



AGENDA

REGULATION COMMITTEE

Thursday, 9th September, 2010, at 10.00 am Ask for: **Andrew Tait**
Council Chamber, Sessions House, County Telephone **01622 694342**
Hall, Maidstone

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

Membership (17)

Conservative (15): Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman),
Mr A H T Bowles, Mr R Brookbank, Mr C J Capon, Mr H J Craske,
Mr J M Cubitt, Mr T Gates, Mr W A Hayton, Mr S Manion,
Mr R F Manning, Mr J M Ozog, Mr R A Pascoe, Mr J N Wedgbury
and Mr M J Whiting

Liberal Democrat (1): Mr S J G Koowaree

Independent (1) Mr R J Lees

UNRESTRICTED ITEMS

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

1. Membership - To note the appointment of Mr J A Davies to the Committee in place of Mr W A Hayton.
2. Substitutes
3. Declarations of Interests by Members in items on the Agenda for this meeting.
4. Minutes (Pages 1 - 8)
 - (a) Committee: 18 May 2010
 - (b) Member Panel: 25 May 2010
5. Amendments to the Committee's Terms of Reference
To note the amended Term of Reference (c):-

“the creation, stopping up, diversion of any footpath or bridleway or restricted byway or the reclassification of any public path where substantive objection has been raised or a political party or the local Member requests.”

To note the new Term of Reference (g):-

“the discharge of persons who are subject to guardianship, pursuant to section 23 of the Mental Health Act 1983 on the recommendation of the Director of Adult Social Services.”

6. Committee meeting dates in 2011
Tuesday, 25 January 2011
Tuesday, 17 May 2011
Wednesday, 7 September 2011
7. Mental Health Guardianship Panels (Pages 9 - 12)
8. Update from the Commons Registration Team (Pages 13 - 16)
9. Home To School Transport (Pages 17 - 22)
10. South East Plan Update (Pages 23 - 34)
11. Unauthorised Development (Pages 35 - 38)
12. Update on Planning Enforcement Issues (Pages 39 - 54)
13. Other Items which the Chairman decides are Urgent
14. Motion to exclude the press and public

That under Section 100A of the Local Government Act 1972, the public be excluded from the meeting for the following business on the grounds that it 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)

15. Update on Planning Enforcement issues at Deal Field Shaw, Charing (Pages 55 - 56)
16. Update on Planning Enforcement issues at Four Gun Field, Upchurch (Pages 57 - 58)

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

Wednesday, 1 September 2010

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.

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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, 18 May 2010.

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

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

UNRESTRICTED ITEMS

9. Minutes

(Item 3)

Resolved that the Minutes of the Committee meeting held on 26 January 2010 and of the Member Panel meetings held on 29 January 2010, 19 February 2010, 19 March 2010 and 27 April 2010 are correctly recorded and that they be signed by the Chairman.

10. Amendment to Member Panel Procedures

(Item 4)

RESOLVED that the Member Panel procedures be amended to enable speakers to address the Panel for “a reasonable amount of time at the Chairman’s discretion” with consequential textual amendments being made.

11. Update from the Commons Registration Team

(Item 5)

RESOLVED that the report be received.

12. Town and Country Planning Act 1990 - Public Rights of Way Diversion and Extinguishment Orders: Service Level Agreement with Ashford Borough Council
(Item 6)

RESOLVED to enter into a Service Level Agreement with Ashford Borough Council in order to undertake (on its behalf) the making of all Orders under the Town and Country Planning Act 1990.

13. Update on the Definitive Map Team Casework Schedules. Clarification of the Committee terms of Reference and the County Council's approach to Orders made by the Secretary of State
(Item 7)

RESOLVED that:-

- (a) progress in reducing the backlog of outstanding definition cases be noted together with the likelihood that the backlogs will grow in future years;
- (b) the County Council be recommended to amend the Committee's terms of reference to reflect that its powers are also exercisable in terms of Restricted Byways;
- (c) the precise interpretation to be given to the interpretation of the words "reclassification" and "substantive" in the Committee's terms of reference be agreed as set out in paragraph 3.2 of the report; and
- (d) a neutral stance be taken in respect of Orders it is directed to make by the Secretary of State unless delegated powers are specifically sought and secured by the relevant officer.

14. Update on Planning Enforcement Issues
(Item 8)

RESOLVED that:-

- (a) the actions taken or contemplated on the respective cases set out in paragraphs 8 to 44 of the report be endorsed, together with those contained within Schedules 1 and 2 of Appendices 1 and 2;
- (b) in respect of land at Tutsham Farm, Hunt Street, West Farleigh, a letter be sent to the Environment Agency thanking it for its actions in respect of this matter and expressing the County Council's wish to see this land restored as quickly as possible; and
- (c) in respect of Unit 10, Detling Airfield, the taking of formal enforcement action be suspended unless there is more importation of waste material.

EXEMPT ITEMS
(Open Access to Minutes)

(Members resolved under Section 100A of the Local Government Act 1972 that 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)

15. 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 the Deal Field Shaw (Shaw Grange) former landfill site in Charing.

(2) RESOLVED that the report be received and that the advice from Kent Waste Management set out in paragraph 3 be noted.

16. Update on Planning Enforcement issues at Four Gun Field, Upchurch
(Item 12)

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

(2) RESOLVED that the enforcement strategy outlined in paragraphs 3 to 7 of the report be noted.

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REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Canterbury City Council, Military Road, Canterbury on Tuesday, 25 May 2010.

PRESENT: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr A H T Bowles, Mr R Brookbank and Mr S J G Koowaree

IN ATTENDANCE: Mr C Wade (Countryside Access Principal Case Officer), Miss M McNeir (Public Rights Of Way and Commons Registration Officer) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

9. Application to register land at Dumpton Park Drive at Broadstairs as a new Town Green

(Item 3)

(1) A visit to the site had taken place prior to the meeting. It was attended by the applicant, Mrs L Cousins; Mr J Thompson from Thanet DC and some 12 members of the public.

(2) The Public Rights of Way and Commons Registration Officer introduced the report and the grounds for the recommendation in detail. In particular, she explained the grounds for her view that the land could not be considered to have been used by a significant of inhabitants of a neighbourhood of a locality.

(3) Mr J Keel, a local resident gave a brief description of the history of the site since he had bought one of the neighbouring properties in 1974.

(4) Mr P Heading, a local resident spoke in support of the application. He said that the land in question had been played in by children and that local events had been held on a number of occasions to celebrate such events as Easter or May Day. He provided photographs to support his claim that such use had been made of the site in 1981 and 1989.

(5) Mr Lehman, a local resident stated that he had been aware of and used the land for lawful pastimes since 1987. He said that the land in question had fostered a neighbourhood spirit since that time.

(6) Mrs D Cousins, the applicant addressed the Panel in support of her application. She provided an e.mail from the Land Registry which stated that the land in question would not be offered any class of title. Thanet DC had unlawfully attempted in February 2009 to fence this land off.

(7) Mrs Cousins asked the Panel to accept evidence of use of the land going back before twenty years before the date of application. The Chairman explained that in order for the 20 year test to be passed, it would be essential to be able to

conclusively demonstrate usage during the qualifying period rather than to rely on evidence gathered before it started.

(8) Mrs Cousins referred to the comments made by Morag Ellis QC during the *Leeds Group plc V. Leeds City Council* case. These comments supported the view that a neighbourhood should be defined as a place where people resided and need not be a logical area. The Public Rights of Way Officer replied to this point by saying that these comments were those of the Counsel involved in the case and that the Judgement in this particular case had not supported Counsel's view.

(9) Mrs Cousins disagreed with the interpretation of the law set out in paragraph 36 of the report and quoted Baroness Farrington's comments from Hansard in respect of the Oxfordshire decision. She added that the term "significant" did not mean any particular number.

(10) On being put to the vote, there were 2 votes in favour of the recommendation of the Director of Environment and Waste and 2 votes against.

(11) In accordance with Committee Procedure Rule 2.20, the Chairman used his casting vote in support of the recommendations.

(12) RESOLVED that the applicant be informed that the application to register the land at Dumpton Park Drive, Broadstairs has not been accepted.

10. Application to register land at Brickfields, Mill Lane, Bridge as a new Village Green.

(Item 4)

(1) The Panel visited the application site prior to the meeting. The visit was attended by the applicant, Mrs E Shirley; Mrs Yeats from Canterbury City Council; Mr M Esdale from Bridge Parish Council; Mr B Mummery, the tenant farmer of part of the site and some half dozen local residents.

(2) The Public Rights of Way Officer introduced the report and explained the reasons for the recommendations. Of particular importance was the inconclusive nature of the evidence in respect of the use of the Watermeadow part of the site and the degree to which use of the site could be attributed to the use of public footpaths.

(3) The applicant, Mrs E Shirley addressed the Panel in support of the application. She drew its attention to the entry points at the Watermeadow section of the site and that a number of the paths and trackways veered away from the public paths, indicating that many people steered away from them. She also said that the various water authorities had needed to read the water meter twice a year on the Brickfields part of the site. She claimed that it was therefore very unlikely that the landowners would have erected a fence to keep people out under those circumstances. She referred to the McAlpine case in support of her contention that the use of the site had been by a significant number of residents in a neighbourhood of a locality.

(4) Mrs J Apps, a local resident spoke in support of the application. She said that she had used the site for a number of lawful sports and pastimes since moving into

the neighbourhood eight years earlier and that the rural nature of the land needed to be preserved.

(5) Mr M Esdale from Bridge Parish Council spoke in opposition to the application. He said that Southern Water's meter reading was by easement and probably by a gate rather than through a gap in the fence. He added that the lawful sports and pastimes claimed by the applicants were in fact those associated with the use of the Public Footpath.

(6) Mrs J Taylor (Canterbury City Council) said that the applicant's case had not been made. Most of the witness statements covered a much shorter period than the Law required and consisted mainly of observing people walking along the footpaths with dogs. She went on to say that when the City Council had visited the site on 25 November 2009, they had noticed that much of the fencing had been broken down, strongly suggesting use by force. These fences were in place in order to prevent the horses from escaping.

(7) Mr B Mummery spoke as the tenant on behalf of the landowners. He confined his remarks to the Watermeadows portion of the site. He said that he had been grazing cattle on this land for a period of 35 years. If Village Green status were granted, he would no longer be able to do so. He added that he had met many walkers and that he had always taken a relaxed attitude when people walked across the land. He accepted that people sometimes walked away from the public footpaths but said that they did so because they were following the tracks made by cattle (which seemed to be a footpath) rather than because they were trespassing.

(8) On being put to the vote, the recommendations of the Director of Environment and Waste were carried by 4 votes to 0 with 1 Abstention.

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

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By: Head of Democratic Services & Local Leadership

To: Regulation Committee – 9 September 2010

Subject: Mental Health Guardianship Panels

Classification: Unrestricted

Summary: To note the Committee's new term of reference in respect of Mental Health Guardianship. This report also provides a brief introduction to the new function.

1. Introduction

(1.1) The County Council agreed on 13 May 2010 to include the following new function in the Regulation Committee's Terms of Reference:-

“ the discharge of persons who are subject to guardianship, pursuant to Section 23 of the Mental Health Act 1983 on the recommendation of the Director of Adult Social Services.”

(1.2) The County Council also agreed that this function could be delegated to a Sub-Committee of at least three Members, one of whom should be a Member of the Regulation Committee and the others to be Members of the Adult Social Services POSC (who must not also be Members of a Foundation Trust). The decision to discharge must be agreed by at least three Members or where there are more Members on the Sub-Committee by a majority of the Panel.

2. Mental Health Guardianship

(2.1) Under section 7 of the Mental Health Act 1983 (MHA 1983), applications for guardianship for any patient who has attained the age of 16 years, signed by two doctors and an Approved Mental Health Professional (AMHP) are received on behalf of KCC and entered into the Guardianship Register kept at County Hall. KCC as a guardian can require that the person subject to the guardianship lives in a certain place, accesses health professionals and attends appointments relating to their care and treatment.

(2.2) The Mental Health Act 2007 (MHA 2007) introduced changes in respect of guardianship orders and amended the regime for health authorities in discharging patients subject to guardianship. It also introduced the requirement for elected Members to “audit the effectiveness of receipt and scrutiny of documents and approve discharges from Guardianship.” The establishment of this Sub-Committee enables Members to consider applications under section 23 of the Mental Health Act 1983 to discharge a person from guardianship and also to regularly scrutinise the documentation in cases where there is no dispute (when the responsible Medical Officer has not asked for a renewal, so allowing the Order to lapse).

(2.3) The County Council decided that this function should come within the remit of the Regulation Committee, allowing it to convene an ad hoc Panel (Sub-Committee) to discharge this function. As Members with the most knowledge of social services mental health issues are likely to serve on the Adult Social Services Policy Overview and Scrutiny Committee it was agreed that the majority of the Panel would be made up of Members from that Committee. The Panel will be supported in coming to its decision by the presentation of reports and advice from an experienced officer from Kent Adult Social Services Directorate.

(2.4) KCC currently has some 50 to 60 people who are the subject of guardianship orders across the county. There have been several instances of people leaving Guardianship over the last three years. These have all been the result of the responsible Medical Officer not asking for a renewal. It is also necessary for the County Council to have a process for considering any applications that may arise where there is a dispute. On such occasions, the Panel will need to follow the Mental Health Act Code of Practice's five guiding principles. These are:-

- a) The Purpose Principle: Decisions under the Act must be taken to minimise the effects of mental disorder, maximise the safety and wellbeing of patients, promote recovery and protect people from harm;
- b) The Least Restriction Principle: The restrictions imposed on the patient's liberty must be kept to a minimum, having regard to the purpose for which the restrictions are imposed;
- c) The Respect Principle: The diverse needs, values and circumstances of each patient must be respected and recognised. These include their race, religion, culture, age, sexual orientation and disability. There must be no unlawful discrimination;
- d) The Participation Principle: Patients must be given the opportunity to be involved as far as is practicable in the circumstances in planning, developing and reviewing their own treatment and care in order to help ensure that it is as appropriate and effective for them as possible;
- e) The Effectiveness, Efficiency and Equity Principle: People taking decisions under the Act must seek to use the resources available to them and to patients in the most effective, efficient and equitable way in order to meet their needs and achieve the purpose for which the decision was taken.

3. Training

(3.1) The County Council agreed to arrange a training session to ensure that there was a pool of appropriately trained Members available to fulfil this role. Accordingly, a training session for Members took place on 9 August 2010. It was attended by three Members of the Regulation Committee (Mr Harrison, Mr Crowther and Mr Craske) and two Members of the Adult Social Services POSC (Mr Lake and Mr Koowaree). The latter is also a Member of the Regulation Committee.

(3.2) The training session was conducted by three KCC Officers: Mrs Mary Macdonald, Training Manager – Mental Health. She was supported by Mr Paul Absolon, Social Care Commissioner for Mental Health and Mr Chris Walters, Policy Officer - Mental Health.

(3.3) The session was arranged at short notice in order to enable the County Council to have a pool of Members to draw from in the event that a Panel needs to be convened in the near future. A further session will be held at a date which is more convenient for Members of the Adult Social Services POSC, who will comprise the majority of the Panel.

4. Likely workload

(4.1) The Panel will meet annually in the new year in order to receive a short report on the guardianship register.

(4.2) The Panel will also meet on those very rare occasions when there is a difference of opinion between medical staff and patients. In these instances an objective judgement by lay people is required on behalf of the community. It is estimated that the number of occasions per year on which the Panel has to convene for this purpose will be no more than two or three occasions and not at all in most years.

(4.3) In some cases when the Panel is asked to meet, there may well need to be a need for an urgent decision. This would require the Panel to be convened at very short notice, possibly more quickly than the five clear working days allowed for by the Access to Information Act.

5. Recommendation

(5.1) The Committee is invited to note the content of this report.

Andrew Tait
Democratic Services Officer (Appeals)
Tel No: (01622) 694342
e-mail: andrew.tait@kent.gov.uk

Background Documents: Mental Health Act 1983 and Amendments 2007.

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Update from the Commons Registration Team

A report by the Director of Environment and Waste to Kent County Council's Regulation Committee on Thursday 9th September 2010.

Recommendation:

I recommend that Members receive this report for information

Progress with Village Green applications

1. Members have requested that a summary of the current position of applications to register Town and Village Greens be provided at meetings of the Regulation Committee. A copy of the Schedule of Village Green applications is therefore attached at **Appendix A**.
2. The County Council continues to receive additional applications to register Town or Village Greens at a rate of approximately one or two new applications per month. There have been 4 new applications received since the last Regulation Committee meeting in May, which takes the total received so far this year to 9 applications.
3. There are currently 28 applications outstanding, of which 15 are under investigation. It had been hoped to resolve several cases at two Member Panel meetings that had been provisionally scheduled in August, but due to difficulties in finding a date suitable for the parties involved, these meetings have now had to be rescheduled. It is now anticipated that 10 cases will be referred to three separate Member Panel meetings during September and October.
4. There remains, inevitably, a backlog of applications due to the increasing number of applications received and Officers continue to work to keep this backlog to a minimum.

Commons Act 2006 – Pilot Project

5. Since the report to Members at the last Regulation Committee meeting in May, Officers have continued to identify errors and anomalies within the Registers of Common Land and Town or Village Greens which require resolution. The types of issues identified so far consist largely of errors made when the Registers were first compiled in the early 1970s, particularly in relation to the incorrect transcription of boundaries on the Register maps. Other issues include the incorrect transcription of land taken and given in exchange for road schemes onto the old base maps. The new powers under Part I of the Commons Act 2006 will enable such issues to be corrected through the republication of map sheets and it is hoped that it will be possible to begin making formal proposals to deal with these issues shortly.

Case Law update

6. During the last Member Panel meeting held in May, Members were asked to determine an application to register land at Dumpton Park Drive at Broadstairs as a new Town Green. In addressing the panel, the applicant introduced an argument in relation to the definition of what, in her view, constituted an appropriate 'locality' or 'neighbourhood within a locality' for the purposes of section 15 of the Commons Act 2006. The applicant's point, whilst not factually correct, engendered lengthy discussion.

7. The terminology relating to 'locality' and 'neighbourhood within a locality' in the context of the registration of land as a new Town or Village Green has created much confusion, particularly for lay applicants and indeed also for Commons Registration Authorities who are charged with dealing with such applications. The Courts have been reluctant to define the terms precisely and the legal definition continues to evolve.
8. The most recent judicial consideration of these terms arose in the High Court case of *Leeds Group Plc v Leeds City Council*¹. The practical implications of this case will now impact on future Member decisions and it seems opportune therefore to provide Members of this Committee with a short resume of the main findings set out by the Court.
9. The *Leeds* case has clarified the definition of 'neighbourhood within a locality' as follows:
 - 'locality' in this context means locality or localities
 - An electoral ward is capable of being a locality
 - There can be more than one 'neighbourhood' within a locality
 - A neighbourhood cannot be defined solely by reference to the inhabitants' use of the land
 - Recreational users need not come predominantly from one neighbourhood

Recommendation

10. I RECOMMEND Members receive this report for information.

Background documents:

Appendix A – Schedule of Village Green applications

Contact Officer:

Chris Wade
Public Rights of Way Principal Case Officer
Tel: 01622 221511

¹ [2010] EWHC 810 (Ch)

**APPENDIX A:
Schedule of Village Green applications**

**Applications resolved by the Regulation Committee since last report
(18th May 2010)**

Description	Parish	Member(s)	Outcome
Land at Dumpton Park Drive	Broadstairs	Mr. B. Hayton Mr. R. Bayford	REJECTED on 25/05/2010

Forthcoming Public Inquiries

Description	Parish	Member(s)	Details
Brickfields, off Mill Lane	Bridge	Mr. M. Northey	Commences 06/09/2010 at The Guildhall, Canterbury

Outstanding applications to be resolved

Description	Parish	Member(s)	Status
Round Wood at Walderslade	Boxley	Mr. P. Carter	On hold at applicant's request
Barton Playing Field	Canterbury	Mr. M. Northey	Take to Member Panel on 14/09/2010
The Old Bowling Green at Montefiore Avenue	Ramsgate	Mr. B. Hayton Mr. R. Bayford	Take to Member Panel on 19/10/2010
Broadstairs Cricket Ground	Broadstairs	Mr. B. Hayton Mr. R. Bayford	Under investigation
St Andrew's Gardens	Gravesend	Mr. B. Sweetland Mr. J. Cubitt	Take to Member Panel on 26/10/2010
Ryarsh Recreation Ground	Ryarsh	Mrs. S. Hohler	Take to Member Panel on 14/09/2010
The Glen	Minster-on-Sea	Mr. A. Crowther	Take to Member Panel on 14/09/2010
Land adjacent to Barnes Car Park	Margate	Mr. R. Burgess	Take to Member Panel on 19/10/2010
Land at Sherwood Lake	Tunbridge Wells	Mr. K. Lynes	Take to Member Panel on 26/10/2010
Brittains Common	Sevenoaks	Mr. J. London	Take to Member Panel on 14/09/2010
The Downs	Herne Bay	Mrs. J. Law	Take to Member Panel on 19/10/2010
Former Council Offices site	Cranbrook	Mr. R. Manning	Take to Member Panel on 26/10/2010
The Allotment Field, Barton Estate	Canterbury	Mr. M. Northey	Under investigation
Grasmere Pastures	Whitstable	Mr. M. Harrison Mr. M. Dance	Under investigation
Land at High Street	Chiddingstone	Mr. P. Lake	Under investigation
Benacre Wood	Whitstable	Mr. M. Harrison Mr. M. Dance	Under investigation
Land at Preston Parade	Hythe	Mr. C. Capon	Under investigation
Land at Hartley Woods	Hartley	Mr. D. Brazier	Under investigation

Land known as Long Field at Angley Road	Cranbrook	Mr. R. Manning	Under investigation
Dawbourne Wood	Tenterden	Mr. M. Hill	Awaiting investigation
Gighill Green	Larkfield	Mrs. T. Dean	Awaiting Investigation
Land at Westwell Lane	Westwell	Mr. R. King	Awaiting Investigation
Land at Mill Lane	Preston	Mr. L. Ridings	Awaiting Investigation
Land known as Seaton Meadow	Wickhambreaux	Mr. M. Northey	Awaiting Investigation
Land at Woodland Road	Lyminge	Ms. S. Carey	Awaiting Investigation
Land known as Fisherman's Beach	Hythe	Mr. C. Capon	Awaiting Investigation
Land at Mountfield Road, Culverstone Green	Meopham	Mr. M. Snelling	Awaiting Investigation

By: Head of Democratic Services & Local Leadership

To: Regulation Committee – 9 September 2010

Subject: Home To School Transport

Classification: Unrestricted

Summary: To provide Members with a brief mid season overview on the role of the Transport Appeals Panel, including Home to School Transport appeal statistics for the period between 1 January 2010 and 31 August 2010 and for the corresponding period in 2009.

1. Introduction

The Chairman has requested that the Committee receive a brief mid season overview on the role of the Transport Appeals Panel.

2. Transport Appeal Statistics – 2010

(2.1) For the period between 1 January 2010 to 31 August 2010 a total of 35 Home-to-School Transport appeals were submitted to 10 Transport Appeal Panel meetings. 14 were successful, (40%) at least in part (eg, time-limited assistance).

(2.2) 9 of the appellants had Local Member representation at their appeals and 11 different Members sat on the Transport Appeal Panels (See Appendix 3).

3. Transport Appeal Statistics – 2009

(3.1) Corresponding figures for the same period in 2009 were 53 appeals to 13 Panels with 39 (68%) at least partly successful.

(3.2) 23 of the appellants had Local Member representation at their appeals and 16 different Members sat on the Transport Appeal Panels (See Appendix 4).

4. Statistic Details

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

5. Costs

(5.1) The Head of Admissions and Transport has advised that the approximate cost of home to school transport during the financial year 2009 -10 for Mainstream Pupils was £14 million and for SEN Pupils £17 million.

6. Recommendations

(6.1) Members are asked to note this report.

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

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

1 JANUARY 2010 - 31 AUGUST 2010

Grounds for Appeal	Upheld	Not Upheld	Total	% Upheld
Denominational	2	0	2	100
Distance	0	3	3	0
Not Attending NAS	7	4	11	63
16+	1	1	2	50
Hazardous Routes	0	1	1	0
Other	0	0	0	0
Low Income Criteria	1	2	3	33
TOTALS	11	11	22	50

1 JANUARY 2009 - 31 AUGUST 2009

Grounds for Appeal	Upheld	Not Upheld	Total	% Upheld
Denominational	0	1	1	0
Distance	8	5	13	61
Not Attending NAS	25	3	28	89
16+	0	2	2	0
Hazardous Routes	0	0	0	0
Other	0	0	0	0
Low Income	3	0	3	100
TOTALS	36	11	47	77

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

1 JANUARY 2010 - 31 AUGUST 2010

Grounds for Appeal	Upheld	Not Upheld	Total	% Upheld
Denominational	0	0	0	0
Distance	2	4	6	33
Not Attending NAS	1	6	7	14
16+	0	0	0	0
Hazardous Routes	0	0	0	0
Other	0	0	0	0
Low Income Criteria	0	0	0	0
TOTALS	3	10	13	23

1 JANUARY 2009 - 31 AUGUST 2009

Grounds for Appeal	Upheld	Not Upheld	Total	% Upheld
Denominational	0	0	0	0
Distance	1	1	2	50
Not Attending NAS	2	0	2	100
16+	0	0	0	0
Hazardous Routes	0	0	0	0
Other	0	2	2	0
Low Income Criteria	0	0	0	0
TOTALS	3	3	6	50

PANEL MEMBERS UP TO 31 AUGUST 2010**PANELS ATTENDED**

Mr M Harrison (Chairman)	10
Mr I Chittenden	8
Mr H Craske	5
Mr J Cubitt	3
Mrs V Dagger	2
Mr T Gates	1
Mr P Homewood	6
Mr C Hibberd	1
Mr G Koowaree	2
Mr R Pascoe	4
Mr R Tolputt	6

PANEL MEMBERS UP TO 31 AUGUST 2009**PANELS ATTENDED**

Mr M Harrison (Chairman - From 12 August)	3
Dr T Robinson (Chairman)	10
Mrs A Allen	1
Mr A Bassam	4
Mr A Bowles	3
Mr C Capon	2
Mr I Chittenden	8
Mrs V Dagger	1
Mr C Hibberd	2
Mr I Jones	6
Mr G Koowaree	2
Mr W V Newman	2
Mr R Pascoe	2
Mrs P Stockell	1
Mr R Tolputt	6
Mr F Wood – Brignall	7

South East Plan Update

Report by Head of Planning Applications Group to the Regulation Committee on 9th September 2010

Summary : Update on the South East Plan

Recommendation: To note the report and take into account in the delivery of the County Council's enforcement function.

Local Member: n/a

Unrestricted

Background

1. On the 6th July 2010 the Secretary of State announced the revocation of Regional Strategies with immediate effect. In the case of the South East region, the RSS was the South East Plan, May 2009. The Plan formed part of the '*development plan*' to which regard was to be had in the determination of planning applications and in the formulation of planning enforcement action. As part of the announcement, the Communities and Local Government's Chief Planner published some '*question and answer*' advice on immediate issues that it considers may arise from the announcement. This guidance covers the period between revocation and legislation (the proposed Localism Bill) to abolish the RSS altogether. I attach this as appendix 1.
2. This advice has immediate consequences for the determination of planning applications and for the planning enforcement service. The most significant being that the South East Plan is no longer part of the development plan for the purposes of s38(6) of the Planning and Compulsory Act 2004 and has no future role to play in the decision making process. In particular I draw your attention to the following paragraphs in the advice note which are provided to aid the development control process.
3. Paragraph 4 of the note provides advice on the **affect on planning applications**. It requires local planning authorities to continue to have regard to the development plan. This now consists of
 - a. Adopted development planning documents (DPDs from the Local Development Frameworks)
 - b. Saved policies; and
 - c. Any old style plans that have not lapsed.

In addition, local planning authorities should have regard to other material considerations, including national policy. Evidence that informed the preparation of the revoked RSS may also be a material consideration depending upon the facts of the case.

4. In the case of mineral and waste development, this means the saved policies in the Kent Waste Local Plan, 1998, the Kent Minerals Local Plan - Construction Aggregates, 1993, Kent Minerals Local Plan - Chalk and Clay, 1997, Kent Minerals Local Plan - Oil and Gas, 1997 and Kent Minerals Local Plan - Brickearth, 1986 and any relevant policies in the District Local Plan or the adopted District Development Plan Documents. The County Council development will need to be considered against relevant policies in the District Local Plan and the adopted Development Plan Documents. All applications will also need to be considered in the context of relevant Planning Policy Guidance

South East Plan Update

Notes and Statements (PPGs and PPS) which will continue to apply until they are replaced by the National Policy Framework. Where relevant, mineral and waste applications will need to be considered in the context of Mineral Policy Guidance Notes and Statements (MPG and MPS).

5. Paragraph 15 provides advice relating to the need for **minerals and aggregates supply** in the absence of regional strategy targets. The Mineral Planning Authorities retain the responsibility for continuing to plan for a steady and adequate supply of aggregate minerals to support economic growth. They should do so within the longstanding arrangements for minerals planning and in the case of Kent take account of the technical advice provided by SEERAWP (South East England Regional Aggregates Working Party). There is specific mention that South Eastern Authorities should work from the apportionment set out in the proposed changes to the revisions of (former) policy M3of the South East Plan that was published in March 2010.
6. In the case of **waste management**, paragraph 16 advises that local planning authorities should continue to provide for waste management facilities to support the sustainable management of waste, including the move away from the disposal to landfill.
7. Paragraph 18 provides advice on the **natural environment** and the need to work with communities on conservation, restoration and enhancement of the natural environment. Paragraph 19 addresses regional policies on **flooding and coastal change**. There is a need to prevent unnecessary building in areas of high flood risk. **Renewable and low carbon energy** issues are addressed in paragraph 20 with support for a move towards a low carbon economy to cut greenhouse gas emissions, secure more renewable energy and adapt to the impacts arising from climate change. Paragraph 21 considers regional policies on **transport** and the need to deliver the most effective and sustainable development. The implications on **Green Belt** are considered in paragraph 22. The Coalition Government is committed to the protection of the Green Belt and local planning authorities should continue to apply policies in PPG2.
8. Finally, Members are asked to note that the Government expects to introduce new ways for local authorities to address strategic planning and infrastructure issues based upon cooperation. Details of which are awaited, although two Government inquiries have been established for this Autumn to consider the issues relating to the abolition and the localism agenda. The Guidance makes no specific mention of the proposed Infrastructure Plan, its purpose or status, nor who will be responsible for its preparation.

RECOMMENDATION:

9. Members are asked to note the report and take its contents into account in the delivery of the County Council's planning enforcement function.

Case Officer: Sharon Thompson	01622 696052
Background Documents: Letter and question and answer advice from Steve Quartermain, Chief Planner, Communities and Local Government dated 6 July 2010	



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The Chief Planning Officer
Local Planning Authorities in England

6 July 2010

Chief Planning Officer Letter:

REVOCAION OF REGIONAL STRATEGIES

Today the Secretary of State announced the revocation of Regional Strategies with immediate effect.

I have attached some 'questions and answer' advice on immediate issues that may arise from this announcement. It will be important for local planning authorities to carry on delivering local development frameworks and making decisions on applications and the attached document focuses on how to continue taking these forward.

Please address any queries to Eamon Mythen at CLG in the first instance (Eamon.Mythen@communities.gsi.gov.uk).

A handwritten signature in black ink, appearing to read "Steve Quartermain", with a long horizontal line extending to the right.

STEVE QUARTERMAIN
Chief Planner

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU

Guidance for Local Planning Authorities following the revocation of Regional Strategies

The Secretary of State for Communities and Local Government confirmed today that Regional Strategies will be revoked (see the attached copy of the Parliamentary Written Statement). In the longer term the legal basis for Regional Strategies will be abolished through the "Localism Bill" that we are introducing in the current Parliamentary session. New ways for local authorities to address strategic planning and infrastructure issues based on cooperation will be introduced. This guidance provides some clarification on the impact of the revocation; how local planning authorities can continue to bring forward their Local Development Frameworks (LDFs); and make planning decisions in the transitional period.

1. Under what powers are Regional Strategies being revoked?

Regional Strategies have been revoked under s79(6) of the Local Democracy Economic Development and Construction Act 2009 and no longer form part of the development plan for the purposes of s38(6) of the Planning and Compulsory Purchase Act 2004. This guidance covers the period between revocation of Regional Strategies and legislation to abolish them altogether.

2. Do Planning Policy Statements (PPSs) remain in force?

Yes. The Policy Statement on Regional Strategies (February 2010) is cancelled, and references to Regional Strategies in other Policy Statements are no longer valid. But all other PPSs will continue to apply until they are replaced by the National Planning Framework.

3. Will this affect the London Plan?

The London Plan will continue to provide the planning framework for London boroughs. As part of a wider process of decentralisation in London, we are reviewing how powers and discretion can be shifted downwards from central government to the Mayor and Assembly, to London Boroughs and to local neighbourhoods. This will include reviewing the scope for devolving power from the Greater London Authority down to the Boroughs and below.

The following sections provide advice on some of the issues likely to arise following revocation of Regional Strategies, until the "Localism Bill" and the new National Planning Framework are in place. This guidance should be regarded as a material consideration by local planning authorities and the Planning Inspectorate in their decisions.

4. How will this affect planning applications?

In determining planning applications local planning authorities must continue to have regard to the development plan. This will now consist only of:

- Adopted DPDs;

- Saved policies; and
- Any old style plans that have not lapsed.

Local planning authorities should also have regard to other material considerations, including national policy. Evidence that informed the preparation of the revoked Regional Strategies may also be a material consideration, depending on the facts of the case.

Where local planning authorities have not yet issued decisions on planning applications in the pipeline, they may wish to review those decisions in light of the new freedoms following the revocation of Regional Strategies. The revocation of the Regional Strategy may also be a material consideration.

5. Should we continue preparing LDF documents?

Yes – the revocation of Regional Strategies is not a signal for local authorities to stop making plans for their area.

Local planning authorities should continue to develop LDF core strategies and other DPDs, reflecting local people's aspirations and decisions on important issues such as climate change, housing and economic development.

These local plans will guide development in their areas and provide certainty for investors and communities. Local authorities may wish to review their plans following the revocation of Regional Strategies. We recommend reviews should be undertaken as quickly as possible.

6. How does this affect adopted local plans / LDFs?

Adopted DPDs and saved policies will continue to provide the statutory planning framework. Local authorities may decide to review these now that Regional Strategies have been revoked. There is no need to review the whole LDF, only those issues or policies which local authorities wish to revisit. When undertaking consultation and sustainability appraisal on their draft policies, authorities should take an approach that considers the stage reached, the extent of work already undertaken and the scope of the policy changes they are making.

7. What if my LDF document is still being prepared?

Where local planning authorities are currently bringing forward development plan documents they should continue to do so. Authorities may decide to review and/or revise their emerging policies in the light of the revocation of Regional Strategies. Where authorities decide to do this they will need to ensure they meet the requirements for soundness under the current legislation. When undertaking consultation and sustainability appraisal on their draft policies, authorities should take an approach that considers the stage reached, the extent of work already undertaken and the scope of the policy changes they are making.

8. Will Examinations in Public continue for DPDs?

Yes – where local planning authorities are bringing forward new development plan documents or reviewing adopted plans they should present evidence to support their plans. The examination process will continue to assess the soundness of plans, and Inspectors will test evidence put forward by local authorities and others who make representations.

9. Will data and research currently held by Regional Local Authority Leaders' Boards still be available?

Yes. The regional planning function of Regional LA Leaders' Boards – the previous Regional Assemblies – is being wound up and their central government funding will end after September this year. The planning data and research they currently hold will still be available to local authorities for the preparation of their local plans whilst they put their own alternative arrangements in place for the collection and analysis of evidence. Notwithstanding, the new Government regards the Regional Leaders' Boards as an unnecessary tier of bureaucracy.

Clarification on policy issues

There are a number of areas where Regional Strategies supplemented the national policy framework. Further clarification on these areas is set out below.

10. Who will determine housing numbers in the absence of Regional Strategy targets?

Local planning authorities will be responsible for establishing the right level of local housing provision in their area, and identifying a long term supply of housing land without the burden of regional housing targets. Some authorities may decide to retain their existing housing targets that were set out in the revoked Regional Strategies. Others may decide to review their housing targets. We would expect that those authorities should quickly signal their intention to undertake an early review so that communities and land owners know where they stand.

11. Will we still need to justify the housing numbers in our plans?

Yes – it is important for the planning process to be transparent, and for people to be able to understand why decisions have been taken. Local authorities should continue to collect and use reliable information to justify their housing supply policies and defend them during the LDF examination process. They should do this in line with current policy in PPS3.

12. Can I replace Regional Strategy targets with "option 1 numbers"?

Yes, if that is the right thing to do for your area. Authorities may base revised housing targets on the level of provision submitted to the original Regional Spatial Strategy examination (Option 1 targets), supplemented by more recent information as appropriate. These figures are based on assessments undertaken by local authorities. However, any target selected may be tested during the examination process especially if challenged and authorities will need to be ready to defend them.

13. Do we still have to provide a 5 year land supply?

Yes. Although the overall ambition for housing growth may change, authorities should continue to identify enough viable land in their DPDs to meet that growth. Strategic Housing Market Assessments and Strategic Housing Land Availability Assessments can help with this. Local planning authorities should continue to use their plans to identify sufficient sites and broad areas for development to deliver their housing ambitions for at least 15 years from the date the plan is adopted. Authorities should also have a five year land supply of deliverable sites. This too will need to reflect any changes to the overall local housing ambition.

14. How do we determine the level of provision for travellers' sites?

Local councils are best placed to assess the needs of travellers. The abolition of Regional Strategies means that local authorities will be responsible for determining the right level of site provision, reflecting local need and historic demand, and for bringing forward land in DPDs. They should continue to do this in line with current policy. *Gypsy and Traveller Accommodation Assessments* (GTAAAs) have been undertaken by all local authorities and if local authorities decide to review the levels of provision these assessments will form a good starting point. However, local authorities are not bound by them. We will review relevant regulations and guidance on this matter in due course.

15. How do we establish the need for minerals and aggregates supply without Regional Strategy targets?

Minerals planning authorities will have responsibility for continuing to plan for a steady and adequate supply of aggregate minerals to support economic growth. They should do this within the longstanding arrangements for minerals planning. Technical advice provided by the Aggregate Working Parties, including their current work in sub-apportioning the CLG guidelines for 2005-2020 to planning authority level will assist with this.

Planning authorities in the South East should work from the apportionment set out in the "Proposed Changes" to the revision of Policy M3, published on 19 March 2010.

Planning authorities can choose to use alternative figures for their planning purposes if they have new or different information and a robust evidence base. We will work with the minerals industry and local government to agree how minerals planning arrangements should operate in the longer term.

16. How do we establish the need for waste management without Regional Strategy targets?

Planning Authorities should continue to press ahead with their waste plans, and provide enough land for waste management facilities to support the sustainable management of waste (including the move away from disposal of waste by landfill). Data and information prepared by partners will continue to assist in this process. For the transitional period this will continue to be the data and information which has been collated by the local authority and industry and other public bodies who

currently form the Regional Waste Technical Advisory Bodies. We intend for this function to be transferred to local authorities in due course.

17. Does the abolition of the hierarchy of strategic centres mean the end of policies on town centres?

No. Local authorities must continue to have regard to PPS 4: *Planning for Sustainable Economic Growth* in preparing LDFs and, where relevant, take it into account in determining planning applications for retail, leisure and other main town centre uses.

In assessing any planning applications proposing unplanned growth in out of town shopping centres, particularly those over 50,000 sqm gross retail floor area, local authorities should take account of the potential impacts of the development on centres in the catchment area of the proposal.

18. What about regional policies on the natural environment?

Local authorities should continue to work together, and with communities, on conservation, restoration and enhancement of the natural environment – including biodiversity, geo-diversity and landscape interests. Authorities should continue to draw on available information, including data from partners, to address cross boundary issues such as the provision of green infrastructure and wildlife corridors.

19. What about regional policies on Flooding and Coastal Change?

Local authorities should continue to work together across administrative boundaries to plan development that addresses flooding and coastal change. For flooding matters local authorities already have a duty to co-operate under the Floods and Water Management Act. The Environment Agency will continue to work with local authorities individually and/or jointly to provide technical support on these matters. The Coalition agreement is clear that we should prevent unnecessary building in areas of high flood risk.

20. What about regional policies on Renewable and Low Carbon Energy?

Through their local plans, authorities should contribute to the move to a low carbon economy, cut greenhouse gas emissions, help secure more renewable and low carbon energy to meet national targets, and to adapt to the impacts arising from climate change. In doing so, planning authorities may find it useful to draw on data that was collected by the Regional Local Authority Leaders' Boards (which will be made available) and more recent work, including assessments of the potential for renewable and low carbon energy.

21. What about regional policies on Transport?

Local authorities should continue to ensure their land use and local transport plans are mutually consistent, and deliver the most effective and sustainable development for their area. Local authorities should work with each other and with businesses and communities to consider strategic transport priorities and cross boundary issues.

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22. Does the end of Regional Strategies mean changes to Green Belt?

No. The Government is committed to the protection of the Green Belt and the revocation of Regional Strategies will prevent top-down pressure to reduce the Green Belt protection. Local planning authorities should continue to apply policies in PPS2. As part of their preparation or revision of DPDs, planning authorities should consider the desirability of new Green Belt or adjustment of an existing Green Belt boundary, working with other local planning authorities as appropriate.

South East Plan Update

Parliamentary Statement Revoking Regional Strategies

Today I am making the first step to deliver our commitment in the coalition agreement to “*rapidly abolish Regional Spatial Strategies and return decision-making powers on housing and planning to local councils*”, by revoking Regional Strategies.

Regional Strategies added unnecessary bureaucracy to the planning system. They were a failure. They were expensive and time-consuming. They alienated people, pitting them against development instead of encouraging people to build in their local area.

The revocation of Regional Strategies will make local spatial plans, drawn up in conformity with national policy, the basis for local planning decisions. The new planning system will be clear, efficient and will put greater power in the hands of local people, rather than regional bodies.

Imposed central targets will be replaced with powerful incentives so that people see the benefits of building. The coalition agreement makes a clear commitment to providing local authorities with real incentives to build new homes. I can confirm that this will ensure that those local authorities which take action now to consent and support the construction of new homes will receive direct and substantial benefit from their actions. Because we are committed to housing growth, introducing these incentives will be a priority and we aim to do so early in the spending review period. We will consult on the detail of this later this year. These incentives will encourage local authorities and communities to increase their aspirations for housing and economic growth, and to deliver sustainable development in a way that allows them to control the way in which their villages, towns and cities change. Our revisions to the planning system will also support renewable energy and a low carbon economy.

The abolition of Regional Strategies will provide a clear signal of the importance attached to the development and application of local spatial plans, in the form of Local Development Framework Core Strategies and other Development Plan Documents. Future reform in this area will make it easier for local councils, working with their communities, to agree and amend local plans in a way that maximises the involvement of neighbourhoods.

The abolition of Regional Strategies will require legislation in the “Localism Bill” which we are introducing this session. However, given the clear coalition commitment, it is important to avoid a period of uncertainty over planning policy, until the legislation is enacted. So I am revoking Regional Strategies today in order to give clarity to builders, developers and planners.

Regional Strategies are being revoked under s79(6) of the Local Democracy Economic Development and Construction Act 2009 and will thus no longer form part of the development plan for the purposes of s38(6) of the Planning and Compulsory Purchase Act 2004.

Revoking, and then abolishing, Regional Strategies will mean that the planning system is simpler, more efficient and easier for people to understand. It will be firmly

rooted in the local community. And it will encourage the investment, economic growth and housing that Britain needs.

We will be providing advice for local planning authorities today and a copy has been placed in the house library.

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Unauthorised Development

Report by Head of Planning Applications Group to the Regulation Committee on 9th September 2010

Summary: Stance taken by Kent Leaders on unauthorised development

Recommendation: To note the report.

Local Member: N/A

Unrestricted

1. The new Coalition Government seeks to review and introduce changes to the planning system with an emphasis on localism. Further details are expected, but to date the Secretary of State for Communities and Local Government has revoked the Regional Spatial Strategies (in the case of Kent, the South East Plan), set up an inquiry to look at the decision to abolish regional spatial strategies and is establishing a second inquiry to consider the localism agenda. It has also announced the preparation of a number of policy statements and a national planning framework.
2. At the June meeting of the Kent Leaders and Chief Executives, the issue of unauthorised development and retrospective planning applications was discussed. The Group unanimously agreed that it should call upon the new Government to introduce procedures, offences or penalties for this type of activity in the forthcoming policy statements and the national policy framework.
3. A letter was sent on behalf of all the Kent Leaders to Greg Clark, the Minister for Decentralisation. It drew attention to current problems dealing with unauthorised development, the creation of an 'uneven playing field' by those that circumvent the planning process and the reputational risks to local authorities in dealing with enforcement matters. It also highlighted the impact upon public resources. The letter urged the Government to seriously consider the introduction of a new offence of carrying out development without the necessary approvals under planning legislation and for a requirement for Building Control officers to inform the Planning Authorities of any discrepancies between approved plans and development on the ground. A joint press statement was issued by the 13 Kent leaders. A copy of which is attached as appendix 1.
4. A review of the planning system provides an opportunity to consider this complex area of planning and to tighten processes to prevent developers taking advantage of the planning system. The County Council has considerable experience in dealing with enforcement matters relating to unauthorised mineral and waste matters and should ensure that this experience is fed into the Government's Review at the appropriate time.

Recommendation

5. I RECOMMEND that MEMBERS: NOTE the stance taken by the Kent Leaders.

Case Officer: Sharon Thompson

01622 696052

Unauthorised Development

Appendix 1

JOINT PRESS STATEMENT BY KENT LEADERS

Kent leaders call for "zero tolerance" of unlawful development

In an unprecedented move to thwart unlawful development in Kent's towns, villages and countryside, all thirteen Kent council leaders have called for legislation to end the practice of building without planning permission.

In a letter to new Planning Policy Minister and Kent MP Greg Clark, the leaders call upon the Coalition Government to introduce a new offence to tackle this increasing type of development which is built without first gaining planning consent from local councils. While those who make mistakes would have nothing to fear from the change, deliberate offenders would be required to take down unlawful buildings or would be fined according to the seriousness of the case or the value of their development.

Tonbridge & Malling Leader Mark Worrall explained:

"Unlawful development can scar the countryside and is the bane of many villagers' lives. This simple piece of legislation would send a clear message that there is now "zero tolerance" for buildings put up without permission and would give local councils clearer and less encumbered powers to enforce the wishes of local people. Such a move would be particularly helpful in dealing with unauthorised caravans and mobile homes."

Canterbury City Council Leader John Gilbey added:

"The current ability to gain planning consent after construction has begun or is completed is simply providing applicants with the opportunity to avoid the planning process. This can often mean deliberate attempts to by-pass the system because councils face real risks in pursuing the ultimate sanction to require the removal or taking down of an illegal structure. In their letter, the leaders make a particular point about caravans and mobile homes, stating; "Local Planning Authorities are hampered in their ability to take effective and urgent action due to the current policy position that has emerged, over the past 13 years, concerning such types of development, particularly by Gypsy and Traveller groups. Whilst it is recognised that the needs of these groups must be addressed, current policy presumptions weigh against what is acceptable and explainable to local communities."

The letter concludes:

"Local Planning Authorities face severe reputational risk. The overwhelming majority of law-abiding citizens are offended by those who ignore or flout the laws by which they themselves have to abide. Too often, they assume that this is allowed to happen through a lack of resolve, capacity or competence by their local Council."

In tackling the growing issue of unlawful development in Kent, particularly in the county's rural areas, Kent leaders are offering to help the Government introduce new legislation which would enable councils to take swift and effective action to ensure no-one is above the law.

Unauthorised Development

Kent leaders believe that the new Government has a great opportunity to tackle this issue in its national planning framework expected later this year. In its programme for government published last month, Ministers state their intention to “...*publish and present to parliament a simple and consolidated national planning framework covering all forms of development*”.

An early planning statement is anticipated before the summer

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Update on Planning Enforcement Issues

Report by Head of Planning Applications Group to the Regulation Committee on 9th September 2010

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 18th May 2010 Regulation Committee.
2. Summary schedules of all current cases have been produced (see Appendices 1 and 2). They cover unauthorised breaches of planning control and those occurring on permitted sites, primarily waste-related. The emphasis is on live and active cases along with those resolved between Meetings.

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 general site monitoring and progress on chargeable monitoring for minerals development.

Meeting Enforcement Objectives

5. Public and Member expectation is that public sector enforcement in its widest sense, including planning control, will be carried out in a seamless and effective way. For that reason closer working relationships are constantly being sought with our District and Environment Agency colleagues. An example is the 'Woodlands Park' case below (paragraph 11), whereby all three regulators have stood firm on a difficult alleged tip case, allowing a conclusive outcome. Members have previously supported and in many cases helped facilitate such joint working arrangements.
6. A free flow of information between the principal parties is of key importance. Districts are already required to consult the County Council in cases where we hold a planning and/ or enforcement interest. Examples would be planning applications made to district

Update on Planning Enforcement Issues

councils on County controlled sites including housing proposals on scrap yards, or re-profiling schemes on former landfill sites.

7. However, I have had a recent series of cases, where districts have failed to consult the County Council, without prompting. That is unfortunate since jurisdiction is sometimes unclear. We may also hold important information on sites and can offer relevant expertise and advice. I am currently pursuing this issue through my development control channels. I shall also underline the point when addressing the districts in stakeholder consultation meetings organised in relation to the County Council's emerging Minerals & Waste Development Framework (MWDF).
8. More informally, I am encouraging an early exchange of information between the County Council, the districts and Environment Agency on prospective tip cases. That should help ensure that any subsequent inputs of waste materials to district permitted golf courses, fish farms and general agricultural improvement schemes are fully justified in land engineering terms. In that way, restoration materials for County controlled mineral and waste sites would be better safeguarded in support of the MWDF.
9. In relation to the cases reported in the 'Achievements / Successes' section below I should like to commend the 'Seasalter Lane' and 'Detling Airfield' cases as examples of creative and cost-effective solutions to challenging situations. The two cases are summarised within Schedule 1 (No. 4 and 7) and expanded upon below (see paragraphs 12 – 15 and 16 – 19).
10. Since the last Meeting resources have been focussed on 5 sites where formal enforcement action has been taken, 4 cases where investigations are underway and a further 6 cases have been satisfactorily progressed. Amongst formal monitoring visits on permitted sites there have been 12 chargeable and 3 non-chargeable visits.

Achievements / Successes [including measurable progress on sites]

Woodlands Park, Tenterden Road, Biddenden (Member: Mike Hill)

11. Woodlands Park is a residential mobile home site, permitted by Ashford Borough Council (ABC). Acting on local resident complaints, ancillary storage of waste materials from renovation works were found on an adjacent agricultural field (see Schedule / Appendix 1, No.2). That fell to ABC and the Environment Agency (EA) to enforce but the County Council voluntarily lent its support. This united stand has led to the site being cleared and compliance reached. A separate EA prosecution in the Magistrates Court resulted in a conviction, with the operator being fined a total of £23,000 with £2,000 costs. I shall now withdraw from the case having ensured on behalf of local residents that planning control and complimentary EA control remains in place.

Update on Planning Enforcement Issues

A299 Underpass, Seasalter Lane, Yorkletts (Members: Mike Harrison & Mark Dance)

12. This case concerns the storage and depositing of waste materials and assorted sundry items on spare land beneath the support pillars of the A299 flyover at Seasalter Lane, Yorkletts. That became a base for building-related purposes and a Canterbury City Council (CCC) matter. They did not pursue the breach (see Schedule 1, Appendix 1, No. 4). Nevertheless, as owner of part of the land and in control of the rest (required to construct and maintain the road); the County Council has had a corporate duty to address the breach and prevent a recurrence.
13. Happily, that has been achieved through a creative use of planning powers. We were not in a position to take action against ourselves. In this case instead, we were able to exert control over the access to the land and from that the strip of land under the flyover. The owner of the access and related land had been traced using a Planning Contravention Notice. The building contractor involved in the errant activity, admitted the breach and to his credit immediately returned the land to its original state. Direct corporate action would have taken longer and cost tens of thousands of pounds. That public expense was spared.
14. I would commend this example of creative-problem solving as a way to achieve in appropriate cases what I would term: '*demonstrated savings*'. The County Council was obliged under Planning Law to address the third party breaches on its own land. That exposed us to an identified series of costs. However, we were able to avert those through lateral-thinking, while still achieving the required outcome. This cost-saving approach may not always be possible but it does pay dividends should the opportunity arise.
15. KCC Highways and Property Services will need to decide on the final lie and level of the land and to secure the area and underpass from any future incursion. The site will also need seeding.

Unit 10, Detling Airfield, Detling (Member: Ms J Whittle)

16. I reported this case as an exempt item at the 26 January 2010 Regulation Committee meeting. It was ironically the landowner who expressed concern over the alleged breaches on his own land. That involved significant volumes of mixed construction spoil being imported on to the site, stockpiled and then processed through crushing and screening plant, for subsequent sale and distribution (see Appendix 1, Schedule 1, No. 7).
17. The service of a Planning Contravention Notice and an initial site meeting brought about a cessation of the crushing and screening activities. The operators agreed to remove the deposited waste stockpiles and provided a timetable and plans to progress removal and restoration of the site.

Update on Planning Enforcement Issues

18. The stockpiles of waste materials have been significantly reduced and the operator is on schedule for rapid compliance, subject to favourable weather conditions. I shall update Members at the meeting on the latest state of play. I can confirm however that the operators are in the process of leaving Kent and transferring their business to a new site in the Greater London area.
19. This case is a further example of direct and decisive intervention. The alleged breaches have been halted and reversed, without the need for extended formal action. That has saved the cost and diversion from other enforcement cases of considerable County Council resources. I am confident that final site clearance will be achieved within a short time frame.

Computerised planning application system

20. There is a continuous effort being made towards assimilating the new IT system within the planning and enforcement service. The system is still being tested but is now at least operating in tandem with the original. The transfer of data from the original system, including long-standing enforcement records has been largely carried out. Early signs are that the new system is more geared to the exacting requirements of a modern enforcement service.

New Cases, especially those requiring action / Member support

21. A new case has arisen since the last Meeting at Thirwell Farm, Hernhill. The alleged contravention has been investigated and progress made. An outline is provided within Schedule 1 (No. 12) at Appendix 1, with an expanded version below.

Thirwell Farm, Drove Lane, Hernhill (Member: Andrew Bowles)

22. The site is located to the north of the A299 slip road at Hernhill. It is adjacent to a flood plain with its northern half designated as a 'Local Wildlife Site'. The site further adjoins an SSSI. A public right of way runs alongside and partly across the site.
23. Swale Borough Council recently confirmed to the owner / occupiers that their proposed 'land improvement' project was exempt from planning control. They accepted the works as agricultural permitted development, so long as waste materials were not imported to the site. However, in accordance with the European Landfill Directive, to which the T&CP Act 1990 (as amended) is now linked, any material discarded at source would in this context be deemed to be waste. In my experience, the need to bring bulk materials to a site of this type would almost always demand the importation of discarded waste materials from the outset.
24. Closer scrutiny was required, especially given the apparent absence of full land engineering specifications. In particular, a waste depositing motive should have been discounted before agricultural permitted development rights were confirmed. In my view, there is doubt over that element and I am confident that with the same information the

Update on Planning Enforcement Issues

County Council would have come to a very different view to that reached by the Borough Council. After all, waste materials were to be brought to a site by known waste carriers and introduced to the land under no apparent or verifiable scheme of land improvement. That would normally amount to a waste depositing activity unless a credible counter case was made for genuine agricultural improvement.

25. Indeed, there was no pre-stripping and retention of original soils. Rather, active damage to the surrounding trees. Land levels were also haphazard and included the depositing of construction and demolition spoil, blacktop, metal and plastics. The Environment Agency whom had exempted the works from Site Permitting Control, were so concerned that they temporarily halted all inputs to the site. The Borough Council were also urgently approached to re-think their original advice and bring the overall activity to an end.
26. Tipping has now ceased. The Borough Council retain responsibility for the site, including damage limitation in the context of a sensitive ecological setting. Given the circumstances, I shall maintain a watching brief. On a positive note however, I have just been consulted by the Borough Council on an unrelated 'agricultural improvement' case. I am pleased to inform Members that the advice given by them to the landowner was in tune with the stricter and more specified approach to such proposals adopted by the County Council.

Significant on-going cases

Deal Field Shaw, Charing (Member: Richard King)

27. This landfill site requiring restoration is the subject of an exempt report to these papers (Item 14); also see summary under No. 1 of Schedule / Appendix 1.

Red Lion Wharf, Northfleet (Member: Leslie Christie / Harold Craske)

28. I reported this case to the last Meeting when I said that I would keep Members informed. It concerns the unauthorised importation of significant quantities of waste wood for shredding (see Appendix 1, Schedule 1, No. 5). The site resides within Red Lion Wharf. The area is owned by SEEDA and is the subject of regeneration proposals formed within the 'Northfleet Embankment Masterplan'.
29. Members' have previously resolved to reserve enforcement action against the wood stockpile to allow for outlets to be found for its constructive re-use. That has not provided a solution but it has served to attract a specialist wood processing company to the site. A planning application has been submitted for a temporary wood shredding yard on site. The existing waste stockpile would be absorbed, processed and removed as an integral part of the scheme.
30. The application is currently being processed. It offers a potential planning solution to the alleged planning contravention on site. This approach is also proportionate and in accordance with government guidance and good practice. I shall report on the outcome of the application to the next Meeting.

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D & D Waste Recycling Ltd, Units 6,12 & 13 Detling Airfield, Detling (Member: Ms J.Whittle)

31. I again reported this case to the last Meeting. A small original waste transfer station on the Detling Industrial Estate, Detling, permitted in 1995 has been expanded without planning permission across two adjoining industrial units (see Appendix 2, Schedule 2, No. 1). The County Council holds a confirmed Enforcement Notice on two of the resulting three-unit footprint for the activity. Conditions attached to the original planning permission are also available to help control the situation.
32. Having threatened the operator and landowner with prosecution from site breaching, talks turned to a potential planning solution for the site. Enforcement Action has been reserved pending submission of a credible and valid planning application, consolidating the site units into one, with a dedicated building enclosing the core of the use.
33. Members resolved at the last meeting for enforcement action to be further reserved to allow a final chance for a duly made application (with full building enclosure) to be received. Pre-application talks have taken place on this overarching proposal but a scheme has yet to be submitted. A more limited application though has been submitted, in apparent deference to Members resolution. This ostensibly returns the use to the original permitted area within Unit 6, in order to create a *'breathing space'* for the larger scheme to be prepared.
34. On closer inspection however, the application seems to imply the continued unauthorised use of the two adjoining Units. The application cannot be supported at officer level on such terms, not least because it would breach a confirmed Enforcement Notice covering Units 6 and 13, which is a criminal offence. A building would largely enclose the Unit, which at the scale proposed would seem to preclude a return to an independent use on Unit 6. For the record, the application is presently invalid.
35. I shall be calling in the applicant's planning consultant before the Meeting. I intend to impress upon him on behalf of his client, the following which appears in my view to capture the mood of the Committee. Waste management facilities are supported for the service that they provide but Planning Law must be fully observed. A proportionate approach is always taken to ensure that enforcement measures do not unduly impact on businesses, as with the waste firm here. Nevertheless, there is a limit to the patience and restraint that can be shown by the County Council.
36. Court action would be the normal reflex against both the operator and landowner. I am mindful though of the contrite demeanour of the operator during our last site inspection. The abortive smaller application with full covered enclosure, also acknowledges in a fashion the two elements of the last Committee resolution. In addition, the site has been almost cleared of waste in an apparent demonstration of respect for the Committee as well as signalling intent to comply.
37. Taking all of this into account, I recommend to Members that the appropriate measure to adopt is an enforced return of the waste transfer use to the original and permitted Unit 6. That includes reinstatement of the demolished building on site, independent access and adherence to all other site practices and conditions. There must be no operational link

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between this base Unit and the other two (i.e. Units 13 and 14). Prior details of the replacement building, access and any necessary operational changes would be required.

38. I commend this measured approach to the case. It re-asserts Planning Law and allows the waste-related business to continue but only on a legitimate basis. Attention can then be put to the overarching scheme mentioned earlier which has been advanced but has still to be pulled together. A positive planning input would then be possible without the background duress of an unauthorised expansion to the business and related breaches. There is a need to completely de-couple the upgrade proposals from the primary duty of the operator and land interests to comply with Planning Law. I would add that the Site Licence / Permit which also attaches to Unit 6 has allegedly been breached in a similar fashion. The Environment Agency however has been largely silent on its enforcement.
39. I shall report further at the Meeting on the outcome of my talks with the operator's planning consultant. Meanwhile, I seek Members' support for the above enforcement stance, with a return of the operation to Unit 6 by the date of the next Meeting. Also, to authorise me to convey these requirements to the Environment Agency on the Committee's behalf, requesting their active support and reinforcement of our position.
40. The above in turn is on the understanding that should the operator depart materially from such terms, breach of condition notices would be immediately served under the Unit 6 planning permission. A prosecution under the confirmed Enforcement Notice would also be sought. Any further level of breaching would be met with a High Court Injunction against the operator, any related business interests and the landowner. I would hope that given the very firm but fair approach of Members in this case that such higher sanctions would not be necessary.

Other cases of interest and those requested by Members

Hooks Hole, Chestnut Street, Borden (Member: Keith Ferrin)

41. This case concerns alleged unauthorised infilling of a former gravel pit (see Schedule 1, Appendix 1, No.11). A Planning Contravention Notice was served on the landowner to uncover the circumstances of the activity. A site meeting then established that the use of the land changed in 2009 from the rearing of cattle to the creation of a horse-based enterprise.
42. To apparently assist his new business still further and without authority, the owner / occupier began to infill the disused gravel pit. This was to achieve a level grassed area for the safe training and grazing of horses. A sand-based manège was also created for more specialised horse-training.
43. This combination of development would appear to be for Swale Borough Council (SBC) to determine. The landowner was directed to them and I understand that pre-application discussions have taken place. There is apparent agreement in principle to the siting of the manège and suitable land reformation including the infilling of the gravel pit to create

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a commercial livery yard for the existing horse-based enterprise. However, an application has still to be received to this effect.

44. It is a requirement, under Members' support from the last Meeting that Enforcement Action will be reserved so long as no further unauthorised tipping takes place and that we are formally consulted by the Borough Council on any application.
45. The last point is important, since the County Council needs to satisfy itself that depositing has been set aside in favour of a genuine scheme of land improvement. I am confident of that since the adviser to the landowner was formerly a consultee of the County Council on the agricultural restoration parts of planning applications and after-care schemes. I do want to demonstrate however to the Borough Council the difference in calibre between scheme and the more 'free-lance' style of alleged land improvement that was accepted for the Thirwell Farm case above (see paragraphs 22 to 26).
46. I would seek Members' endorsement on a contingency basis for the service of an Enforcement Notice in the event of a recurrence of tipping. In the positive however, I shall make my team available to offer technical expertise to SBC for any stage in the proposed land restoration project. That is important since the land acts as a back drop to the Chestnut Street Conservation Area.

Church Lane, Sellindge (Member: Andrew Wickham)

47. I last reported this case to the 10 September 2009 Regulation Committee Report. It concerned an alleged unauthorised composting activity in a rural location involving two streams of waste (sewage and wood chippings) being imported and their subsequent mixing and application to the land. The newly constructed access to the site, the internal track and turning area/ operating pad had been previously accepted by Ashford Borough Council (ABC) as permitted development.
48. Both the Environment Agency (EA) and the County Council intervened at the time to bring the composting activity to a halt. A retrospective planning application was later withdrawn. More recently, ABC have invited a retrospective planning application to test the strength of the case for retention of the residual access and internal concreting works. In the absence of a composting activity, jurisdiction has returned to ABC.
49. Whilst no fresh deposits or further tipping has taken place I have been advised by the EA that a prosecution of the landowner was initiated by them in 2008 for alleged unauthorised waste offences. There have been numerous adjournments but I understand that the case is now listed for a hearing in the Magistrates Court in October 2010. I shall update Members on the outcome of the hearing at the next Committee Meeting scheduled for January 2011.

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Monitoring

Monitoring of permitted sites and update on chargeable monitoring

50. 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 12 chargeable monitoring visits to mineral and waste sites and 3 non-chargeable visits to sites not falling within the chargeable monitoring regime.

Resolved or mainly resolved cases requiring monitoring

51. 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.
52. Cases are periodically removed to make way for others when the situation on site has been stabilised; restoration or acceptable restoration has been achieved, a district or Environment Agency (EA) remit confirmed (or with action being a realistic possibility by them). Another occasion is where a planning application would address the various issues and there is the realistic prospect of one being submitted. Cases then go onto a 'reserve' data base, with an in-built monitoring commitment; ready to be returned to the Committee's agenda should further enforcement issues emerge or a positive planning solution becomes available. The Church Lane, Sellindge case, reported in paragraphs 47 to 49 above, is a case in point.
53. There is a running list of sites which fall within this category, against which priorities are drawn and enforcement monitoring checks are made.

Conclusion

54. The cases presented in this overarching enforcement report are of significance in their own right but also illustrate some underlying themes. A unity of purpose and action between the County Council, district councils and the Environment Agency is the surest route to a successful outcome in most cases. A free flow of information between all bodies reinforces even independent actions by any one of the principal parties. Formal and timely consultation is another way for public enforcement initiatives to be intensified. There are also examples quoted among our own cases, where creative and cost-effective solutions have been found which achieve the desired result with speed and economy.

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Recommendation

55. I RECOMMEND that MEMBERS:

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 5 to 49 above and those contained within Schedules 1 and 2 of Appendices 1 and 2.

Case Officers: Robin Gregory

01622 221067

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 style="text-align: center;">Ashford</p> <p>DC3/AS/03/COMP/0090 Shaw Grange, Charing (Member: Richard King)</p>	<p>Previous multiple breaching of landfill permissions, Enforcement Notices and High Court Injunctions.</p>	<p>To secure restoration of the site in the public interest.</p>	<p>The County Council is directly resolving the restoration issues on site.</p>	<p>This landfill site is the subject of an exempt report to these papers (see Item 15).</p>
2	<p>DC3/AS/09COMP/0009 Woodlands Park, Biddenden (Member: Michael Hill)</p>	<p>The alleged depositing of waste materials on adjacent agricultural land.</p>	<p>To assist the EA and Ashford BC in their enforcement of the site.</p>	<p>A site meeting and inspection established that the land is owned by the Park operator. Waste materials had been deposited following groundwork / demolition operations within the Park.</p>	<p>Following a successful prosecution by the EA and with the support of officers from KCC and Ashford BC the deposited waste materials have now been removed from the site (see paragraph 11 of Item 12 of these papers).</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
3	DC3/AS/08/COMP/0006 Church Lane, Sellindge (Member: Andrew Wickham)	Alleged unauthorised composting activity, with construction of a new access point, internal track and turning area / operational pad.	To test whether the case was within the County Council's waste-related remit.	The activity has ceased. A retrospective planning application for retention of the access has been submitted to Ashford Borough Council.	Ashford BC holds the enforcement lead on the access and the EA have a court case pending on the composting activity. I am now able to remove from the Schedules.
4	Canterbury DC3/CA/09/COMP/0013 Seasalter Lane, Seasalter (Member: Mike Harrison / Mark Dance)	Canterbury City Council originally reported the alleged depositing of waste materials under the A299 flyover, off Seasalter Lane. That became a base for building-related purposes and a Canterbury City Council (CCC) matter.	To stop the activity and have the site restored.	CCC did not pursue the breach. Nevertheless, KCC in owning part of the land and controlling the rest has had a corporate duty to address the breach.	The Planning Enforcement Team has secured removal of all materials and restoration of the land. Kent Highways and Property Services will now need to secure the land from any future trespass and grass over (see paragraphs 12 – 15 of Item 12).

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
5	<p>Gravesham</p> <p>DC3/GR/COMP/0013 Red Lion Wharf Crete Hall Road Northfleet</p> <p>(Member Leslie Christie / Harold Craske)</p>	Importation of waste wood, stockpiling and shredding.	To cease importation and secure removal of the high residual stockpile of waste wood.	SEEDA as the landowner responsible have attempted to find process outlets for the waste wood. That has attracted a specialist firm to the site.	A planning application is being processed for temporary wood shredding, pending redevelopment of the wharf. The scheme includes removal of the original stockpiles (see paragraphs 28–30 of Item 12).
6	<p>Maidstone</p> <p>DC3/MA/05/COMP/0010 Monk Lake (formerly known as Riverfield Fish Farm), Staplehurst</p> <p>(Member: Mrs Paulina Stockell)</p>	Alleged breaches of planning permission granted by Maidstone BC for a fish farm. That included concern over the quantities of waste materials entering the site.	Maidstone BC (MBC) has held primary responsibility for enforcing the site.	Retrospective planning permission for the enhanced development was granted by Maidstone BC, with integral landscaping.	Natural England (NE) is currently investigating complaints of weeds being spread locally from the development. NE is the enforcing body under the 1959 Weeds Act. I have referred them to MBC. I now shall now remove from the Schedules.

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
7	DC3/MA/04/COMP/0010 Unit 10, (Blu-3 UK) Detling Airfield, Detling, Maidstone (Member: Ms Jenny Whittle)	Alleged processing of imported waste materials, using crushing and screening plant.	To verify and arrest the breach.	The operators have voluntarily agreed to cease the use and restore the site. Injunctive action is currently reserved.	Removal and restoration is well advanced and should be complete in the near future. I shall give the latest position at the Meeting (also see paragraphs 16 – 19 .of Item 12).
8	DC3/MA/04/COMP/0060 Tutsham Farm, West Farleigh (Member: Ms Paulina Stockell)	The alleged depositing of waste materials on agricultural land.	To assist and support the Environment Agency who have taken the enforcement lead.	The landowner, operator and business have been convicted in the Magistrates Court for waste-related offences. The fines and costs were in excess of £71,000.	Under Members' request and encouragement, the EA are considering their next option of serving a Notice for removal of the deposited waste materials by road and / or by water (R. Medway).
9	Sevenoaks DC3/SE/09/COMP/0001 Park House Farm, Eynsford (Member: Roger Gough)	Alleged unauthorised waste transfer station including mixed waste materials.	A District Council mixed-use activity was identified, with Sevenoaks DC now taking the enforcement lead.	There is no direct remit for the County Council. However, we have stayed with the case to ensure a solution is place before withdrawing. That has included a recent 'all-party' meeting at Eynsford Parish Council Offices.	A unified approach among the enforcement bodies has been sought. Sevenoaks DC and the EA have their front-line part to play. I shall stay in reserve, advising as necessary. Meanwhile, I shall remove this item from the Schedules.

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
10	DC3/SW/04/COMP/0059 Four Gun Field, Upchurch (Member: Keith Ferrin)	Alleged waste-activities on a former brickfield 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 and upheld at Inquiry. The operator has then appealed against the Planning Inspector's decision. That is due to be heard in the High Court on 4.11.10.	This case is the subject of a confidential report (see Item 16). There are no current complaints but continuing support is sought for any High Court action deemed necessary to restrain the use.
11	DC3/SW/10/COMP/0007 Hooks Hole, Borden (Member: Keith Ferrin)	Alleged unauthorised infilling of agricultural land through the importation and depositing of waste materials.	To investigate and see if the activity falls within the County Council's waste-related remit.	Tipping has ceased. A site audit revealed an apparent change in the use of the site from cattle grazing to a horse-based enterprise.	I am reserving enforcement action, pending the outcome of talks between the land-owner and Swale BC on the extent of any land repair needed to support the new horse-related business. KCC will be consulted on any submitted scheme.
12	DC3/SW/10/COMP/0011 Thirwell Farm, Hernhill (Member: Andrew Bowles)	Alleged 'agricultural improvements' through the importation / depositing of waste materials. The site is located adjacent to a flood plain and a local Nature Reserve and SSSI.	To see if Swale BC was correct in its assessment that such works were Permitted Development. The County Council had previously dissuaded the activity, confirming that it needed planning permission.	The importation of inert waste materials was damaging the land but through EA and County intervention that has now ceased. Grading and levelling has taken place in readiness for final top -soiling.	Swale BC (SBC) has responsibility for the site. I was disappointed at not being consulted, which would have proved decisive. I have since agreed with SBC, the outline of a far stricter and specified approach to such proposals.

Schedule 2: Alleged breaches on Permitted Minerals & Waste Sites

Appendix 2

	Site & Case Reference	Alleged Breach	Objectives / Actions	Progress	Notes / Remarks
1	<p>Maidstone</p> <p>DC3/MA/04/COMP/0005 D&D Waste Recycling, Units 6,12 & 13 Detling Airfield, Detling, Maidstone</p> <p>(Member: Ms Jenny Whittle)</p>	<p>Alleged breaching of conditions attached to the original 1995 planning permission for a Waste Transfer Station and unauthorised expansion onto adjoining units in (part) default of a confirmed Enforcement Notice.</p>	<p>To prevent further breaching and secure restoration of the site. The overall activity has recently been scaled down.</p>	<p>The planning application to rationalise the use on the enlarged site and house the core activities within a fully enclosed building remains invalid. A more limited scheme has also been submitted but equally remains invalid.</p>	<p>Enforcement Action has been reserved pending an application. That has not materialised. The breaches must therefore be addressed and I would seek Member support for an enforced return to the original site area (see paragraphs 31 - 40 under Item 12).</p>
2	<p>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 visual amenity impacts from the over-stacking of scrap.</p>	<p>To ensure compliance with the base planning permission and related Enforcement Notice.</p>	<p>Activity on site is at the moment reasonably balanced. Re-location holds the key to resolving issues on site. There are two potential alternative sites, in favour of housing at Mill Hall.</p>	<p>Close discussions are taking place with the operator, on the running of the current scrap yard and on potential replacement sites. Members already support the seeking of an Injunction should co-operation be lost, with site impacts escalating unduly.</p>

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

Agenda Item 15

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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 16

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