham be deleted from the Register. However, a proviso was added that specific areas are reinvestigated by the Local Authority by way of a further Public Inquiry under the auspices of the original Inspector.
9. As so often happens in the law of Village Greens, matters were overtaken by further decisions of the Courts. During 2007, two cases emerged that would have a direct effect upon Justice Lightman's decision. These were ***Betterment Properties (Weymouth Limited) v Dorset County Council*** and ***High Peak Borough Council v Derbyshire County Council and Budd***. The ***Betterment*** case was subsequently referred to the Court of Appeal in 2008.
10. The implication of these decisions meant, in basic terms, that the County Council would not be able to hold a further Public Inquiry. Those cases and in particular the ***Betterment*** case in the Court of Appeal had determined that matters of this nature had to be decided by the High Court and not by a local Registration Authority. The County Council is therefore currently liaising with Counsel with regard to returning those issues relating to the Booth Field to the High Court for further consideration.

### **Commons Act 2006 – Pilot Project**

11. Since the last verbal report given to the Regulation Committee at its January meeting, the County council is still continuing to comply with the requirements of the Project and is currently adhering to a timetable given to all Pilot Authorities by DEFRA. This is primarily to ensure that the required review of the Registers of Common Land and Village Greens is undertaken in line with Regulations accompanying the Commons Act 2006. The aim of this particular aspect of the Pilot is to ensure that the Registers accurately reflect applications that were made under the Commons Registration Act 1965 in the early 1970's. In addition, checks are being undertaken to establish whether recorded Greens or Commons have been encroached or built upon either by way of encroachment by neighbouring properties or by road schemes or other similar types of development. Computer software and the County Council's Geographical Information Systems (G.I.S.) are greatly assisting this exercise.
12. Officers from this Authority were also invited by DEFRA to assist with a training day for Members of its Planning Inspectorate. This included seven of the Planning Inspectors charged with determining Public Inquiries both in respect of this area of work and Public Rights of Way. Officers from this Authority were also asked to present to representatives of the other Pilot Authorities at a Best Practise Event held in Bristol.
13. Representatives from Parish and District Councils and those representing landowner interests were invited to a Seminar on Common Land and Town and Village Greens held in the Lecture Theatre at Sessions House on the 14<sup>th</sup> May. It is hoped that this will have

given further publicity to the Pilot Project and at the same time raised the profile of the County Council within this area of work. Almost 90 delegates accepted this invitation and Speakers included an expert from DEFRA and a leading Barrister in this area of expertise.

### **Recommendation**

14. I RECOMMEND Members receive this report for information.

Case Officer:

Chris Wade 01622 221511

Background documents:

Appendix A - Register of applications to record land as a Town or Village Green.

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**Register of applications under the Commons Registration Act 1965 and the Commons Act 2006**  
(Last updated on 6<sup>th</sup> April 2009)

For further information please call 01622 221568 or email commons.villagegreens@kent.gov.uk



Application reference	District	Parish/Town	OS Grid Reference	Description of the land	Status
583	Canterbury	Herne	TR 180 654	Land known as the 'Cherry Orchard Playing Field' at Canterbury Road	Public Inquiry starts 18/05/09
583A	Tonbridge and Malling	Hadlow	TQ 628 501	Land at the centre of The Freehold	DECLINED
584	Ashford	Boughton Aluph	TR 007 456	Land known as the 'Charter or Techpro Sports Ground' at Sandyhurst Lane	WITHDRAWN
585	Gravesham	Hartley	TQ 616 679	Land known as 'Hartley Woods' near Hartley Bottom Road	Committee meeting TBA
586	Canterbury	Whitstable	TR 129 660	Land known as 'Grasmere Pastures' near Richmond Road	DECLINED
587	Tunbridge Wells	Hawkhurst	TQ 762 310	Land known as 'Heartenok Playing Field' to the rear of Basden Cottages	REGISTERED – VG239
588	Canterbury	Whitstable	TR 109 648	Land at Duncan Down adjacent to VG232	REGISTERED – VG240
589	Shepway	Hythe	TR 165 344	Land known as 'South Road Recreation Ground' at South Road	DECLINED
590	Maidstone	Coxheath	TQ 738 510	Land known as 'The Green' at Huntingdon Road	REGISTERED – VG241
591	Maidstone	Boxley	TQ 767 618	Land known as 'Round Wood' at Walderslade	On hold at applicant's request
592	Ashford	Wittersham	TQ 901 272	Land known as 'Coronation Field and The Village Green'	DECLINED
593	Canterbury	Barham	TR 207 493	Land known as 'The Village Green' at Valley Road	REGISTERED – VG242
594	Ashford	Rolvenden	TQ 846 317	Land opposite Gatefield Cottages, Tenterden Road	DECLINED
595	Canterbury	Canterbury	TR 160 574	Land known as 'Barton Playing Field' at Spring Lane	Public Inquiry starts 14/07/09

596	Thanet	Broadstairs	TR 391 661	Land known as 'The Old Bowling Green' at Montefiore Avenue	Public Inquiry TBA
597	Thanet	Broadstairs	TR 385 667	Land known as 'Broadstairs Cricket Ground' and surrounding area at Park Avenue	Under investigation
598	Dover	Aylesham	TR 236 522	Land known as Market Square at	Committee meeting TBA
599	Ashford	Ashford	TR 013 444	Land at the corner of Beecholme Drive, Bybrook	Committee meeting TBA
600	Dartford	Stone	TQ 565 740	Land known as 'The Green' at London Road	Under investigation
601	Canterbury	Barham	TR 206 495	Land known as 'Derringstone Green' at Valley Road	Under investigation
602	Gravesend	Northfleet	TQ 635 741	Land at Fountain Walk	Under investigation
603	Gravesend	Gravesend	TQ 648 743	Land known as 'St. Andrew's Gardens'	Under investigation
604	Canterbury	Canterbury	TR 138 579	Land known as 'Victoria Recreation Ground'	Awaiting investigation
605	Tunbridge Wells	Hawkhurst	TQ 757 295	Land known as 'King George Playing Fields'	Awaiting investigation
606	Maidstone	Chart Sutton	TQ 796 503	Land at Chart Corner, Amber Lane	Awaiting investigation
607	Canterbury	Bridge	TR 179 540	Land Known as 'Brickfields', off Mill Lane	Awaiting investigation
608	Thanet	Broadstairs	TR 390 666	Land between 132 and 134 Dumpton Park Drive	Awaiting investigation
609	Tonbridge and Malling	Ryarsh	TQ 670 600	Ryarsh Recreation Ground, Birling Road	Awaiting investigation
610	Swale	Minster	TQ 950 732	Land known as 'The Glen'	Awaiting investigation
611	Thanet	Margate	TR 327 706	Land adjacent to Barnes Car Park	Awaiting investigation



## Update on Planning Enforcement Issues

Report by Head of Planning Applications Group to the Regulation Committee on 19th May 2009

Summary: Update for Members on planning enforcement matters.

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

Local Member: Given by case in Appendices 1 to 3

Unrestricted

### Introduction

1. This report provides an update on enforcement and monitoring work carried out by the Planning Applications Group since the 27<sup>th</sup> January 2009 Regulation Committee.
2. Summary schedules of all current cases have been produced (see Appendices 1 to 3). The cases are organised by District and the local County Member(s) identified in each case. Members are already notified on any new County enforcement cases under the existing Enforcement Protocol arrangements. The summary tables cover unauthorised breaches of planning control and those occurring on permitted sites, whether minerals or waste related or those further connected with County Council developments.

### Report Format

3. Cases have been taken from the appended schedules and expanded reports produced. These in turn are presented under the following categories:
  - Achievements / successes [including measurable progress on existing sites]
  - New cases, especially those requiring Member endorsement for action
  - Significant on-going cases
  - Other cases of interest and those requested by Members
4. Members may wish to have verbal updates at Committee on particular sites from the schedules, (ideally with prior notice) or reports returned to the next Meeting. The report continues to give details of site monitoring and progress on chargeable site monitoring arrangements for minerals development.

### Meeting Enforcement Objectives

5. Planning enforcement is an important but discretionary service. The resources allocated have to be balanced against those directed to statutory services, in turn referenced to corporate BVPI targets. Efforts have been concentrated chiefly on defending formal actions that have previously been taken and have progressed or are likely to progress to planning inquiry. Resources have been focussed on 4 sites where formal enforcement action has been taken, 6 cases where investigations are underway and a further 3 cases have been satisfactorily progressed or resolved. Amongst monitoring visits on permitted sites there have been 13 chargeable visits.

## **Update on Planning Enforcement Issues**

6. Significant time has been absorbed in servicing a recent public inquiry, into an action taken at Four Gun Field, Upchurch in Swale. The case has proved exceptionally demanding and has required the active and on-going involvement of Counsel. The appeal has been dismissed but the appellants have sought leave to appeal the Planning Inspector's decision in the High Court. The demands of the case continue unabated. Notwithstanding this significant diversion of resources, some positive outcomes have been achieved on other cases.

### **Achievements / Successes [including measurable progress on sites]**

#### **Roman Road, Dover (Members: Gordon Cowan & Bill Newman)**

7. This case referred to us by Dover District Council concerns the unauthorised depositing of imported waste materials on agricultural land (see summary schedule 1, no.5). The waste was in part surplus from a redevelopment of the landowner's local business. The remainder was from general sources.
8. I immediately required the imports to cease. Realising the level of control and severity of sanction available to the County Council, a negotiated solution was quickly agreed with the alleged contravener. An acceptable scheme of restoration, respecting adjoining contours and capable of being properly enforced has been carried out, without the need for protracted formal action. I now propose to move this site to my site monitoring list.

#### **Land to the north of Southern Way, Folkestone (Member: Roland Tolputt)**

9. Shepway District Council have referred this new case to us, concerning the alleged unauthorised depositing of waste materials on land adjacent to the rail network formerly owned and used by KCC and Railtrack (see summary schedule 1, No. 14). The waste materials have been imported on to the site by a local skip hire business, causing physical changes to the site.
10. There are two separate private landowners involved. I have previously served a Planning Contravention Notice on both parties requiring them to submit information to me as to why this alleged unauthorised development has taken place without planning permission. My investigations were allied to those of the Environment Agency and Shepway District Council, whom have both served similar Notices on one of the landowners.
11. I have since met with the site operator and prospective new landowner on site. A remedial plan was agreed concerning the materials on site. I am pleased to announce that the work has been carried out satisfactorily and ahead of schedule. The site is now in a position to change hands for a more beneficial use. Potential future uses of the site will need to be discussed with Shepway District Council. There would be an opportunity of incorporating any minor residual breaches on the land into any later permitted redevelopment scheme.

## Update on Planning Enforcement Issues

### Warren Court Farm, Knockholt Road, Halstead (Member: Richard Parry)

12. This case was originally referred to us by Sevenoaks District Council. It concerns the alleged unauthorised depositing of waste materials on agricultural land (see summary schedule 1, no. 7). The waste materials were brought on site to develop a large screening earthbund. I immediately required the imports to cease. A negotiated settlement with the landowner (as opposed to formal action) has resulted in removal of the deposited waste stockpiles from the land. An acceptable outcome has been achieved and I again propose to move this site to my monitoring list.

### Four Gun Field, Otterham Quay Lane, Upchurch

13. I would direct Members to Schedule 1 (16) of these papers for a summary update and the confidential report as Item 8.
14. Given the on-going nature of the case, I have to be circumspect in my public briefings to Members. I am pleased to relay however, that the 24 April 2009 edition of 'Planning' (the official journal of the Royal Town Planning Institute) carried a useful and independent summary of the case, offering good interim publicity. I reproduce the article here for Members information:

#### **"Waste claim proven in enforcement case"**

"An enforcement notice alleging that a waste management centre has been established at former brickworks in Kent has been upheld after an inspector agreed that the activities do not fall within the lawful use of the site.

The site had a long history of uses associated with brick making. In 1999, a lawful development certificate was issued confirming that the land had a lawful use as a brickworks under class B2 of the Use Classes Order 1987. The appellants then occupied the site with the intention of manufacturing secondary aggregates. The council issued a contravention notice alleging that wastes were being imported for processing, leading ultimately to the serving of an enforcement notice.

The appellants accepted that broken concrete was brought onto the site for crushing and feeding into a mobile power screen to provide saleable products. However, they maintained that when the materials left the site they were no longer wastes. They referred to various definitions, including those adopted by the Waste and Resources Action Programme. On this basis, they claimed that the activities conducted at the site remained within class B2 and no material change of use had occurred.

The inspector reviewed precedents including the European Court of Justice ruling in *Vessoso & Zanetti* [1990], where it was held that wastes include substances discarded by their owners even if the product is capable of "economic reutilisation". Although the appellants claimed that secondary aggregates were produced to a recognised specification, he found that a high proportion of the materials leaving the site did not involve fully recovered wastes.

On that basis, he held that the activities did not fall solely in the B2 use class. The

## Update on Planning Enforcement Issues

importation and screening of soils reinforced his view that the site was used for waste processing. He also decided that the construction of a hardstanding and fencing and the siting of equipment including a weighbridge involved operational development that required planning permission. These elements had enabled the change of use and it was appropriate for them to be removed as part of the enforcement action, he determined.”

15. The Enforcement Notice against the alleged unauthorised waste management activities at the site has therefore been upheld following a recent Public Inquiry. I am pleased to report that the appeal was dismissed on all grounds (apart from a very minor technical point on vehicle routeing). This represents a very significant win at appeal. Nevertheless, as mentioned under paragraph 6 above, the operator / landowner has exercised his right to seek leave to appeal the Planning Inspector’s decision in the High Court.
16. Should leave to appeal be granted, a High Court hearing would be scheduled. The Secretary of State for the Department of Communities and Local Government (DCLG) would be the defendants and the County Council an interested party. For the case to succeed, the prospective appellants would have to demonstrate on strict legal grounds that the Inspector had *‘misguided’* himself in the conclusions that he had reached and the way in which he arrived at them. Should a High Court Judge rule that the appeal decision is fatally flawed; the Public Inquiry would have to be re-re-run under a different Planning Inspector. I shall advise Members on the latest procedural position, at the Meeting.
17. Aside from matters in the High Court, the appellants legal representative has sought a ruling from the Information Commissioner on whether the County Council was right (under a Freedom of Information Request) to deny him access to Exempt Regulation Committee reports concerning the case. I shall also inform Members at the Meeting on any development concerning this challenge.

### **Other achievements**

18. I am pleased to announce that Alan Goodison, Kent County Council’s Planning Contravention Officer, has been awarded Technical Membership of the Royal Town Planning Institute. Alan has successfully completed the Planning Enforcement certificated programme at Cambridge University’s Madingley Hall. His certificate has contributed towards eventual Technical Membership of the Royal Town Planning Institute. His qualification was immediately put to use in lending weight to the evidence he was able to give at the adjourned public inquiry into the Four Gun Field, appeal case.

### **New Cases, especially those requiring action/ Member support**

19. The following new alleged waste-related cases have been reported:
  - (a) Hillborough Business Park, Herne Bay (Schedule 1, no. 3)
  - (b) Canterbury Business Park, Hersden (Schedule 1, no. 4)

## Update on Planning Enforcement Issues

- (c) Timberlakes, Port Richborough, Sandwich (Schedule 1, no. 6)
- (d) Land off Redland Glade, Bredhurst (Schedule 1, no. 9)
- (e) Stonelees Golf Club, Ramsgate (Schedule 1, no. 20)
- (f) Ford Lane, Trottiscliffe (Schedule 1, no. 21)

20. The above sites are at an initial stage of investigation. A summary of each can be found in Schedule 1 (Appendix 1) to this Report, as indicated. I intend to report on each case in more detail at the next Meeting.

### Significant on-going cases

#### Deal Field Shaw, Charing

21. This landfill site requiring restoration is the subject of an exempt report to these papers (Item 9); also see summaries under number 1 of Schedules / Appendices 1 and 2, respectively).

### Other cases of interest and those requested by Members

22. I would further direct Members to (Schedule 2, no.4) of these papers concerning the support being sought for enforcement action at Aylesford Metals, Aylesford.

#### Park House Farm, Bower Lane, Eynsford (Member: Roger Gough)

23. Sevenoaks District Council has reported this case to the County Council. It concerns the alleged unauthorised importation, sorting, storage and transfer of mixed waste materials on a farm located at Eynsford, in the Metropolitan Green Belt, Area of Outstanding Natural Beauty and Special Landscape Area (see summary schedule 1, no.12). The alleged unauthorised activity has attracted complaint from local residents.

24. The site has been inspected several times both independently and with Sevenoaks District Council. The site is also known to the Environment Agency.

25. The landowners were told to cease the alleged activity. A Planning Contravention Notice elicited some further information on the case. It is evident that a mix of planning uses is taking place, which would indicate that the case at this stage is best handled as a District Council matter. That is particularly appropriate given the long planning history on the site. My current stance is to assist the District Council in monitoring the site. I have adopted this approach on a successful enforcement case in Ashford and in relation to the current site at Redwood Glade, Bredhurst (see Schedule 1, no. 9).

26. Should a material and primary waste use arise at Park House Farm, I would revise my position. With that in mind, I seek Members further support for the issuing of a Temporary Stop Notice and / or the service of an Enforcement Notice, should it prove

## Update on Planning Enforcement Issues

expedient to do so.

### **Monitoring**

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

27. In addition to our general visits to sites as a result of planning application work, we also undertake routine visits specifically to formally monitor sites. Since the last Regulation Committee in January and up until 30 April, we have made a further 13 chargeable monitoring visits to mineral and waste sites and 9 non chargeable visits to sites not falling within the chargeable monitoring regime. That is 22 monitoring visits overall.

#### **Resolved or mainly resolved cases requiring monitoring**

28. Alongside the chargeable monitoring regime there is also a need to maintain a watching brief on resolved or mainly resolved enforcement cases which have the potential to reoccur. It is intended that cases in this category should continue to be removed from the reporting lists (now the appended schedules 1 to 3, to this and subsequent reports) on the understanding that officers will keep them under review. Any recurrence will be reported back under the *'new cases, especially those requiring Member endorsement for action'* section at the front of subsequent reports to Committee.

29. The running list of sites which fall within this category have now been incorporated into a spreadsheet database and priorities for enforcement monitoring are being identified.

### **Conclusion**

30. A significant amount of time since the January Meeting has unavoidably been given to the public inquiry case at Upchurch. That in turn has now moved to the High Court arena and will continue to divert resources. Nevertheless, further successes and measurable progress on other cases has been achieved. I intend to restore the balance still further with an enforcement monitoring drive over the next few months. I shall report on progress at the next Meeting.

### **Recommendation**

31. I RECOMMEND that MEMBERS:

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 5 to 29 above and those contained within Schedules 1 to 3 of Appendices 1 to 3.

Case Officers: Robin Gregory / Alan Goodison

01622 221067 / 1065

Background Documents: see heading

**Schedule 1: Contraventions on (part) unauthorised sites**

	<u>Site &amp; Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
1	<p style="text-align: center;"><b>Ashford</b></p> <p>DC3/AS/03/COMP/0090 Shaw Grange, Charing (Member: Richard King)</p>	Multiple breaching of landfill permissions Enforcement Notices and High Court Injunctions	To prevent further breaching and secure restoration of the site.	The site has now been acquired as a means of directly addressing the enforcement issues on site.	This landfill site in need of restoration is the subject of an exempt report to these papers (see Item 9.).
2	<p>DC3/AS/08/COMP/0006 Church Lane, Sellindge (Member: Charles Findlay)</p>	Alleged unauthorised composting activity at a rural location, involving the construction of a new access and hardsurface, receipt of two main streams of waste (sewage sludge and wood chippings), and their mixing and informal composting, before being deposited on adjoining land.	To investigate and see if the activity falls within the County Council's waste related remit.	Planning Contravention Notice served on 28 April 2008. This required the landowner to declare his position and to give details of the use. That prompted a site meeting and the grounds of a negotiated settlement.	The activity has ceased. A retrospective planning application for a composting use has been withdrawn. Removal of all parts of the development are now required and support is sought on a contingency basis for the service of an Enforcement Notice. The EA and Ashford BC (EHO) have their own pollution and amenity remits to use.

	<u>Site &amp; Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
3	<p style="text-align: center;"><b>Canterbury</b></p> DC3/CA/09/COMP/0006 Hillborough Business Park, Herne Bay (Member: David Hirst)	Recent complaint of alleged unauthorised waste activities involving alleged unlicensed Skip Businesses.	To investigate and see if the activity falls within the County Council's waste related remit.	Site to be inspected.	The EA have been informed with a view to inspecting the site within their own powers and remit.
4	DC3/CA/09/COMP/0007 Canterbury Business Park, Hersden (Member: Alan Marsh)	Recent complaint made by Canterbury City Council of alleged unauthorised tipping of waste building materials.	To investigate and see if the activity falls within the County Council's waste related remit.	Site to be inspected.	I shall need to liaise with Canterbury City Council on the details of the case and in order to establish jurisdiction.
5	<p style="text-align: center;"><b><u>Dover</u></b></p> DC3/DO/08/COMP/0007 Roman Road, Dover (Members: Gordon Cowan & Bill Newman)	Unauthorised depositing of waste materials on private agricultural land	To investigate and see if the activity falls within the County Council's waste related remit.	The tipping was halted and a negotiated solution found for restoration, respecting adjoining contours and with the capability of being enforced.	The site was visited on 24 April 2009 and satisfactory restoration has been completed. I shall now add the site to my monitoring list.



	Site & Case Reference	Alleged Breach	Objectives / Actions	Progress	Notes / Remarks
6	DC3/DO/COMP/09/0003 Timberlakes, Port Richborough, Ramsgate Road, Sandwich  (Member: Leyland Ridings)	Alleged unauthorised use for the storage and baling of paper and plastic waste materials. Dover DC report that this site generates regular complaints of untidiness.	To investigate and see if the activity falls within the County Council's waste related remit.	The site has been visited.	The existing use on site appears to be a district matter. However, the planning history is being reviewed in order to accurately establish jurisdiction.
7	<b>Maidstone</b>  DC3/MA/05/COMP/0010 Monk Lake (formerly known as Riverfield Fish Farm), Staplehurst  (Member: Mrs Paulina Stockell)	Alleged breaches of planning permission granted by Maidstone BC for a fish farm. There is concern at the quantities of waste materials entering the site	Maidstone BC has primary enforcement responsibility. It is being advised by specialist retained Counsel under the recommendation of County Officers.	The EA has issued an Exemption from Site Licensing. Maidstone BC however has served an Enforcement Notice to arrest the use and secure restoration. That has been appealed. The means and timescale for determination has still to be established.	KCC holds no immediate remit on available evidence.

	<u>Site &amp; Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
8	DC3/MA/04/COMP/0060 Tutsham Farm, West Farleigh  (Member: Mrs Paulina Stockell)	Depositing of builders waste on the southern bank of the River Medway	Cessation of tipping and to secure restoration.	The EA holds the enforcement lead on this case given their waste, pollution control, river protection remit and waste removal powers. That includes the ability to trace the origin of the tipped material through transfer documentation.	The EA have prepared the ground for potential prosecution. No further tipping has been reported. KCC are in a supportive role. Members have authorised the service of an Enforcement Notice if needed and / or the seeking of an injunction, to further protect the landholding from any further deposits.
9	DC3/MA/09/COMP/0008 Land off Redwood Glade, Bredhurst  (Members: Paul Carter / Jean Law)	Report by MBC of the depositing of waste materials at this site.	To investigate and see if the alleged activity falls within the County Council's waste-related remit.	From sight of the evidence provided by MBC it is apparent that the primary use of the land is as a Builders Merchant.	Matter returned to MBC for action within their wider- ranging enforcement remit.
10	<b>Sevenoaks</b>  DC3/SE/07/COMP/0014 Morley's Farm, Morley's Road, Sevenoaks  (Member: Nick Chard)	Unauthorised waste recycling facility reported by the EA.	To investigate and see if the activity falls within the County Council's waste related remit	Long established use of minor waste recycling facility through hand sorting of waste materials, in part for agricultural purposes.	There remains an invalid application for Lawful Use to retain the activity. However, potential re- location offers an alternative planning solution. The relative merits of each are being evaluated.

	<u>Site &amp; Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
11	DC3/SE/08/COMP/0010 Warren Court Farm, Knockholt Road, Halstead  (Member: Richard Parry)	Unauthorised depositing of waste materials (including 'soils' and wood chipping) reported by Sevenoaks DC.	To secure a stop to the activities and restoration	Discussions with the landowner have resulted in agreement to cease further importation of waste materials and removal of the current waste stockpiles.	A negotiated settlement has resulted in satisfactory compliance. Sevenoaks DC and the EA have been kept informed, with a view to supportive monitoring within their own remits. I shall now remove to the monitoring list.
12	DC3/SE/09/COMP/0001 Park House Farm, Bower Lane, Eynsford  (Member: Roger Gough)	Unauthorised waste transfer station including mixed waste materials.	To investigate and see if the activity falls within the County Council's waste related remit	The landowner has been instructed by this Authority and the EA to cease any unauthorised waste-related activities.	A District Council mixed use activity is apparently occurring. Nevertheless, contingent support is sought for the issuing of a Temporary Stop Notice and / or Enforcement Notice, as required.
13	<b>Shepway</b>  SH/05/1425. A20 Scrapyard, Rear of Airport Café, Main Road, Sellindge  (Member: Susan Carey)	Storage and breaking of disused vehicles without planning permission	To establish the planning status of the activity. If deemed to be unlawful to ensure removal of the use and restoration of the site.	A Certificate of Lawful Use Application has been expected but has not materialised.	I intend to conduct a full review of the case when time allows. Meanwhile, continuing support is sought for the serving of an Enforcement Notice, if required.

14	<p>DC3/SH/08/COMP/0014 Land north of Southern Way, Folkestone</p> <p>(Member: Roland Tolputt)</p>	<p>Unauthorised depositing of waste materials, including construction and demolition spoil raising the land formerly used and owned by KCC and Railtrack plc as reported by Shepway DC.</p>	<p>Cessation of tipping and to secure restoration.</p>	<p>Enquiries and a site inspection established that the site was already under investigation by Shepway DC and the EA. Planning Contravention Notices have been served on both private landowners. Importation and depositing of waste materials has ceased.</p>	<p>All waste imports have now ceased and the site has been inspected in the presence of both landowners. A negotiated settlement has enabled satisfactory restoration of the land ahead of schedule.</p>
15	<p style="text-align: center;"><b>Swale</b></p> <p>DC3/SW/05/COMP/0016 Woodgers Wharf, Upchurch</p> <p>(Member: Keith Ferrin)</p>	<p>Unauthorised use of marine wharf for screening and crushing of imported spoil and alleged related waste management breaches</p>	<p>To arrest the alleged breaches and return the site to its lawful wharf-related use</p>	<p>An Enforcement Notice has been served and upheld at appeal. No further importation and has occurred on site.</p>	<p>Restoration is required under the timescales set within the Enforcement Notice. A compliance strategy is in hand. I shall continue monitoring the site.</p>

16	DC3/SW/04/COMP/0059 Four Gun Field, Upchurch  (Member: Keith Ferrin)	Alleged and sporadic waste-activities on a former brickfield related site with an associated lawful use	To ensure that no waste-related use is carried out on site, particularly given its sensitivity close to housing.	An Enforcement Notice was served, appealed against, heard at Inquiry and upheld. However, the landowner / operator have sought leave to appeal the Inspector's decision in the High Court.	Given the potential High Court hearing and complaint by the appellants to the Information Commissioner, I am unable to comment any further publically on the case. To assist, I have prepared a confidential report to Committee as Item 8. Continuing support is sought for any High Court action deemed necessary to restrain the use.
17	DC3/SW/04/COMP/0049 Raspberry Hill Park, Farm, Iwade  (Members: Brenda Simpson / Roger Truelove)	Unauthorised importation, burning and depositing of mixed construction spoil, stationing of mobile homes and haulage distribution use on the waste deposit.	KCC and Swale BC's 3 Enforcement Notices were upheld on Appeal. They require all traces of the unauthorised uses to be removed from the site, within given timescales.	Compliance monitoring with the Enforcement Notice is required. There have been no further breaches on site.	The operators are currently in prison but the landowners have been pursued for restoration. However, following the convictions of the site operators a Court Restraining Order has been served which effectively 'freezes' the situation on site. Counsel's advice has just been received on the way forward and is currently being absorbed.

18	<p>DC3/SW/07/COMP/0004 Chapel Lane, Lower Halstow</p> <p>(Member: Keith Ferrin)</p>	<p>Unauthorised importation and depositing of waste</p>	<p>To secure removal of a required quantity of waste according to road and site conditions. Also, to ensure future protection of the land.</p>	<p>An agreed 20 vehicle loads have still to be removed..</p>	<p>A balanced approach is required. I shall persist in ensuring that the agreed restoration is honoured. Should that be the case, I am prepared to forego service of an Enforcement Notice, in favour of written legal commitments from the landowner to ensure no repeat of the activity.</p>
19	<p style="text-align: center;"><b>Thanet</b></p> <p>TH/06/729 Unit JIC and J7 Westwood Industrial Estate Margate</p> <p>(Member: Bill Hayton &amp; John Fullarton)</p>	<p>The original site unit has temporary planning permission for a recycling centre. However, the operator has moved the business to a larger unit on the same industrial estate without planning permission.</p>	<p>Cessation of waste inputs and clearance of waste from the new site in absence of a valid planning permission.</p>	<p>This new alleged contravention has arisen from routine site monitoring.</p> <p>The operator and landowner have been informed of the alleged unauthorised activities.</p>	<p>Options are to vacate the new site and revert to the original permitted site or to seek retrospective planning permission at the larger unit.</p> <p>Discussions have taken place on the latter but no application has yet materialised. I therefore seek contingency support for the service of BCNs and / or an Enforcement Notice as required.</p>

20	<p>DC3/TH/09/COMP/0004 Stonelees Golf Course, Ebbsfleet Lane, Ramsgate</p> <p>(Member: Charles Hibberd)</p>	<p>Report by Thanet DC that excessive stockpiles of waste materials are being deposited and recycled at this location.</p>	<p>To investigate and see if the activity currently falls within the County Council's immediate waste remit.</p>	<p>The site has been visited and it transpires that this alleged contravention is intrinsically 'bound-up' with a planning permission in place to extend the golf course, as granted by Thanet DC.</p>	<p>Thanet DC has been informed that the alleged breach should as a first resort be tackled through the current golf course permission and as such would fall to that Authority to enforce.</p>
21	<p><b>Tonbridge &amp; Malling</b></p> <p>DC3/TM/09/COMP/0002 Land off Ford Lane, Trottscliffe</p> <p>(Member: Sarah Hohler)</p>	<p>Report by Tonbridge &amp; Malling BC that large volumes of waste are being stockpiled on land between the M20 and M26.</p>	<p>To investigate and see if the activity falls within the County Council's waste-related remit.</p>	<p>The site has been visited revealing that waste has been deposited around the base of a series of trees. The activity has been exempted from environmental permitting by the EA.</p>	<p>The exemption has been challenged by KCC and the EA are in the process of revoking it. They will then monitor removal of the material off-site.</p>

22	<p><b>Tunbridge Wells</b></p> <p>DC3/TW/06/COMP/28 Durrants Farm, Maidstone Road, Paddock Wood</p> <p>(Member: Alex King)</p>	<p>Unauthorised waste recycling facility reported by the EA.</p>	<p>To assist the EA in their enforcement lead.</p>	<p>The site operator has already been prosecuted by the EA.</p>	<p>KCC is supporting the intervention of the EA which has so far proved successful in the context of the site. I therefore intend to remove the site to the monitoring list, returning to these schedules only if the service of an Enforcement Notice and / or Temporary Stop Notice is warranted.</p>
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**Schedule 2: Alleged breaches on Permitted Minerals & Waste Sites**

***Appendix 2***

	<b><u>Site &amp; Case Reference</u></b>	<b><u>Details of Alleged Breach</u></b>	<b><u>Objectives / Actions</u></b>	<b><u>Progress</u></b>	<b><u>Notes / Remarks</u></b>
1	<p><b>Ashford</b></p> <p>DC3/AS/03/COMP/0090 Shaw Grange, Charing (Member: Richard King)</p>	<p>Multiple breaching of landfill permissions, Enforcement Notices and High Court Injunctions (q.v. No.1, Schedule 1).</p>	<p>To prevent further breaching and secure restoration of the site.</p>	<p>The site has now been acquired as a means of directly addressing the enforcement issues on site.</p>	<p>This landfill site in need of restoration is the subject of an exempt report to these papers (see Item 9.)</p>
2	<p>DC3/AS/04/COMP/0003 Ripley's Scrapyard, Tennyson Road (Member: George Koowaree)</p>	<p>Local complaints of noise and vibration.</p>	<p>To help improve the level of local amenity protection within the powers available.</p>	<p>Permission has been granted to further improve and rationalise the site layout and amenity safeguarding. The noise issue is being addressed, as the site is upgraded and by a team including KCC, ABC and the EA.</p>	<p>The site improvements are well progressed. The optimum level of amenity safeguarding is being sought, within the scope of available powers. No further noise complaints have been received and I propose to remove to the monitoring list.</p>

	<u>Site &amp; Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
3	AS/94/1155 Hegdale Quarry, Challock  (Member: Charles Findlay)	Phasing of extraction at the site has departed from the approved plan impacting on timescales for phased removal of historically tipped wastes in the valley adjoining the site. Unconnected materials have been separately imported to the site and an apparent independent contracting use has been introduced.	Removal of alien stockpiles from the site and any secondary planning use. With a return to proper phasing, with removal of the unauthorised tipped materials and attendant restoration.	These breaches have been indentified from a chargeable monitoring visit. A return visit is required to establish the current level of compliance and to develop a strategy for resolution.	This web of alleged contraventions on site is complex and demanding. I intend to approach the breaches in the order given. To strengthen my enforcement stance I seek Members continued support for the serving of BCNs and / or an Enforcement Notice if as required.
4	<b>Dartford</b> DA/00/72 & DA/04/993 150a Lower Hythe Street, Dartford  (Member: Tom Maddison)	Unauthorised waste-related extension to existing permitted waste transfer station into adjoining area	To pull back the extended use to the original footprint area and then attend to less serious operational breaches under the original waste transfer permission	First objective achieved.	Full compliance with the original permission will need to be periodically monitored. Continuing support for the serving of BCNs is needed, should that enforcement route prove necessary. In the meanwhile, I shall add to my monitoring list.

5	<p>DC3/TM/08/COMP/0013</p> <p>Aylesford Metals Co. Ltd, Mill Hall, Aylesford</p> <p>(Member: Geoff Rowe)</p>	<p>Complaints from local residents of out of hours working and amenity impacts from the over-stacking of scrap.</p> <p>The current economic downturn appears to have contributed to the over-stacking on site and related alleged breaches</p>	<p>To ensure compliance with the base planning permission and related Enforcement Notice.</p>	<p>Meetings have been held with both local residents and the site operator to reach a negotiated settlement on the alleged breaches.</p> <p>The operator has failed to respond through negotiation and formal action is now required.</p>	<p>A staged series of letters have been sent with action in mind. I am now seeking the best combination of actions through Counsel, including: the serving of BCNs; a potential prosecution under the existing Enforcement Notice (c 1971); its re-service or injunctive action through the County / High Courts.</p>
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**Schedule 3: Alleged breaches on Permitted County Council Developments**

***Appendix 3***

	<b><u>Site &amp; Case Reference</u></b>	<b><u>Alleged Breach</u></b>	<b><u>Objectives / Actions</u></b>	<b><u>Progress</u></b>	<b><u>Notes / Remarks</u></b>
1	<b>Swale</b> SW/02/221 Preston Depot, Canterbury Road, Faversham  (Member: T.Gates)	Extension of site for waste aggregate recycling outside of the original permitted area	To regularise the position.	The content of a retrospective planning application to address (amongst other matters) the identified breach has been negotiated with KCC Highways.	The breach has been contained and a planning application has been received, seeking to regularise the breach. The application is due to be reported to the 26 May 2009 Meeting of the Planning Applications Committee.

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

Agenda Item 10

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

Agenda Item 11

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