



AGENDA

REGULATION COMMITTEE

Tuesday, 17th May, 2011, at 10.00 am
Council Chamber, Sessions House, County
Hall, Maidstone

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

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

UNRESTRICTED ITEMS

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

1. Substitutes
2. Declarations of Interests by Members in items on the Agenda for this meeting.
3. Terms of Reference
To note the amendment to Term of Reference (b) to read:

all Commons Registration functions under Part 1 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008
4. Minutes (1 - 16)
 - (a) Committee: 25 January 2011
 - (b) Member Panel: 8 February 2011
22 February 2011
 - (c) Mental Health Guardianship Panel: 21 January 2011
5. Update on Home to School Transport Appeals (Oral Report)
6. Update from the Commons Registration Team (17 - 22)
7. Update on recent Public Rights of Way cases (23 - 24)
8. Update on Planning Enforcement (25 - 44)
9. Other Items which the Chairman decides are Urgent
10. Motion to Exclude the Press and Public
That under Section 100A of the Local Government Act 1972 the public be excluded for the following business on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 5 and 6 of Part 1 of Schedule 12A of the Act.

EXEMPT ITEMS

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

11. Enforcement Strategy for Four Gun Field, Otterham Quay Lane, Upchurch (45 - 50)

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

Monday, 9 May 2011

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

KENT COUNTY COUNCIL

REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Tuesday, 25 January 2011.

PRESENT: Mr M J Harrison (Chairman) Mr A D Crowther (Vice-Chairman) Mr R Brookbank, Mr C J Capon, Mr I S Chittenden (Substitute for Mr S J G Koowaree), Mr H J Craske, Mr J M Cubitt, Mr J A Davies, Mr T Gates, Mr S Manion, Mr R F Manning, Mr J M Ozog, Mr R A Pascoe, Mr J N Wedgbury, Mr M J Whiting and Mr A T Willicombe (Substitute for Mr A H T Bowles)

ALSO PRESENT: Mr P J Homewood and Mr R Tolputt

IN ATTENDANCE: Mr G Rudd (Assistant Democratic Services Manager), Mr S Bagshaw (Head of Admissions & Transport), Mr C Feltham (Head Of Additional Educational Needs & Resources), Mr K Cobb (Transport Integration Manager), Mr C Wade (Countryside Access Principal Case Officer), Miss M McNeir (Public Rights Of Way and Commons Registration Officer), Mrs S Thompson (Head of Planning Applications Group), Mr R Gregory (Principal Planning Officer - Enforcement) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS**1. Minutes**

(Item 3)

RESOLVED that the Minutes of the Committee meeting held on 9 September 2010 and of the Member Panel meetings held on 14 September 2010, 19 October 2010, 26 October 2010 and 30 November 2010 are correctly recorded and that they be signed by the Chairman.

2. Home to School Transport

(Item 4)

(1) Members of the Committee asked questions on the wider issues associated with Home to School Transport. The Transport Integration Manager described the various means of provision and explained the methodology used by his Team to assess the most appropriate form of transport in each individual case.

(2) The Committee agreed to the arrangement of educational visits by small numbers of Committee Members to the Transport Integration Team and to the Admissions and Transport Team.

(3) RESOLVED that the report be noted and that educational visits by small numbers of Committee Members to the Transport Integration Team and to the Admissions and Transport Team be arranged.

3. Presentation by Kenneth Cobb (Transport Integration Manager) on Bus Passes

(Item 5)

(1) The Transport Integration Manager tabled a document identifying the three types of bus pass (Entitled Scholar, Kent Freedom Pass and Zip (Oyster)) and describing their validity, entitlement and retention period. He briefly described the operation of the system and answered questions from the Committee Members.

(2) RESOLVED that Mr Kenneth Cobb be thanked for his interesting and informative presentation.

4. Update from the Commons Registration Team

(Item 6)

(1) The Public Rights of Way Principal Case Officer displayed files relating to three cases in order to give the Committee Members an illustration of the volume of work involved in each of these individual representative cases.

(2) The Public Rights of Way Principal Case Officer drew the Committee's attention to the implications of the "Betterment case" in terms of the importance of "contentiousness" when assessing whether use of land was as of right.

(3) RESOLVED that the report be received and that educational visits by small numbers of Committee Members to the Commons Registration Team be arranged.

5. Proposals arising from the review of the Register of Common Land and Town and Village Greens

(Item 7)

RESOLVED that the errors identified as a result of the review of the Registers of Common Land and Town or Village Greens be dealt with accordingly; and that proposals be initiated under Section 19 of the Commons Act 2006 to seek to rectify these errors.

6. Update on Planning Enforcement Issues

(Item 8)

(1) Mr P M Homewood was present for this item pursuant to Committee Procedure 2.24 and spoke.

(2) The views of Mrs J Whittle in respect of unauthorised sites in her constituency were tabled, noting in particular the efforts of the County's Planning Contraventions Officer, Mr Alan Goodison.

(3) RESOLVED that:-

- (a) the actions taken or contemplated on the respective cases set out in paragraphs 5 to 41 of the report be endorsed, together with those contained within the Schedules in Appendices 1 and 2 of the report; and

- (b) educational visits by small numbers of Committee Members to the Planning Enforcement Team be arranged.

7. Strengthening of Planning Enforcement

(Item 9)

(1) The Chairman informed the Committee that he was attempting to speak to the Minister, Greg Clark, MP in order to ensure that he was fully aware of the County Council's views on the key problems and suggested solutions summarised in Appendix 1 to the report. Although he had not at this stage succeeded in discussing this matter with him, he was reassured that the Minister was indeed giving this document his consideration.

(2) RESOLVED that:-

- (a) the report be noted; and
- (b) the current lobbying of the Government in the pursuit of enhanced planning enforcement powers be endorsed.

8. Update on planning enforcement issues at Deal Field Shaw (Shaw Grange), Charing

(Item 10)

RESOLVED that:-

- (a) the content of paragraph 7 of the report concerning the surface engineering of the site and related technical works be endorsed on the proviso that details are first lodged with the Head of Planning Applications group for enforcement and verification purposes; and
- (b) the report form the basis of any briefing concerning the site given to local residents or other adjoining land interests.

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.)

9. Enforcement Strategy for Four Gun Field, Otterham Quay Lane, Upchurch
(Item 13)

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

(2) RESOLVED that the report be received.

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Thanet District Council, Cecil Street, Margate on Tuesday, 8 February 2011.

PRESENT: Mr M J Harrison (Chair), Mr A D Crowther (Vice-Chairman), Mr J A Davies, Mr S J G Koowaree and Mr R A Pascoe

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

UNRESTRICTED ITEMS

1. Application to register land at Park Avenue, Broadstairs as a new Town Green *(Item 5)*

(1) Members of the Panel visited the application site before the meeting. This visit was attended by Mr T Herron, the applicant and some 10 members of the public.

(2) The Public Rights of Way and Commons Registration Officer introduced the application, explaining that the various areas of landownership within the application site were set out in Appendix D to the report.

(3) The Public Rights of Way and Commons Registration Officer explained that some parts of the application site had been fenced off after the application had been made and that some of its vegetation had very recently been cut down.

(4) The Public Rights of Way and Commons Registration Officer set out the various legal tests that needed to be passed before an application could succeed. The first of these was whether use of the land had been "as of right." The evidence was clear that use had not been with secrecy or permission (although formal games such as Cricket had been the subject of permission). In respect of whether force had been used was far less transparent. The site had been the subject of fencing and notices, but there was conflicting evidence about when these had been erected. Furthermore, Mr and Mrs Brazil had drawn the remains of fencing to the Panel's attention earlier in the day. It could not yet be established whether the land had ever been completely fenced off. The Panel had also seen the private road notice, but further detailed investigation was needed to establish what the effect of that notice had been.

(5) The Public Rights of Way and Commons Registration Officer then considered whether use of the land had been for the purposes of lawful sports and pastimes. Whilst it was accepted by all parties that activities such as dog walking and playing with children had indeed taken place on parts of the land, there was a dispute over which areas of the land had actually been the subject of such use. The applicant considered that the land was looked upon in its totality by those who had used it; whereas the objectors claimed that some areas were impenetrable and incapable of use. A further complication arose as a result of a Public Right of Way crossing the

land. Any decision on this aspect of the application would need to be one which balanced fact and degree.

(6) The Public Rights of Way and Commons Registration Officer went on to address the question of whether use had been by a significant number of inhabitants of a particular locality, or a neighbourhood of a locality. Although the objectors had pointed out that the recognised administrative unit of Upton Ward had only come into existence in 2002, the Courts had upheld that similar areas could be categorised as a locality in such circumstances. The applicant considered that Park Avenue could also be described as a neighbourhood within a locality, but the objectors disagreed. This question would best be addressed by a qualified Inspector. It was considered that the 67 households who had claimed to have used the land would constitute “a significant number” as it would have been enough to make the landowners aware that the land was in use.

(7) The Public Rights of Way and Commons Registration Officer then discussed whether the use had taken place over a period of twenty years or more. The qualifying period was 1987 to 2007 (the year that the application had been made). Many of the people who had given user evidence had been present for the entire period. Account would still need to be taken of the objectors’ contention that use of parts of the land would have been impossible over this period as a result of its impenetrability.

(8) The Public Rights of Way and Commons Registration Officer said that use had definitely continued up to the date of application.

(9) The Public Rights of Way and Commons Registration Officer then explained her conclusions, which were that the large volume of unanswered questions could only be resolved through the mechanism of a non-statutory Public Inquiry.

(10) Mr R A Pascoe moved, seconded by Mr A D Crowther that the recommendations of the Public Rights of Way and Commons Registration Officer be agreed.

(11) The Chairman offered those people who had indicated that they wished to speak to the Panel the opportunity to do so. Each of them indicated that, given the very strong nature of the Officer’s recommendations, they would forego this opportunity.

(12) On being put to the vote, the Motion set out in paragraph (10) above was agreed.

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

(14) Following the conclusion of this item, Mr A D Crowther left the meeting.

2. Application to register land adjacent to Barnes Car Park, Westbrook as a new Town Green

(Item 6)

- (1) Members of the Panel had visited the application site prior to the meeting. This visit was attended by the applicant, Mr A Sykes, the Local Member, Mr R B Burgess and by 6 members of the public.
- (2) The Public Rights of Way and Commons Registration Officer informed the Panel of the history of the application and of the claim by Thanet District Council (the landowner) that the land had been used with permission under the provisions of the Public Health Act 1875.
- (3) The Public Rights of Way and Commons Registration Officer set out the various legal tests that needed to be fulfilled in order for an application to succeed.
- (4) The first legal test was whether use of the land had been as of right. The Public Rights of Way and Commons Registration Officer explained that a local authority was able to acquire land under various acts, including the Public Health Act 1875, enabling it to be used as a "public walk and pleasure ground." Whenever this occurred, the public was using the land by right and could therefore not acquire a right. Thanet DC had provided a copy of the original Conveyance (dated 1923) and the plan. The Conveyance made no reference to any acquiring power, although it did make reference to management provisions.
- (5) The Public Rights of Way and Commons Registration Officer then said that the applicants believed that the land applied for had been created when the sea wall was built after the remainder of the land had been acquired. This was confirmed by the document at Appendix E of the report, which was a plan showing the modern base map overlaying the 1923 Conveyance. In the absence of any evidence to the contrary, she therefore concluded that the land in question had been used as of right rather than by right.
- (6) The Public Rights of Way and Commons Registration Officer then said that the user evidence clearly demonstrated that the land in question had been used for lawful sports and pastimes by a large number of people. In addition, there were a number of spots that had in all likelihood been used as picnic areas. Most of the use had been by residents of the electoral ward of Westbrook. Use had therefore undisputedly been by a significant number of residents within a locality.
- (7) The Public Rights of Way and Commons Registration Officer also confirmed that the final two tests had been successfully met in that use had clearly been for a period of over twenty years up to and beyond the date of application in 2009.
- (8) The Public Rights of Way and Commons Registration Officer concluded that (all the legal tests having been met) the application should succeed.
- (9) Mr Sykes, the applicant addressed the Panel. He said that the report had been very fair and well researched and that Town Green status would be very beneficial to the local residents of Westbrook. Both he and a local historian had researched the question of how Thanet DC had acquired their land but they had been unable to find any reference to it between the years 1921 and 1924.
- (10) Mr J Thompson, representing Thanet District Council said that he had nothing to add.

(11) On being put to the vote, the recommendations contained in the report were unanimously carried.

(12) RESOLVED that the applicant be informed that the application to register the land at Barnes Car Park at Westbrook has been accepted, and that the land subject to the application be formally registered as a Town Green.

3. Application to register land at Mill Lane, Preston as a new Village Green
(Item 2)

(1) The Public Rights of Way and Commons Registration Officer informed the Panel that this land was the subject of a voluntary registration application. Checks had confirmed that the applicant was indeed the owner, and that there were no other interested parties and no restrictive covenants. The owner intended to transfer ownership of the land to Preston Parish Council once Village Green status had been confirmed.

(2) RESOLVED that the applicant be informed that the application to register the land at Mill Lane in Preston has been accepted and that the land subject to the application be formally registered as a Village Green.

Carried Unanimously

4. Application to register land at the High Street, Chiddingstone as a new Village Green
(Item 3)

(1) The Public Rights of Way and Commons Registration Officer informed the Panel that this land was the subject of a voluntary registration application. Checks had confirmed that Chiddingstone Parish Council did indeed own the land, and that there were no other interested parties and no restrictive covenants.

(2) RESOLVED that the applicant be informed that the application to register the land at High Street in Chiddingstone has been accepted and that the land subject to the application be formally registered as a Village Green.

Carried Unanimously

5. Application to register land known as Gighill Green, Larkfield as a new Village Green
(Item 4)

(1) The Public Rights of Way and Commons Registration Officer informed the Panel that this land was the subject of a voluntary registration application. Checks had confirmed that East Malling and Larkfield Parish Council did indeed own the land, and that there were no other interested parties and no restrictive covenants.

(2) RESOLVED that the applicant be informed that the application to register the land known as Gighill Green in Larkfield has been accepted and that the land subject to the application be formally registered as a Village Green.

Carried Unanimously

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Whitstable Rugby Club, Reeves Way, Chestfield, Whitstable CT5 3QS on Tuesday, 22 February 2011.

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

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

6. Application to register land known as the Long Field in Angley Road, Cranbrook as a new Village Green *(Item 5)*

(1) Mr R A Pascoe and Mr R E Brookbank each made a declaration of Personal Interest as they were Members of the Planning Applications Committee which would be considering any planning application for development of the land in question. Mr S J G Koowaree also made a declaration of Personal Interest as a Member of the Kent Adult Social Services Policy Overview and Scrutiny Committee.

(2) The Public Rights of Way and Commons Registration Officer informed the Panel that the application had been made by Mr P Allen, accompanied by 70 user evidence questionnaires. Objections to the application had been made by Cranbrook and Sissinghurst Parish Council and by 8 local residents. Twenty four letters of support had also been received.

(3) The land in question was owned by Kent County Council and an objection to the application had been received from its Property Group. Kent Adult Social Services had applied for the construction of 40 extra care apartments for older people on the land. This application had been withdrawn. It was still possible that a similar application would come forward at a later stage.

(4) The Public Rights of Way and Commons Registration Officer said that there was a provision for the County Council to refer Village Green applications to the Planning Inspectorate in circumstances when it was considered that the authority had an interest in the outcome which would seriously call into question the authority's ability to determine the matter impartially. The Panel should not consider whether it had confidence in its own ability to act impartially. It was rather a matter of whether a reasonable local resident, in possession of all the facts, could reasonably conclude that the County Council was not in a position to do so.

(5) The Public Rights of Way and Commons Registration Officer concluded her presentation by explaining the grounds for her recommendation. These were that the

County Council owned the land, had recently sought to develop the land and had publicly stated that it might pursue development options in the future. Under these circumstances, the local community could reasonably lack confidence in the decision-making process.

(6) Mr P Allen, the applicant addressed the Panel in support of the recommendations. He said that there was a fair amount of local mistrust of the County Council. This had arisen when it had fenced off the site at the same time as it had put the care apartments planning application forward.

(7) Mr R A Pascoe moved, seconded by Mr A D Crowther that the recommendation set out in paragraph of the report be agreed.

carried unanimously

(8) RESOLVED that the application to register the land known as Long Field at Angley Road, Cranbrook as a new Village Green be referred to the Planning Inspectorate for determination.

7. Application to register land at Grasmere Pastures, Whitstable as a new Village Green

(Item 3)

(1) Members of the Panel visited the application site before the meeting. The visit was also attended by Mr J Spencer from the Grasmere Pastures Residents Action Group and by Mr P Watkins of Kitewood Estates Ltd.

(2) The Chairman informed the Panel that he was the Local Member for this application site. He had had no connection with the application and had not previously expressed any view on its merits. He would therefore be approaching it with an open mind.

(3) The Public Rights of Way and Commons Registration Officer introduced the application. She said that it was a re-submission of an application which had been rejected by the Panel in 2007. Although there was no provision in Law for an identical application to be re-submitted, the circumstances were sufficiently different to enable a re-hearing on this occasion. This was because the new application was submitted under the provisions of the Commons Act 2006 rather than the Commons Registration Act 1965. It contained new evidence, which had not been brought to the Panel's attention in 2007.

(4) The application had been submitted by the Grasmere Pastures Residents Action Group and had been accompanied by 152 user questionnaires. It had received support from Chestfield Parish Council, whilst Canterbury City Council had raised no objection. The landowner, OW Prestland Ltd had objected on the grounds that the specified locality was not a qualifying locality for registration; that the principal use of the site had been through exercise of the Public Footpaths which crossed the land rather than for lawful sports and pastimes; that the land had not been used for lawful sports and pastimes during the months when hay was being grown and harvested; and that use of the site had not been as of right due to the erection of "private property" notices.

(5) The Public Rights of Way and Commons Registration Officer then considered each of the legal tests. In terms of whether use of the land had been “as of right”, use of the land had clearly not been through secrecy or with permission. The question was whether it had been used by force. There had been no fencing before 2004 but there was conflicting evidence around the “private property” signs. The objectors had claimed that there had always been such notices around the site, whilst the applicants and other users claimed either that there had been no notices before 2004 or that they could not recollect them being there. It was also their view that the notices themselves did not refer to the land in question.

(6) The Public Rights of Way and Commons Registration Officer said that the objectors claimed that the principal use of the application site had been to walk along the designated footpath. As such use would be “by right”, it could not have been “as of right” as would be necessary for the site to be registered. The applicants, on the other hand, said that the site had been used by many residents for a great variety of purposes. Clarification of all aspects of the “as of right” legal test could only be achieved through a non-statutory Public Inquiry.

(7) The Public Rights of Way and Commons Registration Officer said that use of the site had been for a number of lawful sports and pastimes, such as kite flying, nature observation and playing with children. However, the majority of use had been for the purpose of walking. Further clarification was needed on the question of how much use had been on the public footpaths as opposed to the rest of the site.

(8) The Public Rights of Way and Commons Registration Officer said that the application had clearly demonstrated that use had been by a significant number of people and that the locality identified by the applicants (the electoral ward of Chestfield and Swalecliffe) was, in her view, one which met the legal test.

(9) The Public Rights of Way and Commons Registration Officer said that although fencing had been erected in October 2004 and the application had been submitted on 14 September 2009, the application did pass the test of being in use up to the date of application because the Law allowed a 5 year grace period.

(10) The Public Rights of Way and Commons Registration Officer said that whilst it was established that use of the site had taken place for a period of over 20 years, there was doubt over the question of whether this period had been interrupted. The objectors claimed that use would have been because of the hay cropping activities, which lasted for several months of the year. The applicants claimed that such activities would last for 3 to 4 days a year and had not prevented lawful sports and pastimes taking place. This conflict of evidence needed the closer scrutiny that only a non-statutory Public Inquiry could provide.

(11) The Public Rights of Way and Commons Registration Officer concluded her presentation by saying that because of the conflicting evidence that made consideration of most of the legal tests difficult to determine, the most appropriate way to proceed would be for the Panel to agree to the holding of a non-statutory Public Inquiry.

(12) Representatives from both the applicants and objectors had previously indicated a wish to speak to the Panel. The Panel Members considered that it would not be possible for the issues to be fully clarified during the meeting and that it would

therefore not be productive to prolong the debate any further. Accordingly, Mr R A Pascoe moved, seconded by Mr A D Crowther that the recommendation set out in paragraph 59 of the report be agreed.

carried unanimously

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

8. Application to register land at Benacre Wood, Whitstable as a new Village Green

(Item 4)

(1) Members of the Panel visited the application site before the meeting. The visit was also attended by Mr A Clark, Mrs A Palmer and Mrs F Cornish from the Friends of Duncan Down; and by N Strand (landowner) and his son Mr J Strand.

(2) The Chairman informed the Panel that he was the Local Member for this application site. He had had no connection with the application and had not previously expressed any view on its merits. He would therefore be approaching it with an open mind.

(3) The Public Rights of Way and Commons Registration Officer introduced the application which had been submitted by The Friends of Duncan Down on 19 October 2009 under the provisions of the Commons Act 2006. It had been accompanied by 50 user evidence questionnaires, photographs, newspaper cuttings and a leaflet. Objections had been received from two of the three landowners, Mrs Lucchesi and Mrs Buchan. They considered that use of the land had been by force as fences had been erected and cut down or otherwise damaged.

(4) The Public Rights of Way and Commons Registration Officer then considered each of the legal tests. In terms of whether use of the land had been “as of right”, use of the land had clearly not been through secrecy or with permission. The objectors were claiming that use had been by force. Investigations had led to the conclusion that there had been no sign of fencing having been put up continually or recently, although there was some evidence of the remnants of old fencing. There had also been much evidence of use being unchallenged or otherwise restricted.

(5) The Public Rights of Way and Commons Registration Officer said that the user evidence indicated a range of activities which qualified as lawful sports and pastimes. These included dog walking, fruit picking, jogging, photography and bird watching.

(6) The Public Rights of Way and Commons Registration Officer said that the applicants had specified the electoral wards of Gorrell and Seasalter as the “locality”. Although it was unclear whether two wards could be combined to represent a “locality”, an analysis of the addresses of those who had submitted user questionnaire forms showed that most users lived in the Gorrell ward, which could appropriately be identified as such. The number of users was also sufficient to be defined as “significant” because there were enough respondents to indicate that the land in question was in general use by the local community.

(7) The Public Rights of Way and Commons Registration Officer said that it was clear that use of the site had continued up to and, indeed, beyond the date of

application. It was equally clear from the evidence user forms that this use had taken place for a period of 20 years.

(8) The Public Rights of Way and Commons Registration Officer concluded her presentation by saying that, in her professional view, each of the legal tests had been met and that she therefore recommended that the land in question should be registered as a Village Green.

(9) Mr A Clark addressed the Panel on behalf of the applicants. He said that The Friends of Duncan Down could have collected more user evidence questionnaires but they had taken the view that there had been no need to gather more than 50. The purpose of making the application was to ensure that the land could be properly protected. The organisation that he represented had achieved a number of nationally accredited awards, demonstrating that its members would work responsibly to achieve this end. He said that all the legal tests had been passed.

(10) Mr N Strand (landowner) said that owing to a family bereavement he had been unable to reply during the consultation period. He fully supported the views of the other two landowners. The land in his ownership had been farmed for 60 years, whilst the land in question had been in disrepair since the 1980s. The northern boundary of the site had never been fenced as it was important to allow the cattle to roam. Fencing had been put up to prevent the cattle from straying into ditches and dykes and there had been no reason to put up a second border to keep the public out.

(11) Mr Strand went on to say that there had not been sufficient opportunity to challenge use of the land, but whenever this had been done, the public had for the most part been apologetic and co-operative. Fences and signs had been put up, mainly in order to prevent anti-social behaviour associated with illegal motorcycle riding. These had been torn down. So too had barbed wire and cord, aimed at stopping motorcycles coming on to the site. This had been torn down immediately. The most notable example had been on Christmas Eve 2009 when cord had disappeared within a day of being put up. The Police had also been involved in trying to prevent such activities.

(12) In response to a question from the Panel, Mr Strand said that his main reason for opposing the application was that he was concerned that Village Green status would be a personal encumbrance due to the additional costs, duties and regulations that would be imposed upon him by DEFRA. He had no objection to walkers using the site and was also prepared to draw up a document giving powers to members of The Friends of Duncan Down to protect the site if the application fell through.

(13) On being put to the vote, the recommendation set out in paragraph 38 of the report was agreed by 4 votes to 0 with 1 abstention.

(14) RESOLVED that the applicant be informed that the application to register the land known as Benacre Wood at Whitstable as a new Village Green has been accepted, and that the land subject to the application be formally registered as a Village Green.

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REGULATION COMMITTEE MENTAL HEALTH GUARDIANSHIP PANEL

MINUTES of a meeting of the Regulation Committee Mental Health Guardianship Panel held in the Wantsum Room, Sessions House, County Hall, Maidstone on Friday, 21 January 2011.

PRESENT: Mr M J Harrison (Chairman), Mr R Brookbank, Mr P W A Lake and Mr C P Smith

ALSO PRESENT:

IN ATTENDANCE: Mr P Absolon (Social Care Commissioner for Mental Health), Ms D Divine (Policy Officer - Mental Health), Macdonald (Training Manager - Mental Health) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

1. Terms of Reference

(Item 2)

The Committee noted that its Terms of Reference were: "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."

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 1 and 2 of Part 1 of Schedule 12A of the Act.)

2. The Local Authority's Guardianship Register

(Item 4)

(1) The Social Care Commissioner for Mental Health informed the Panel of the work of the Officer Working Party to review Guardianship Orders. He explained that the appended lists of closed cases since January 2010 and the current guardianship register were very close to the point where every case had been completely reviewed.

(2) The Panel agreed that the Chairman and possibly some other Panel Members should inspect the register in three months' time in order to certify that the proper governance arrangements were in place.

(3) The Chairman left the meeting in order to attend another meeting, whereupon Mr W P W A Lake took the Chair.

(4) RESOLVED that:-

- (a) the content of the report be noted together with the lists of closed cases since January 2010 and the current guardianship register; and
- (b) the Chairman and possibly some other Members of the Panel be invited the detailed register in three months' time in order to certify that the proper governance arrangements are in place.

Update from the Commons Registration Team

A report by the Head of Countryside Access to Kent County Council's Regulation Committee on Tuesday 17th May 2011.

Recommendation:

I recommend that Members receive this report and that a proposal is initiated under section 19 of the Commons Act 2006 to correct an error in the Register of Village Greens in relation to VG235 at Wittersham.

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. So far this year, 8 such cases have been considered at two separate Regulation Committee Member Panel meetings held in February. Five of those cases were registered as new Town or Village Greens (three of which were voluntary dedications of land by the owner). Two complex cases were referred to Public Inquiry for further consideration, details of which are provided at Appendix A. It was also agreed that a third case should be referred to the Planning Inspectorate for decision due to a potential conflict of interest between the County Council's role as the Commons Registration Authority and its capacity as a landowner seeking to develop the land.
3. Officers continue to work to reduce the current backlog and there has been a steady reduction in the number of applications awaiting resolution. There are now 19 applications outstanding, 12 of which are currently under investigation. Two further Regulation Committee Member Panel meetings have been scheduled to take place in June to consider six of the outstanding applications.

Commons Act 2006 – Pilot project

4. The review and correction of the Registers of Common Land and Village Greens required by the pilot project remains an ongoing process. At the January meeting of the Regulation Committee, authority was sought from the Committee to proceed with several proposals to correct administrative errors on the Registers of Common Land and Village Green. The necessary consultation processes have now been completed and no objections have been received. As required by the Regulations, these cases are now being referred to the Planning Inspectorate for confirmation, after which the County Council will be able to make the necessary amendments to the Registers.
5. Work has also begun on an application received by the County Council from Mrs. A. Wilks seeking the correction of the Register of Village Greens for VG128 at Seasalter. The application has been made on the basis that, when the land was first registered as a Village Green in 1972, mistakes were made by the Commons Registration Authority in making the entry on the Register of Village Greens. The application

proposes two clerical amendments to the description in the textual section of the Register, as well as an amendment to the Register plan to increase the area of the registered extent of the Village Green. The necessary consultation processes are currently under way and the matter will ultimately be determined by the Planning Inspectorate. The outcome will be reported to the Committee in due course.

Proposal to amend the register for VG235 at Wittersham

6. In addition to the cases referred to above, a further issue has been identified in relation to the Register of Village Greens for VG235 at Wittersham, which requires an amendment to be made to the Register.
7. The Village Green at Wittersham was registered as such following a successful application by a local resident in 1993. In 1994, an Agreement was made between the County Council and the landowner, Ashford Borough Council, to exchange the registered Village Green for an adjacent piece of land. The Register of Village Greens was amended to reflect this agreement. However, legal advice has since confirmed that the correct procedures in relation to the Agreement were not followed and as such neither it, nor the subsequent amendment to the Register of Village Greens, had any lawful effect. The Borough Council has been consulted and accepts this position.
8. Counsel's advice is that the County Council should now use the new powers available under the Commons Act 2006 to resolve the situation by initiating a proposal under section 19 of the 2006 Act. This section allows the County Council to initiate a proposal to amend the Register of Village Greens for the purpose of correcting a mistake made by the Registration Authority in making or amending an entry in the Register. The effect of this proposal would therefore be to restore the original registration and delete the reference in the Register to the invalid exchange of land Agreement.
9. A plan showing the effect of the proposal is attached at **Appendix B**. The Committee is asked to approve the course of action advised by Counsel so that the matter can now be resolved.

Delegations

10. Another issue which has had to be overcome in relation to the County Council's duties under Part I of the Commons Act 2006 has been the necessity to ensure that the Regulation Committee has the necessary delegated powers in order to deal with the range of new powers introduced by the Commons Act 2006. It would appear that those powers, according to the County Council's Constitution, were the responsibility of full Council and had not been fully delegated to the Regulation Committee.
11. In this respect, the Committee's terms of reference set out in the Constitution referred only to the Committee's ability to deal with applications to register land as new Common Land and Town or Village Greens, and applications to vary Rights of Common. This does not affect any previous decisions taken by the Committee (or by the Member Panels) but may have limited the Committee's ability to deal with other types of application now being received under the new provisions of the Commons Act 2006.

12. The situation has had to be rectified and has now been resolved, in consultation with the Director of Governance and Law. As such, arrangements have been put in place for the necessary amendment to be made to the Committee's terms of reference.

Recommendation

13. I RECOMMEND Members receive this report and that a proposal is initiated under section 19 of the Commons Act 2006 to correct an error in the Register of Village Greens in relation to VG235 at Wittersham.

Background documents:

Appendix A – Schedule of Village Green applications

Appendix B – Plan showing proposed modification to the Register of Village Greens for VG235 at Wittersham

Contact Officer:

Melanie McNeir

Public Rights of Way and Commons Registration Officer

Tel: 01622 221628

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

**Applications resolved by the Regulation Committee since last report
(25th January 2011)**

Description	Parish	Member(s)	Outcome
Land adjacent to Barnes Car Park	Margate	Mr. R. Burgess	ACCEPTED and registered as VG252 on 08/02/11
Land at High Street	Chiddingstone	Mr. P. Lake	ACCEPTED and registered as VG253 on 08/02/11
Benacre Wood	Whitstable	Mr. M. Harrison Mr. M. Dance	ACCEPTED and registered as VG256 on 22/02/11
Gighill Green	Larkfield	Mrs. T. Dean	ACCEPTED and registered as VG254 on 08/02/11
Land at Mill Lane	Preston	Mr. L. Ridings	ACCEPTED and registered as VG255 on 08/02/11

Forthcoming Public Inquiries

Description	Parish	Member(s)	Details
Grasmere Pastures	Whitstable	Mr. M. Harrison Mr. M. Dance	Commences 05/09/2011. Venue to be confirmed.
Broadstairs Cricket Ground	Broadstairs	Mr. B. Hayton Mr. R. Bayford	Commences 12/09/2011 at the Broadstairs Campus of Christ Church University
Land known as Long Field at Angley Road*	Cranbrook	Mr. R. Manning	Commences 11/10/11 at Unity Hall, Hawkhurst

**Note that this case has been referred to the Planning Inspectorate for determination due to KCC's interest in the outcome of the application. The Inquiry is being held by the Planning Inspectorate.*

Outstanding applications to be resolved

Description	Parish	Member(s)	Status
Round Wood at Walderslade	Boxley	Mr. P. Carter	On hold at applicant's request
St Andrew's Gardens	Gravesend	Mr. B. Sweetland Mr. J. Cubitt	To be referred to Member Panel for decision in June
The Downs	Herne Bay	Mrs. J. Law	To be referred to Member Panel for decision in June
The Allotment Field, Barton Estate	Canterbury	Mr. M. Northey	To be referred to Member Panel for decision in June
Land at Princes Parade	Hythe	Mr. C. Capon	To be referred to Member Panel for decision in June
Land at Hartley Woods	Hartley	Mr. D. Brazier	To be referred to Member Panel for decision in June
Dawbourne Wood	Tenterden	Mr. M. Hill	Under investigation
Land at Westwell Lane	Westwell	Mr. R. King	To be referred to Member Panel for decision in June
Seaton Meadow	Wickhambreaux	Mr. M. Northey	Under investigation
Land at Woodland Road	Lyminge	Ms. S. Carey	Under investigation
Land known as Fisherman's Beach	Hythe	Mr. C. Capon	Awaiting investigation
Land at Mountfield Road	Meopham	Mr. M. Snelling	Awaiting investigation

Playing Field	Marden	Mrs. P. Stockell	Awaiting investigation
Scrapsgate Open Space	Minster-on-Sea	Mr. A. Crowther	Awaiting investigation
The former airfield	Lympne	Ms. S. Carey	Awaiting investigation
Rammell Field	Cranbrook	Mr. R. Manning	Awaiting investigation
Chaucer Field (at the University of Kent campus)	Canterbury	Mr. G. Gibbens	Awaiting investigation

APPENDIX B:
Plan showing proposed amendments
to the Register of Village Greens for
VG235 at Wittersham

127750 000000

127750 000000

127500 000000

127500 000000



**LAND GIVEN IN EXCHANGE,
CURRENTLY REGISTERED
AS VILLAGE GREEN,
TO BE DE-REGISTERED
(edged and hatched red)**

**EXISTING VILLAGE GREEN
UNAFFECTED BY PROPOSAL
(edged black and hatched mauve)**

**ORIGINAL VILLAGE GREEN,
TO BE RE-REGISTERED
(edged and hatched green)**

Wittersham

Scale 1:2500

Update on recent Public Rights of Way cases

A report by the Head of Countryside Access to Kent County Council's Regulation Committee on Tuesday 17th May 2011.

Recommendation:

I recommend that Members receive this report

Introduction

1. As Members will be aware, the Public Rights of Way team deals with a variety of cases in relation the modification of the legal record of Public Rights of Way, known as the Definitive Map. Copies of the Registers of applications are available on the County Council's website at:
http://www.kent.gov.uk/environment_and_planning/countryside_access/definitive_map_and_statement/changing_the_network.aspx
2. The purpose of this report is to bring to the attention of the Committee to two recent cases of note.

Claimed Public Footpaths on the former Bayham Abbey Estate in Tunbridge Wells

3. Members will be aware of this ongoing and longstanding case which was first dealt with by the Committee at a Member Panel meeting on 5th April 2005. At that meeting, it was resolved to reject an application made by the Ramblers' Association under provisions in the Wildlife and Countryside Act 1981 to record on the Definitive Map several Public Footpaths running across the Bayham Abbey Estate. Following a successful appeal against the County Council's decision, Definitive Map Modification Orders were made in relation to two long distance route across the Estate. Objections to the Orders were made by the landowners. The County Council, with this Committee's approval, retained a neutral stance at the subsequent Public Inquiry which was held in December 2010. The Public Inquiry was chaired by an Inspector appointed by the Planning Inspectorate and heard a considerable amount of evidence both in support of the application and in objection to it.
4. The Inspector's decision was issued on 1st April 2011. The Inspector found that there was insufficient evidence of use throughout the relevant twenty year period to record the routes as Public Footpaths. He also concluded that, due to various obstacles to use (including a missing bridge and locked gates), it was not physically possible for the public to have used the routes without interruption. Therefore, the Inspector refused to confirm the Definitive Map Modification Orders and rejected the application.
5. Now that a final decision has been taken and all parties have been informed accordingly, the matter has now been concluded and no further action is required by the County Council. The only right of appeal against the Inspector's decision is by way of an application for Judicial Review in the High Court (within three months of the date of the decision). It is not known at this stage whether it is the intention of the Ramblers' Association to appeal against the decision.

Proposed Diversion of Public Footpath SD284 at West Kingsdown

6. This application was considered by members of a Regulation Committee Panel on the 29th January 2010. A site visit was held and, during the more formal meeting, Members were addressed by the landowner and representatives of the two objectors, the Parish Council and the Ramblers Association. Despite the objections, it was agreed that the County Council should make a Public Path Diversion Order. Following the making of this Order, formal objection was lodged by the two objectors. There were no other duly made objections from any other source.
7. As a result of further consideration, the Parish Council withdrew its objection. However, the matter had to be referred to the Planning Inspectorate for resolution because the Ramblers' Association refused to withdraw its objection. The Planning Inspectorate has decided to hold a public Hearing, as the Ramblers' Association representative has exercised his right to be heard.
8. The Ramblers Association Kent Executive has now withdrawn the objection lodged on its behalf. However, the County Council has been informed by the Planning Inspectorate that the Hearing, programmed for 5th July 2011, still has to continue because the representatives who objected on behalf of the Ramblers Association and the Parish Council wish to maintain those objections in their own right. The County Council has written to the Planning Inspectorate expressing dissatisfaction at this turn of events but to no avail.

Recommendation

9. I RECOMMEND Members receive this report.

Contact Officer:

Mr. Chris Wade

Public Rights of Way Principal Case Officer

Tel: 01622 221511

Update on Planning Enforcement Issues

Item 8

Report by Head of Planning Applications Group to the Regulation Committee on 17th May 2011.

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 25th January 2011 Regulation Committee.
2. Summary schedules of all current cases have been produced (see Appendices 1, 2 and 3). 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. Those cases resolved or able to be removed from our immediate workload are highlighted in bold.

Report Format

3. Cases have been summarised in the appended schedules and presented in this report 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 / issues of interest and requests 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

Co-ordinating Role

5. In a positive vein, I have been assisting in a number of difficult district enforcement cases by offering advice on strategy and on the wider controls and powers available. Members will notice within Schedule 1, Appendix 1 to this report, a series of referrals from district councils to this Authority. Examples include numbers 9, 10, 11, 12 and 14 from Sevenoaks District Council. Whilst concluding on current information that each of these cases amount to district enforcement matters, County officers have still adopted a supportive or co-ordinating role. The Milton Creek case at Sittingbourne in Swale Borough (see number 19 of Schedule 1) is a good example of that approach.

6. A co-ordinated approach allows for a pooling of expertise and powers with a sharing of workloads between regulators. There is also the salutary effect on landowners and operators, when faced with a united enforcement front. The energy and morale of officers and the momentum of effort through protracted cases, is also maintained. From a County Council perspective, it is a cost and case-effective outlet for available experience and expertise. A multi-agency approach also allows for a number of trained technical and court witnesses to be made available, should legal action be required.

Mixed-use contravention sites

7. Apart from the tactical advantages of more seamless enforcement, there are procedural and legal reasons for adopting this particular approach. The cases mentioned within paragraph 5 above are largely alleged mixed-use contraventions. These fall within district council jurisdiction, unless a primary (usually waste-related) County planning use is evident. Our Enforcement Protocol with Kent district councils makes that very point. I would also draw Members' attention to fairly recent case law which lends statutory support to this distinction. The High Court decision in *R (East Sussex County Council) v Secretary of State for Communities and Local Government and Robins (2010)* contains a number of guiding principles.
8. The deputy judge in the case, David Elvin QC, stated in essence that in two tiers areas, councils should consult and co-operate where a mixed-use appears complex and could include both county and district matters. Unless the breach involves a purely 'county matter', the district council should then initiate any necessary enforcement action. The County Council has to strictly adhere to this court advice in terms of jurisdiction but officers may still contribute in the public interest through other channels such as the advisory and co-ordinating roles outlined in paragraphs 5 and 6 above.

Member / Officer Initiative

9. I reported to the last Meeting on an initiative by Members and Officers in the context of the Localism Bill, seeking improved planning enforcement powers from the new Coalition Government. A reply has recently been received from The Rt Hon Greg Clark MP, Minister for Decentralisation, addressed to the Chairman of this Committee, Mike Harrison. In summary, the trials and tribulations of planning enforcement are acknowledged and the new 'ambitious' measures that we suggested were described as a '*welcome contribution to the enforcement debate*'. Unfortunately, he advises that there is unlikely to be legislative space for our ideas in the short to medium term. There would also be compensatory and Human Rights complications to work through.
10. Notwithstanding, these constraints, it should be considered an achievement to have secured the personal time and attention of the Minister in considering our proposals. In commenting on the content of our submission, he stated that '*What comes through strongly in your briefing document is the need for all enforcement agencies to work together*'. That significantly mirrors our approach under paragraphs 5 and 6 above and the High Court advice under paragraphs 7 and 8. The County Council is therefore very much in tune with current best practice and indeed has the distinction of personal Ministerial endorsement.

Emerging Minerals & Waste Development Framework (MWDF)

11. The emerging Minerals & Waste Development Framework sets the County context for the management of development within the planning system. There is a further need however, to give the local régime for development that falls outside of this realm. That principally, though not exclusively occurs within the waste field.
12. I have taken the opportunity to input into the emerging framework from an enforcement perspective. That includes policies and supporting argument which seeks the minimising of construction waste, the maximising of re-use potential and the safeguarding of restoration materials for the backfilling of mineral voids. In particular, a construction waste management plan has been proposed for selective types of development.
13. Such policies should go a long way in maintaining and protecting the integrity of the Framework Document itself and of Planning Law in general. However, there will be occasions when planning enforcement is required. Such actions are by their nature operational rather than policy matters. Nevertheless, their scope is largely discretionary to Local Planning Authorities (the High Court may however impose a duty to enforce in individual cases). This requires the actions of a local control and management régime and the consensus of a recognised policy base. To provide such a platform, I have offered the following draft policy for inclusion within the latest stage of the Framework Document:

Policy 1 The County Council will carry out its planning enforcement functions within the terms of its own Enforcement Protocol (and any subsequent variations) and specifically for waste-related matters, in light of the European Union Waste Framework Directive.
14. The Document will go out for public consultation later this year. If policy backing is secured our enforcement protocol could be used as a vehicle to develop our operational enforcement framework, over time. That would be a flexible and convenient way to do so, organised through the auspices of this Regulation Committee.

Case focus

15. Since the last Meeting resources have been focussed on 5 sites where formal enforcement action has been taken, 10 cases where investigations are underway and a further 5 cases have been satisfactorily progressed. Amongst formal monitoring visits on permitted sites there have been 10 chargeable and 6 non-chargeable visits.

Achievements / Successes [including measurable progress on sites]

Four Gun Field, Otterham Quay Lane, Upchurch (Member: Keith Ferrin)

16. The principal achievement since the last Meeting concerns this long standing case of

alleged waste-related activities on this former lawful brickfield site, at Upchurch. Summary particulars are given under Appendix 1, Schedule 1, No. 17. A full exempt report forms Item 11 of these papers.

17. Of particular note is that the site is currently quiet and that the owner / occupiers appeal in the High Court against the Planning Inspector's decision has been dismissed. An application for leave to appeal in the Court of Appeal was in turn dismissed by a more senior High Court Judge. An application for a hearing in person with the same judge was subsequently withdrawn by mutual agreement with the Court Administrators.
18. No change or amendment was made to the County Council's Enforcement Notice, in the course of these appeals within the High Court, leaving the action completely intact.

New Cases, especially those requiring action / Member support

19. 15 new or recurring cases have arisen since the last Meeting. They include: Church Lane (Sellindge); A299 Underpass (Seasalter Lane); Longton Woods (off the A249, Detling); Kent & Surrey Golf Club (Edenbridge); Oak View Stud Farm (Horton Kirby); Marwood House (Crockenhill); Willow Farm (Crockenhill); Mussenden Lane (Horton Kirby); Moores Turf & Topsoil (Brenzett); APM Metals (Sittingbourne); Milton Creek (Sittingbourne); FEL Skip Hire (Addington); Blaise Farm (Kingshill); Workhouse Lane Pit (Ryarsh) and Tunstall School (Bredgar).
20. These alleged contraventions have been investigated and addressed as summarised within the attached schedules. It is notable that 7 of the sites are district mixed-use cases rather than County Matters. Notwithstanding that, each has to be thoroughly investigated and represent an appreciable work load within their own right.

Significant on-going cases

Deal Field Shaw, Charing (Member: Richard King)

21. The restoration of this acquired landfill site at Charing, near Ashford is summarised under Appendix 1, Schedule 1, and No.1. Local residents have been briefed accordingly.

Other cases / issues of interest and requests from Members

22. I would refer Members to the extended section on 'Meeting Enforcement Objectives' between paragraphs 5 to 14 of this report, concerning our attempts to extend the boundaries and effectiveness of the planning enforcement powers available to this Authority.

Monitoring

Monitoring of permitted sites and update on chargeable monitoring

23. In addition to our general visits to sites as a result of planning application work, we also undertake routine visits to formally monitor sites. Since the last Regulation Committee, we have made a further 10 chargeable monitoring visits to mineral and waste sites and 6 non-chargeable visits to sites not falling within the chargeable monitoring regime.

Resolved or mainly resolved cases requiring monitoring

24. 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 recur.
25. 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. Examples where this has happened include Phoenix Yard, Dartford (see Schedule 2, Appendix 2 and No.3) and the A299 Underpass, Whitstable (Schedule 1, Appendix 1 and No.3).
26. There is a running list of sites which fall within this category, against which priorities are drawn and enforcement monitoring checks are made.

Conclusion

27. The cases reported reveal some underlying and related themes. The first is the recent increase in cases referred to this Authority by district councils, with an ancillary rather than primary waste element. For procedural and legal reasons such cases fall to district authorities to enforce. That does not preclude however, a supportive advisory and / or coordinating role by County Council officers. The Member and officer initiative in seeking more meaningful planning enforcement powers has attracted positive comment from the Minister for Decentralisation, Greg Clark MP. A draft enforcement policy has also been inserted into the emerging Minerals & Waste Framework Document. Among case achievements and successes is the long awaited confirmation in the High Court of our Enforcement Notice for Four Gun Field, Upchurch.

Recommendation

28. I RECOMMEND that MEMBERS:

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 5 to 26 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>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>Restoration is progressing and the neighbouring residential park has been briefed on the extensive efforts of KCC in the past and the plans now for reinstatement.</p>
2	<p>DC3/AS/06/COMP/ Church Lane, Sellindge (Member: Andrew Wickham)</p>	<p>Previous unauthorised composting activity on open farmland. This involved the construction of a new access and hard surface, accepted by Ashford B.C. as permitted development and which they report has been used recently for the tipping of a ‘grey-coloured’ material.</p>	<p>Breaching ceased following the service of a Planning Contravention Notice, resulting in a negotiated settlement. The EA have also pursued their own action. It is for Ashford BC to decide on the future of the access and hard surface.</p>	<p>The access and hard surface remain as unauthorised district development. The tipped material is in fact paper sludge, applied to enhance the agricultural quality of the land. Ashford BC has previously confirmed this practice as permitted development.</p>	<p>The EA control the application of paper sludge at the site. It is now for the Borough Council to decide whether the use of the access and hard surface is acceptable in planning terms or not. I shall therefore remove from these schedules.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
3	<p>Canterbury</p> <p>DC3/CA/COMP/ A299 Underpass, Seasalter Lane, Seasalter</p> <p>(Members: Mike Harrison / Mark Dance)</p>	<p>Unauthorised use of road underpass for builders merchants use.</p>	<p>Vacation of use and materials. The site has been cleared but from ongoing monitoring, a new amount of wooden pallets and rails were found under the under pass.</p>	<p>The neighbouring landuser was challenged. It transpires that the items were there to be used for the erection of a fence, to prevent his stabled horses from entering the underpass.</p>	<p>This case demonstrates the value of monitoring and highlights an improvement on site for enhanced security of the Underpass. I shall now remove again from these schedules.</p>
4	<p>Gravesham</p> <p>DC3/GR/COMP/0013 Red Lion Wharf Crete Hall Road Northfleet</p> <p>(Members: Leslie Christie / Harold Craske)</p>	<p>Importation of waste wood, stockpiling and shredding.</p>	<p>To cease importation and secure removal of the high residual stockpile of waste wood.</p>	<p>A 3 year temporary planning permission has been granted (with S106 Agreement), for removal of the waste wood and recovery of the site's development potential.</p>	<p>Implementation of the planning permission is currently being arranged between the operator and third parties.</p>
5	<p>Maidstone</p> <p>DC3/MA/11/COMP/A01 Seaview Farm, Southstreet Road, Stockbury</p> <p>(Member: Ms Jenny Whittle)</p>	<p>Alleged depositing of waste materials on agricultural land</p>	<p>To investigate and establish whether the reported activity falls within the County Council's planning enforcement remit.</p>	<p>Construction aggregate as opposed to waste materials had been deposited on the land in connection with the unauthorised development of a caravan site. Maidstone B.C. are taking the lead in this case.</p>	<p>This is a district planning matter, which Maidstone BC are currently pursuing. I shall therefore remove from these schedules.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
6	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 arrest the breach.	The operators voluntarily agreed under close negotiating pressure to cease the use and restore the site. Injunctive action was reserved to this effect, with the support of Members.	Removal and restoration is now complete. Full compliance with Planning Law has been achieved and there has been no recurrence of the breach on site. I shall therefore remove from these schedules.
7	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 as the lead enforcement authority in this instance.	The landowner, operator and business have already been convicted in the Magistrates Court for waste-related offences. The fines and costs were in excess of £71,000.	The EA have served a Removal Notice and are pursuing removal of the deposited waste and reinstatement of the land. I shall therefore remove from these schedules.
8	DC3/MA/11/COMP/ Longton Woods, Detling (Member: Ms Jenny Whittle)	The alleged depositing of waste materials in woodland	To investigate and establish whether the reported activity falls within the County Council's planning enforcement remit.	Access to the woodland is through a metal gate leading directly from the A249. The gate was found to be insecure and two small stockpiles of mixed waste materials fly-tipped just inside the entrance.	The landowner was advised of the insecure gate and site clearance was referred to Maidstone B.C., who have S215 Site Clearance powers at their disposal. I shall therefore remove from these schedules.

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
9	<p>Sevenoaks</p> <p>DC3/SE/11/COMP/ Kent & Surrey Golf Club (formerly Edenbridge Golf Club) Edenbridge</p> <p>(Member: Peter Lake)</p>	Importation, depositing and storage of waste materials on land at the Golf Club, reported by the EA.	To investigate and establish whether the reported activity falls within the County Council's planning enforcement remit.	It was established that 1200 tonnes of clean clay was being stored in the Golf Club car park for developing the existing tees.	A planning application for this development has been submitted to Sevenoaks D.C. who have taken the planning lead in this case. I shall therefore remove from these schedules.
10	<p>DC3/SE/11/COMP/ Oak View Stud Farm & Business Park Horton Kirby</p> <p>(Member: Roger Gough)</p>	Depositing and storage of waste materials on the land.	To investigate and establish whether the reported activity falls within the County Council's planning enforcement remit.	The site involves a mix of activities which falls to Sevenoaks D.C. to regulate. The stockpiles of materials were found to arise from internal groundworks.	This constitutes a district planning matter. I shall therefore remove from these schedules.
11	<p>DC3/SE/11/COMP/ Marwood House Crockenhill</p> <p>(Member: Roger Gough)</p>	The importation, depositing, land raising and storage of waste materials on agricultural land.	To investigate and establish whether the reported activity falls within the County Council's planning enforcement remit. If not, to advise and assist in brokering a solution to the site given its scale and impact.	Sevenoaks DC have regulated this site to date, including an on-going equestrian development and caravan park with ancillary storage. Concerns over the recent importation of construction spoil has led to SDC referring the activity to the County Council.	The site has been investigated and whilst the case seemingly remains a district matter, sufficient doubt has been cast over the planning status of the recent material inputs for the Environment Agency to withdraw the site's exemption from their own set of controls.

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
12	DC3/SE/11/COMP/ Willow Farm Crockenhill (Member: Roger Gough)	The importation and depositing of waste materials to raise the land.	To investigate and establish whether the reported activity falls within the County Council's planning enforcement remit.	Waste materials have been imported and deposited on the land to develop (district sanctioned) earthbunds to form enclosures in the form of manure pits to store animal waste generated internally on the farm landholdings prior to being spread on the farmland as a fertilizer.	This represents a district planning matter with no apparent County Council element. No commercial composting venture is taking place and I intend to return the case to SDC to regulate in company with the Environment Agency. I shall therefore remove from these schedules.
13	SE/10/03196/FUL. Brasted Sandpits Brasted (Member: Richard Parry)	Delayed restoration of a former sand quarry with some unauthorised infilling.	To achieve restoration to original levels, in compliance with the County Council's confirmed Enforcement Notice.	The EA pursued the errant tipping through the courts, resulting in the site being sold to the adjoining Golf Club. A planning application has since been submitted to SDC for a 9 hole par 3 Golf Course, completion of restoration and a Golf Academy.	County Council officers have been consulted by SDC on the recent application, replying in a positive vein, with regard to the creative solution found towards meeting the outstanding site restoration requirements. I shall update Members on progress of the application, at the Meeting.

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
14	DC3/SE/11/COMP/ Mussenden Lane Horton Kirby (Member: Roger Gough)	The importation and depositing of waste materials on agricultural land.	To investigate and establish whether the reported activity falls within the County Council's planning enforcement remit.	Small stockpiles of inert waste materials from external ground works have been imported and deposited on the land without authority. Sevenoaks D.C. and the Environment Agency are both investigating the activity.	This very recent case is still being evaluated. However, it is not an apparent County Matter and very likely requires district level intervention. I shall update Members on any new developments at the Meeting.
15	Shepway DC3/SH/10/COMP/A02 Keith Cornell Waste Paper Ltd, Lympne Industrial Park, Lympne (Member: Ms Susan Carey)	Alleged unauthorised waste-related recycling use on industrial land resulting in local residential complaints of noise and fire risk.	To achieve a reduction in the current amenity impacts through voluntary restraint, pending submission of a retrospective planning application.	Protracted negotiation has resulted in agreement by the operator to voluntarily reduce the amenity impacts of the use and to submit a retrospective planning permission. Pre-application talks have taken place but an application is still awaited.	No recent complaints have been received from local residents. As a precaution however, I would seek Members continuing support for the service of an Enforcement Notice, should a planning application fail to materialise and / or any undue amenity impacts occur.

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
16	DC3/SH/11/COMP/A02 Moore's Turf & Topsoil Brenzett (Member: Ms Carole Waters)	Waste material stockpiles are encroaching into the countryside without authority.	To arrest and retract the alleged breach.	Agreement has been reached for the alleged breach to be urgently addressed within the time frame of the Lawful Use Application currently being processed for the site. That seeks lawful planning status for inert waste processing activities on the land.	I shall inform Members at the Meeting on the level of compliance reached and any relationship that holds with the Lawful Use Application currently being processed. As a contingency however, I would seek Members continued support for any proportionate enforcement action deemed necessary.
17	Swale 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.	The County Council's Enforcement Notice is now confirmed following 3 High Court appeals. Compliance is now required with the Enforcement Notice.	This case is subject to a confidential report (see Item 11 of these papers).
18	DC3/SW/11/COMP/ APM Metals Sittingbourne (Member: Mike Whiting)	Unusual site traffic movements disrupting peak-hour flows.	To urgently alleviate the problem.	Jurisdiction of the site was not immediately apparent but the operator was contacted and a practical solution found. Phased use of the site was organised by radio, using remote parking spots.	Essential site improvements had restricted operational space on site, decanting site vehicles onto the road. The operator was quick to respond and being aware of no further complaints I shall now remove from these schedules.

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
19	DC3/SW/11/COMP/ Milton Creek Sittingbourne. (Member: Mike Whiting)	Over stacking and stock-piling of site materials causing collapse of the creek bank structure, resulting in the blockage of water flow within the creek and obstruction to navigation. This partly involves alleged trespass onto Medway Ports Authority land.	To see whether enforcement of the district planning permission for production of 'growing media' (i.e. soil compost) at the site, warrants the further intervention of the County Council?	A joint meeting involving officers from KCC, Swale B.C., the Environment Agency and Medway Ports Authority has taken place. Investigation is on-going. Whilst not an apparent County Matter, a team co-ordinating role has been adopted.	The pooling of powers from so many regulatory bodies should see an early return of the site to compliance and for the damage done to the site and its immediate environs to be put right. To assist that process, I would seek Members' support for County 'team' involvement in any required court action.
20	Tonbridge & Malling DC3/TM/11/COMP/ FEL Skip Hire Addington (Member: Ms Sarah Hohler)	Unauthorised waste transfer station.	TMBC reported the presence of an unauthorised waste transfer station at the site. However, the Environment Agency had already taken the enforcement lead.	FEL Skip Hire sublet part of the site to conduct this alleged unauthorised activity. On hearing of this, the main leaseholder terminated their lease and the company has since ceased trading and gone into liquidation.	The EA have confirmed that the remaining skips and residual waste materials have now been cleared but the site remains under close surveillance. I shall now remove from these schedules.

Schedule 2: Alleged breaches on Permitted Minerals & Waste Sites

Appendix 2

	<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/COMP/ Ripleys Scrap Metal Recycling Tennyson Road Ashford</p> <p>(Member: George Koowaree)</p>	Over-stacking of permitted metal stockpiles and related additional noise and disturbance.	To urgently bring the stockpiles back down and in compliance.	The company Managing Director was directly approached, who accepted ownership of the problem and his company's vulnerability to prosecution under a Breach of Condition Notice on site. He traced the problem to some outdated site machinery (i.e. over 30 years old).	The current over-stacking is being addressed by the operators. However, future problems should hopefully be averted by the bringing forward of site investment into more modern and capable machinery. I shall keep Members informed on this potential and positive site improvement.
2	<p style="text-align: center;">Dartford</p> <p>DA/10/1232 Easy Load Ltd Dartford Heath</p> <p>(Member: Jan Ozog)</p>	Alleged unauthorised use of soil screening machine on site.	To have the machine removed or the activity regularised through a planning application.	A revised scheme of working was permitted at the March Planning Applications Committee. The screener will be removed in favour of a 'Trommel' recycling machine.	The latest permission gives the opportunity for higher waste recovery rates on improved controls on site. I now propose to remove from these schedules.

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
3	DA/10/01025/COU Phoenix Yard 150A Lower Hythe Street, Dartford (Member: Avtar Sandhu)	Previous exceeding of permitted waste transfer activity.	Ensure compliance with the base planning permission.	Combined County Council and EA intervention arrested the series of breaches. However, Dartford BC has since granted an alternative Timber Yard permission.	The change of use from waste transfer to Timber Yard gives jurisdiction to DBC. I shall therefore remove from these schedules and related monitoring list.
4	Maidstone DC3/MA/04/COMP/0005 D&D Waste Recycling, Units 6,12 & 13 Detling Airfield, Detling, Maidstone (Member: Ms Jenny Whittle)	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.	To prevent further breaching and secure restoration of the site.	Complementary planning permissions were granted at the March Planning Applications Committee. These offer to regularise the set of breaches across 3 Industrial Units and provide a 'fit-for-purpose' waste transfer building, to cover the core site activities.	The permissions offer enhanced waste recovery and modern site controls. I shall now remove from these schedules.
5	Tonbridge & Malling DC3/TM/08/COMP/0013 Aylesford Metals Co. Ltd, Mill Hall, Aylesford (Member: Peter Homewood)	Complaints from local residents of out of hours working and visual amenity impacts from the over-stacking of scrap.	To ensure compliance with the base planning permission and related Enforcement Notice.	Activity on site remains reasonably in balance. Re-location holds the key to resolving issues on site. There are two potential alternative sites, in favour of housing at Mill Hall.	The site is being closely monitored whilst re-location is sought. Members already support the seeking of an Injunction should co-operation be lost, with site impacts escalating unduly.

6	<p>TM/09/3231 New Earth Composting Facility, Blaise Farm Quarry, Kings Hill, West Malling, Kent, ME19 4PN</p> <p>(Members: Mrs S Hohler, Mrs T Dean and Mr R Long)</p>	<p>Alleged breaches of planning permission relating to odour nuisance in parts of Offham, Kings Hill and West Malling since the beginning of 2010 (and ongoing).</p> <p>Alleged breach of Environmental Permit.</p>	<p>To investigate concerns and ensure that the terms of the planning permission are complied with. Also, to encourage the Environment Agency to ensure that the terms of the Environmental Permit (which provides the main odour controls) are complied with and any action required to resolve the odour problems is implemented.</p> <p>Site visits established odour problems associated with the site.</p> <p>Discussions with operator, Environment Agency, KCC Waste Management, Borough Council, Parish Councils and local residents (e.g. at Liaison Committee).</p> <p>Invited the operator to seek approval to address a number of discrepancies between the permitted and “as built” in-vessel composting facility and provide for improved ventilation / odour control.</p> <p>The Environment Agency issued an enforcement notice relating to contravention of Odour Management Plan at end of March 2011.</p>	<p>The operator initiated a review of its operations which led to a number of apparent deficiencies relating to the ventilation system, management practices and the leachate tank being identified. The operator has prepared an odour reduction plan designed to rectify these and other problems. Some equipment has already been improved or replaced and other measures are planned to be implemented.</p> <p>A submission has also been made pursuant to condition 5 of planning permission TM/09/3231 to regularise a number of discrepancies between the permitted and “as built” facility and provide for improved ventilation control. This is currently the subject of consultation with relevant parties.</p>	<p>Despite various actions by the operator, complaints about odour are still being made (to the Environment Agency and operator), albeit that the number and frequency has reduced. These matters were most recently discussed by the Liaison Committee on 6 April 2011.</p> <p>KCC will need to decide if the recent submission is acceptable (once technical consultee responses have been received).</p> <p>The issue of complaints was included in paragraph 6 of the report to Planning Applications Committee on 15 February 2011 relating to planning application TM/10/3056 for renewable energy generating equipment at the site (which was deferred at the applicant’s request). This application remains to be determined.</p> <p>KCC officers will continue to liaise with relevant parties to seek to ensure that any odour problems are satisfactorily resolved.</p>
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	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
7	TM/08/175 Gallaghers Ltd Workhouse House Lane Pit, Ryarsh. (Mrs Sarah Hohler)	Alleged breach of site restoration scheme through the introduction of new materials on site.	To halt the activity.	On receiving complaints from local residents, the company were approached and importation of materials was stopped.	Swift intervention by officers has dealt with the matter. The site will be monitored though to prevent any recurrence.

Schedule 3: Alleged breaches on Permitted County Council Developments

Appendix 3

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
1	<p style="text-align: center;">Swale</p> <p>Tunstall School Bredgar</p> <p>(Members: Mike Whiting & Alan Willicombe)</p>	<p>Alleged breach of planning permission, concerning informal car parking in front of the Listed School building, which itself is within a Conservation Area.</p>	<p>To help alleviate the parking issue at the site and within its village context.</p> <p>Whilst the School are not actually in breach of any planning permission, we are continuing to monitor the situation.</p>	<p>Given the lack of progress since the last unsuccessful planning application, it is clear that no one party is in a position to remedy the school parking problem on their own, and therefore a group of local representatives is needed to try and broker a mutually acceptable solution.</p>	<p>In the meantime, the Diocese and the Education Authority are considering improving upon their earlier submitted planning package to incorporate some properly managed parking on the school site with high quality landscape planting to complement the Conservation Area setting.</p>

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

Agenda Item 11

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