



AGENDA

REGULATION COMMITTEE

Thursday, 10th September, 2009, at 9.30 am Ask for: **Andrew Tait**
Council Chamber, Sessions House, County Telephone **01622 694342**
Hall, Maidstone

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

UNRESTRICTED ITEMS

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

1. Substitutes
2. Declarations of Interests by Members for items on the Agenda for this meeting.
3. Election of Vice Chairman
4. Terms of Reference and dates of future meetings (Pages 1 - 18)
5. Minutes (Pages 19 - 24)
 - (a) Committee: 19 May 2009
 - (b) Committee: 25 June 2009
 - (c) Member Panel: 7 August 2009
6. Update on Planning Enforcement Issues (Pages 25 - 44)
7. Other Items which the Chairman decides are Urgent
8. Update on Planning Enforcement issues at Deal Field Shaw, Charing (Pages 45 - 46)
9. Update on Planning Enforcement issues at Four Gun Field, Upchurch (Pages 47 - 50)
10. Update on Planning Enforcement Issues at Woodgers Wharf, Upchurch (Pages 51 - 52)

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

Wednesday, 2 September 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.

By: Head of Democratic Services and Local Leadership

To: Regulation Committee – Thursday, 10 September 2009

Subject: TERMS OF REFERENCE AND DATES OF FUTURE MEETINGS

Classification Unrestricted

FOR INFORMATION

Terms of Reference

1. The County Council agreed the Terms of Reference set out below at its meeting on 25 June 2009.

“This committee is responsible for the Council’s functions in relation to the enforcement of the control of development under the Town and Country Planning Act 1990 and related statutory instruments and may exercise any of the powers of the County Council in Part A of the schedule to Appendix 2 Part 3 of the Constitution. The committee also considers:

(a) appeals against refusal to approve premises for the solemnisation of marriages (or the attachment of a condition to such an approval)

(b) the registration of common land or town or village greens or the variation of common rights where any party raises objection

(c) the creation, stopping up, diversion of any footpath or bridleway or the reclassification of any public path where substantive objection has been raised or a political party or the local Member requests

(The Council agreed on 20 September 2001 that functions (a)-(c) could be delegated to sub-committees)

(d) reports of Kent County Council’s work with the Environment Agency

(e) appeals by pupils and parents against school-related decisions that are not considered by an external appeal committee, including transport, education awards and religious education. Such appeals to be dealt with by ad hoc sub-committees of Members (Panels) chaired by and including at least one member of the Regulation Committee. All Panel members must have received appropriate training before taking up their positions.

(f) The making, variation or revocation of Gating Orders under the Highways Act 1980 (Gating Orders) (England) Regulations 2006.

(The Council agreed on 19 June 2008 that function (f) could be delegated to sub-committees)”

The procedure rules for the various Member Panels of this Committee are attached as Appendices to this report.

Dates of future meetings

2. The following dates have been scheduled in the County Council Diary for meetings of the Committee in 2010: -

Tuesday, 26 January 2010

Tuesday, 18 May 2010

Thursday, 9 September 2010.

All meetings are scheduled to start at 10.00 am in County Hall, Maidstone.

RECOMMENDATION:

3. The Committee is recommended to note its Terms of Reference and the dates of its meetings in 2010.

Peter Sass: Head of Democratic Services and Local Leadership

Officer Contact: Andrew Tait
Democratic Services Officer
(01622) 694342

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 4 Conservative 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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APPENDIX 2

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 4 Conservative 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:

DAY OF PANEL MEETING	Contact Clerk by 12.00 Noon on the preceding
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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APPENDIX 3

KENT COUNTY COUNCIL

REGULATION COMMITTEE

PROCEDURE FOR CONSIDERING A REQUEST FOR A REVIEW OF THE REGULATORY AUTHORITY'S DECISION WITH RESPECT TO THE REGISTRATATION OF A PREMISES FOR THE SOLEMNIZATION OF MARRIAGES AND THE REGISTRATION OF CIVIL PARTNERSHIPS

- 1) The Marriages and Civil Partnerships (Approved Premises) Regulations 2005 permit the applicant, or the holder of an approval of a premise for the solemnization of marriages and the registration of civil partnerships, to request a review of the regulatory authority's decision with respect to the registration of that premise for the solemnization of marriages and the registration of civil partnerships.
- 2) An applicant may request a review in respect of a decision to:
 - (a) refuse an approval
 - (b) attach to an approval special conditions other than those specified in the Regulations.
- 3) A Holder of an approval may request a review in respect of a decision to:
 - (a) refuse to renew that approval
 - (b) attach to the renewal of that approval special conditions other than those specified in the Regulations
 - (c) revoke the approval otherwise than under Regulation 8(9) or 8 (10) of the Regulations.
- 4) The request for a review shall be made in writing to the Proper Officer for the Registration Service, setting out the grounds and the preferred outcome of the review. Except for requests to review a decision to revoke an approval, any such request must be accompanied by a fee of £400.
- 5) Except in the case of a review of a decision to revoke an approval, or where the decision on which the review is requested has been made by the Regulation Committee, the Proper Officer will refer the request to the Director of Community Safety and Regulatory Services, who shall consider whether the request can be acceded to in accordance with normal policies and practices. If so, (s)he may amend the conditions as requested by the applicant and reissue the licence.

6) If the Director of Community Safety and Regulatory Services can not deal with the request as provided for in paragraph 5 (s)he shall refer it to the Head of Democratic Services who shall arrange for it to be considered by a Regulation Committee Panel of Members. The following procedure applies:-

- (a) The Panel of Members will consist of 4 Conservative and 1 Liberal Democrat Member of the Regulation Committee nominated by political group spokesmen. The Chairman of the Panel will normally be the Chairman or Vice-Chairman of the Regulation Committee. No Member of the Panel will have had any previous connection with the request or the original licence application.
- (b) A Democratic Services Officer nominated by the Head of Democratic Services 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 applicant, the Director of Community Safety and Regulatory Services and Panel Members.

7) 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. The meeting procedure is set out below:-

- (a) Introductions by the Chairman, including an explanation of the procedure to be followed.
- (b) The Director of Community Safety and Regulatory Services (supported as (s)he deems appropriate) explains the County Council's grounds for refusal or the conditions imposed.
- (c) The applicant and Panel Members ask questions of the Director of Community Safety and Regulatory Services.
- (d) The applicant or his/her representative (with such witnesses as s(he) deems appropriate) explains the grounds for seeking a review and the preferred outcome of the review.
- (e) The Director of Community Safety and Regulatory Service and the Panel Members ask questions of the applicant.
- (f) If the application under review has been the subject of a previous Member Panel, it may be appropriate for the Chairman

of that Panel to be invited to attend, comment to the Panel and be asked questions.

- (g) When the Chairman is satisfied that all parties have completed their representations, the Director of Community Safety and Regulatory Services is invited to summarise the case for the Authority.
- (h) The Applicant is invited to sum up. (The Applicant has the final word).
- (i) Following the summing up by the Applicant, a decision is reached by the Panel. No further representations may be made to the Panel at this stage by either the Applicant or the Director of Community Safety and Regulatory Services. The full decision will be made in public and set out in writing to all parties by the Clerk. The decision can be:-
 - (i) to confirm the County Council's decision;
 - (ii) to vary an original decision to grant or renew an approval, in particular by removing special conditions, or by attaching new or different special conditions;
 - (iii) to substitute a different decision, which may, where the original decision was to revoke an approval, be a decision that the approval should not be revoked but should be subject to new or different conditions than those which were previously attached to it.

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APPENDIX 4

KENT COUNTY COUNCIL REGULATION COMMITTEE

PROCEDURE FOR CONSIDERING APPLICATIONS FOR THE CREATION, STOPPING UP OR DIVERSION OF ANY FOOTPATH OR BRIDLEWAY OR THE RECLASSIFICATION OF ANY PUBLIC PATH WHERE SUBSTANTIVE OBJECTION HAS BEEN RAISED OR A POLITICAL PARTY OR THE LOCAL MEMBER REQUESTS

- 1) The decision as to whether or not to approve an application for the creation, stopping up or diversion of any footpath or bridleway or the reclassification of any public path is taken by Members of a Panel of the Regulation Committee.
- 2) 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 County Environment Officer's 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 4 Conservative and 1 Liberal Democrat Member of the Regulation Committee (this confirms 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 as follows:

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

- (c) 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. 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;
 - the applicant; and
 - the landowner, 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) At the Panel meeting, the Chairman will explain the procedure for the meeting and then ask the County Environment Officer or her representative 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 Panel 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 County Environment Officer in time for it to have been evaluated professionally.
- (f) The landowner 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.
- (g) 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.

KENT COUNTY COUNCIL

REGULATION COMMITTEE

PROCEDURE FOR CONSIDERING APPLICATIONS FOR THE REGISTRATION OF A TOWN OR VILLAGE GREEN

- 1) The decision as to whether or not to approve an application for the registration of a town or village green is taken by Members of a Panel of the Regulation Committee.
- 2) 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 4 Conservative and 1 Liberal Democrat Member of the Regulation Committee (this confirms 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 as follows:

DAY OF PANEL MEETING	Contact Clerk by 12.00 Noon on the preceding
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;
- the applicant; and
- the landowner, 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 County Environmental Manager 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 Panel 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 County Environmental Manager in time for it to have been evaluated professionally.

(f) The landowner 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.

(g) 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.

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, 19 May 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 Curwood, Mr J A Davies, Mr C Hibberd (Substitute for Mr A H T Bowles),
Mr M J Northey (Substitute for Mr W A Hayton), Mrs P A V Stockell and
Mr F Wood-Brignall

IN ATTENDANCE: Mrs S Thompson (Head of Planning Applications Group),
Mr R Gregory (Principal Planning Officer Enforcement), Mr C Wade (PROW Team
Manager (definition)), Mr G Rusling (Public Rights of Way Service Delivery
Manager) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS**8. Membership**
(Item. 1)

(1) The Committee noted that Dr T R Robinson had replaced Mr R A Pascoe as a Member of the Committee.

(2) The Committee recorded its thanks to Mr A R Bassam, Mr I T N Jones and Mr F Wood-Brignall for all their work on the Committee's behalf, particularly in respect of their work on Member Panels and Home to School Transport Appeal Panels.

9. Minutes
(Item. 4)

(1) The Minutes of the Member Panel held on 12 May 2009 were tabled.

(2) RESOLVED that the Minutes of the meetings of the Committee held on 27 January 2009 and of the Member Panels held on 16 February 2009 and 12 May 2009 are correctly recorded and that they be signed by the Chairman.

10. Gating Orders
(Item. 5)

RESOLVED that the report be noted.

11. Update on Village Green issues
(Item. 6)

(1) The PROW Team Manager (definition) informed the Committee that the County Council had been directed by the High Court to make an Order to modify the Definitive Map and Statement by showing the Old Coach Road claimed route on the former Bayham Estate, Tunbridge Wells at footpath status. This overturned in part the decision taken by the Member Panel on 5 April 2005.

(2) RESOLVED that the report be noted.

12. Update on Planning Enforcement Issues

(Item. 7)

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

(2) The Committee noted that the Head of Planning Applications Group would be reporting in greater detail on Swale enforcement cases including Raspberry Hill Park Farm, Iwade to the next meeting of the Committee.

(3) RESOLVED to endorse the actions taken or contemplated on the respective cases set out in paragraphs 5 to 29 of the report and those contained within Schedules 1 to 3 in Appendices 1 to 3 of the report.

EXEMPT ITEMS

(Open Access to Minutes)

(Members resolved that under Section 100A of the Local Government 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 Four Gun Field, Upchurch

(Item. 10)

(1) The Head of Planning Applications Group reported the latest enforcement position concerning Four Gun Field, Otterham Quay Lane, Upchurch.

(2) RESOLVED that the Officers of the Planning Enforcement Team be thanked for their efforts and achievements in relation to the site and that the enforcement strategy outlined in paragraphs 4, 5, 10 and 11 of the report be endorsed.

14. Update on Planning Enforcement issues at Deal Field Shaw, Charing

(Item. 11)

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

(2) The Committee expressed the view that all monies set aside for restoration of the site should be used for that purpose.

(3) RESOLVED that the enforcement and site strategy set out in paragraphs 5 to 10 of the report be endorsed.

KENT COUNTY COUNCIL

REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Thursday, 25 June 2009.

PRESENT: Mr A H T Bowles, Mr R Brookbank, Mr C J Capon, Mr I S Chittenden (Substitute for Mr S J G Koowaree), Mr H Craske, Mr A D Crowther, Mr J Cubitt, Mr W A Hayton, Mr M J Harrison, Mr R J Lees, Mr S Manion, Mr R F Manning, Mr J Ozog, Mr R A Pascoe, Mrs P A V Stockell (Substitute for Mr T Gates), Mr J Wedgbury and Mr M Whiting

IN ATTENDANCE: Mr P Sass (Head of Democratic Services and Local Leadership)

ALSO PRESENT: Audit Commission

UNRESTRICTED ITEMS

15. Membership

(Item 1)

The Committee noted its membership as set out above.

16. Election of Chairman

(Item 3)

RESOLVED that Mr M J Harrison be elected Chairman of the Committee.

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REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Medway Room, Sessions House, County Hall, Maidstone on Friday, 7 August 2009.

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

ALSO PRESENT: Mrs E M Tweed

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

5. Application to register land at Alamein Gardens, Stone as a new Village Green *(Item 3)*

- (1) The Panel was informed of the views of the local Member, Mrs P T Cole in support of the application.
- (2) RESOLVED that the applicant be informed that the application to register the land at Alamein Gardens, Stone has been accepted (with the exception of the land owned by Dartford BC) and that the part of the land subject to the application that is under the ownership of Stone Parish Council be formally registered as a Village Green.

6. Application to register land at Beecholme Drive, Ashford as a new Village Green. *(Item 4)*

- (1) Members of the Panel visited the application site at Beecholme Drive, Ashford on the morning of the meeting. This visit was attended by the applicant, Mrs P Boorman and by Mrs S Smith and Mr D Jeffrey from Ashford BC (the landowner). Also present were 12 members of the public.
- (2) Mrs E M Tweed was present for this item pursuant to Committee Procedure 2.24 and spoke in favour of the application.
- (3) Mrs P Boorman, the applicant addressed the Panel in support of the application. Mrs S Smith from Ashford BC (the landowner) spoke in reply. Mrs Smith confirmed on behalf of Ashford BC that the planning application to build social housing on the site would not be considered until this Village Green application was finally determined.
- (4) RESOLVED that a non-statutory Public Inquiry be held into the case to clarify the many issues that remain in contention.

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Update on Planning Enforcement Issues

Report by Head of Planning Applications Group to the Regulation Committee on 10th September 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 19th May 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.
3. The schedules are designed to help focus officer and committee time on those cases requiring the most attention. The accent is on live and active cases along with those resolved between Meetings (see paragraph 15). They exclude cases where other agencies are pursuing a solution. This close targeting of effort is in accordance with the County Council's Enforcement Protocol. A phased approach is taken, with an initial attempt to negotiate an informal settlement. Formal and more costly action is used as a last resort to stop determined contraveners in accordance with Government guidance and enforcement good practice. The priority is always to urgently stop any serious environmental damage or unacceptable level of amenity impacts. Restoration tends to take place over a longer timescale.

Report Format

4. 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
5. 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.

Update on Planning Enforcement Issues

Meeting Enforcement Objectives

6. Planning enforcement is a high profile County Council function. The powers used derive from planning statutes but the type and degree of action taken is discretionary. That is to allow a flexible and proportionate approach to cases. The resources allocated have to be balanced against those directed to other planning services, in turn referenced to national and corporate BVPI targets. There also needs to be a balance between responding at speed to live cases within our Enforcement Protocol commitments and attending to longer-term restoration objectives on existing sites.
7. 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 or the High Court. Resources have been focussed on 4 sites where formal enforcement action has been taken, 4 cases where investigations are underway and a further 12 cases have been satisfactorily progressed or resolved. Amongst monitoring visits on permitted sites there have been 18 chargeable visits.
8. Significant time has been absorbed in relation to the action taken at Four Gun Field, Upchurch in Swale. The appeal against the service of our Enforcement Notice was dismissed but the appellants have been granted leave to appeal the Planning Inspector's decision in the High Court. The demands of the case are ongoing. Notwithstanding this significant diversion of resources, some positive outcomes have been achieved on other cases.

Achievements / Successes [including measurable progress on sites]

Larkey Wood, Chartham (Member: John Simmons)

9. This case concerns the unlawful deposit of construction spoil and related waste processing activities on a Special Landscape Area section of the scarp slope at Chartham, near Canterbury. A confirmed Enforcement Notice and County Court Injunction require restoration to a standard, which reflects its landscape status. The scarp slope includes land adjacent to the farm itself and the 'upper' and 'lower' fields.
10. Canterbury City Council have also served 2 Enforcement Notices against residential and related buildings on site, together with a Section 215 (site clearance) Notice to support the County's own injunction requiring removal of 'non-agricultural' items from the site. Both Enforcement Notices were upheld on appeal. The S215 Notice was also confirmed in court.
11. Patient litigation in this case and regular monitoring has paid dividends. The land has been progressively restored to agriculture over a number of years. The last and most substantial of the 3 original fields has been cleared of surplus imported material, profiled and planted with kale. This represents an acceptable level of compliance with the County Council's Enforcement Notice.
12. A self-generating motive for the land to remain in agriculture has been established with the owners. I am confident that given this and the existing controls remaining in place

Update on Planning Enforcement Issues

that no further waste-related contraventions should occur.

13. The case has now been formally passed to Canterbury City Council as an agricultural district matter. Any residual enforcement matters would now fall to them. In view of this successful restoration outcome, I shall now transfer the case to our monitoring database.

New Cases, especially those requiring action/ Member support

14. I give below a list of new alleged waste-related cases. A summary of each can be found in Schedule 1 (Appendix 1) to this Report, as indicated.

- (a) Woodlands Park, Tenterden (Schedule 1, No. 3)
- (b) Howfield Lane, Howfield (Schedule 1, No. 4)
- (c) Seasalter Lane, Seasalter (Schedule 1, No. 7)
- (d) Chippies Way, Ash Road, Sandwich (Schedule 1, No. 10)
- (e) Bleriot Memorial Car Park, Upper Road, Dover (Schedule 1, No. 11)
- (f) Gabriels Farm, Edenbridge (Schedule 1, No. 14)
- (g) East Kent International Freight Terminal, Dargate (Schedule 1, No. 18)

15. Although new to the Group, each case has been accounted for, transferred to other regulators or resolved within the terms of paragraph 3 of this report.

Significant on-going cases

Deal Field Shaw, Charing

16. This landfill site requiring restoration is the subject of an exempt report to these papers (Item 7); also see summaries under number 1 of Schedules / Appendices 1 and 2, respectively).

Other cases of interest and those requested by Members

Aylesford Metals Co. Ltd, Millhall, Aylesford (Member: Peter Homewood)

17. This case was reported to us by Tonbridge & Malling Borough Council (TMBC) and local residents. It involves a site with a 1971 Planning Permission for use as a Scrap yard. A confirmed 1972 County Council Enforcement Notice also applies (see Schedule 2, No. 2). The site also benefits from a planning permission granted by TMBC in 2005 to develop the yard for housing.

Update on Planning Enforcement Issues

18. The main allegations concern working outside permitted hours, which involves the traffic movements of large goods vehicles exiting the site in the early morning and disturbing the rest of the local residents. There are further concerns that the over-stacking of the stockpiles of scrap metals stored on site is also impinging on local residential amenity. The permitted stacking level is limited to a maximum height of six feet (1.8m). It appears that the current business activities have outgrown the site's permitted use.
19. Meetings have been held with local residents, the site operator and his agent. The operator is actively seeking a new site in the local area to relocate his business in favour of housing on the existing site. That offers an eventual solution to the concerns of the local residents and the required effort is being injected from both sides.
20. As an interim measure, a site is being sought within which to park the scrap yard vehicle fleet. That would give some traffic relief to the local area and offer more space on the existing site to lower the levels of the stockpiles of scrap metal.
21. Notwithstanding a potential planning solution to the overall amenity impacts from the site, there remains a current level of breaching. After a slow start the operator has shown intent to comply but needs to demonstrate a more tangible commitment. I am currently pressing for a meaningful reduction in scrap heights. Should I encounter any unreasonable level of resistance and acting on Counsel's advice I should seek a High Court Mandatory Injunction to enforce the required compliance. I would seek Member's support on a contingency basis for such action, so that I may convey that to the operator and add weight to our enforcement position.

Monitoring

Monitoring of permitted sites and update on chargeable monitoring

22. 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, we have made a further 18 chargeable monitoring visits to mineral and waste sites and 9 non-chargeable visits to sites not falling within the chargeable monitoring regime.

Resolved or mainly resolved cases requiring monitoring

23. 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 (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.
24. The running list of sites which fall within this category have been incorporated into a spreadsheet database and priorities for enforcement monitoring are being identified.

Update on Planning Enforcement Issues

Conclusion

25. A significant amount of time since the May Meeting has unavoidably been given over to the High Court case at Upchurch that will continue to divert resources. Nevertheless, further successes and measurable progress on other cases has been achieved. The balance has been further restored with an enforcement monitoring drive over the last few months.

Recommendation

26. I RECOMMEND that MEMBERS:

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 9 to 21 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

Active Enforcement Cases

Schedule 1: Contraventions on (part) unauthorised sites

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
1	<p>Ashford</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</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 7).</p>

2	DC3/AS/08/COMP/0006 Church Lane, Sellindge (Member: Andrew Wickham)	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.	The activity has ceased. A retrospective planning application for a composting use was withdrawn.	Removal of the access, track and turning area are required within existing workloads. Service of an Enforcement Notice if required has already been endorsed. The EA and Ashford BC (EHO) have their own pollution and amenity remits to use.
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	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
3	DC3/AS/09/COMP/0009 Woodlands Park, Tenterden (Member: Mike Hill OBE)	Complaint by Ashford BC of waste depositing on adjacent land to a residential caravan / mobile home park.	To investigate and see if the activity falls within the County Council's waste related remit.	No evidence of waste processing activity was evident but the waste stockpiles have been removed by negotiation in any event.	Ashford BC has been notified and the site will now be added to our monitoring sheet.
4	DC3/AS/09/COMP/0012 Howfield Lane, Howfield (Member: John Simmonds)	An anonymous call reported waste materials being tipped on a field adjacent to Howfield Lane.	To investigate and see if the activity falls within the County Council's waste related remit	Whilst small stockpiles of chalk have been deposited in a field adjacent a dwelling in Howfield Lane there was no evidence of any waste processing.	Canterbury City Council are pursuing the development in apparent connection with an adjoining small encampment.

5	<p style="text-align: center;">Canterbury</p> <p>DC3/CA/09/COMP/0006 Hillborough Business Park, Herne Bay</p> <p>(Member: David Hirst)</p>	Complaint of alleged unauthorised waste / skip activities.	To investigate and see if the activity falls within the County Council's waste related remit.	A minor waste transfer station was found involving the sorting and transfer of waste materials between skips and containers.	The EA have taken the lead and compliance has been achieved through negotiated settlement. The waste transfer station activity has ceased. KCC has agreed to support the EA in any further required action.
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	Site & Case Reference	Alleged Breach	Objectives / Actions	Progress	Notes / Remarks
6	DC3/CA/09/COMP/0007 Canterbury Business Park, Hersden (Member: Alan Marsh)	Reported previously 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.	The material was waste tipped directly outside a building already controlled by the City Council.	The case falls within the remit of Canterbury City Council and has been returned accordingly.
7	DC3/CA/09/COMP/0013 Seasalter Lane, Seasalter (Member: Mike Harrison / Mark Dance)	Canterbury City Council reported the depositing of waste materials taking place on land off Seasalter Lane	To investigate and see if the activity falls within the County Council's waste related remit	It was established that waste materials were being deposited to raise the land between the large concrete pillars supporting the A299 Flyover.	Such unauthorised activity may affect the integrity and safety of the flyover. Full details have been passed to KCC Highways for enforced and supervised removal.
8	DC3/CA/03/COMP/0089 Larkey Wood, Chartham (Member: John Simmonds)	Multiple breaching of landfill permissions Enforcement Notices and County Court Injunctions	To prevent further breaching and secure restoration of the site.	The site has been satisfactorily restored and terms of the Enforcement Notices complied with.	This site is reported in more detail in paragraphs 9 – 13 of the Main Report.

9	<p style="text-align: center;"><u>Dover</u></p> <p>DC3/DO/09/COMP/0003 Timberlakes, Port Richborough, Ramsgate Road, Sandwich</p> <p>(Member: Leyland Ridings)</p>	<p>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.</p>	<p>To investigate and see if the activity falls within the County Council's waste related remit</p>	<p>This case was passed to KCC by Dover DC as the operator had submitted a planning application to process waste at the site, since withdrawn</p>	<p>The use in my view is a matter for Dover DC. Any untidiness could be addressed through a S215 Site Clearance Notice which is available to the district council.</p>
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	Site & Case Reference	Alleged Breach	Objectives / Actions	Progress	Notes / Remarks
10	DC3/DO/09/COMP/0014 Chippies Way, Sandwich (Member: Leyland Ridings)	Complaint from local resident of tipping on land adjacent to the (KHS) Ringways Depot off Ash Road, Sandwich.	To investigate and see if the activity falls within the County Council's waste related remit.	Small stockpiles of various waste materials were being temporarily stored on KCC land adjacent to the depot.	The materials were deposited in error and were promptly removed and the land restored.
11	DC3/DO/COMP/0015 Bleriot Memorial Car Park, Upper Road, Dover (Member: Nigel Collor / Bryan Cope)	Report by Dover DC of unauthorised landraising.	To investigate and see if the activity falls within the County Council's waste related remit.	Land adjoining a car park for tourists has been contoured to match.	Dover DC is the appropriate authority to handle the matter.
12	Maidstone 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.	KCC holds no immediate remit on available evidence but is tracking events. A Public Inquiry was convened in early July then immediately adjourned until further notice.

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
13	<p>Sevenoaks</p> <p>DC3/SE/09/COMP/0001 Park House Farm, Bower Lane, Eynsford</p> <p>(Member: Roger Gough)</p>	<p>Unauthorised waste transfer station including mixed waste materials.</p>	<p>To investigate and see if the activity falls within the County Council's waste related remit</p>	<p>The landowner has been instructed by this Authority and by the EA to cease any unauthorised waste-related activities. A District Council mixed use activity seems to be occurring.</p>	<p>A meeting was recently held between residents, Members, Sevenoaks DC and KCC to address local concerns. Sevenoaks DC are to take the lead with the support of the EA and KCC as required.</p>
14	<p>DC3/SE/09/COMP/0010 Gabriels Farm, Edenbridge</p> <p>(Member: Peter Lake)</p>	<p>Sevenoaks DC reported unidentified waste planning breaches occurring during the construction of a new road in Surrey adjacent to its border with Kent.</p>	<p>To investigate and see if the activity falls within the County Council's waste related remit</p>	<p>A full area search has proved negative.</p>	<p>Sevenoaks DC have been asked to identify the location of any further complaints more precisely.</p>

15	<p>Swale</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. There is a further report in the green papers (Item 9).</p>
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	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
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 now sought and been granted 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: Mike Whiting / Alan Willicombe)	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. Further advice from Counsel is being sought to help break the deadlock.

18	<p>DC3/SW/09/COMP/0011 East Kent International Freight Terminal, Dargate</p> <p>(Member: Andrew Bowles)</p>	<p>Report of an unauthorised waste transfer station operating within this site.</p>	<p>To investigate and see if the activity falls within the County Council's waste related remit.</p>	<p>It was established that a small area of the site was being used by a local operator as a vehicle park and to temporarily store both loaded and unloaded skips.</p>	<p>Whilst the site remains as a vehicle park the waste- related activity has ceased and been removed to a registered landfill site.</p>
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Schedule 2: Alleged breaches on Permitted Minerals & Waste Sites

Appendix 2

	<u>Site & Case Reference</u>	<u>Details of Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
1	Ashford DC3/AS/03/COMP/0090 Shaw Grange, Charing (Member: Richard King)	Multiple breaching of landfill permissions, Enforcement Notices and High Court Injunctions (q.v. No.1, Schedule 1).	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 7)

2	<p style="text-align: center;">Tonbridge & Malling</p> <p>DC3/TM/08/COMP/0013 Aylesford Metals Co. Ltd, Mill Hall, Aylesford</p> <p>(Member: Peter Homewood)</p>	<p>Complaints from local residents of out of hours working and amenity impacts from the over-stacking of scrap. 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>The site activity has intensified over time requires to be reined back.</p>	<p>This site is reported in more detail in paragraphs 17 - 21 in the Main Report.</p> <p>Support for the service of a High Court Injunction is sought from Members should the operator fail to resolve the alleged breaches through negotiation.</p>
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Schedule 3: Alleged breaches on Permitted County Council Developments

Appendix 3

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
1	Swale SW/02/221 Preston Depot, Canterbury Road, Faversham (Member: T.Gates)	Extension of site for waste aggregate recycling outside of the original permitted area	To regularise the position.	The content of a retrospective planning application to address (amongst other matters) the identified breach has been negotiated with KCC Highways.	Planning permission has now been granted to regularise the use.

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Agenda Item 8

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Agenda Item 9

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Agenda Item 10

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