



## AGENDA

### REGULATION COMMITTEE

**Tuesday, 20th May, 2008, at 10.00 am**  
**Council Chamber, Sessions House, County**  
**Hall, Maidstone**

Ask for: **Andrew Tait**

Telephone **(01622) 694342**

*Tea/Coffee will be available from 9.45 am outside the meeting room*

#### **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. Minutes (Pages 1 - 12)
  - (a) Committee: 22 January 2008
  - (b) Member Panels: 11 February 2008  
21 February 2008  
7 April 2008  
11 April 2008

4. Update on Planning Enforcement Issues
5. Other Items which the Chairman decides are Urgent (Pages 13 - 48)
6. Motion to Exclude the Press and Public

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

7. Update on Planning Enforcement issues at Four Gun Field, Sittingbourne (Pages 49 - 54)
8. Update on Planning Enforcement issues at Deal Field Shaw, Charing (Pages 55 - 58)

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

**Monday, 12 May 2008**

*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

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### REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held at Sessions House, County Hall, Maidstone on Tuesday, 22 January 2008.

PRESENT: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mrs C Angell (substitute for Mr L Christie), Mr C J Capon, Mr A R Chell (substitute for Mr A H T Bowles), Mr I S Chittenden, Mr J Curwood, Mr J A Davies, Mr J B O Fullarton, Mr T Gates, Mr C Hart, Mrs M Newell, Mr R A Pascoe and Mrs P A V Stockell.

ALSO PRESENT: Mr A J King.

IN ATTENDANCE: The Head of Planning Applications Group, Mrs S Thompson (with Mr R Gregory); the Head of Admissions and Transportation, Mr S Bagshaw (with Mrs A Hayward); the Principal Case Officer – Public Rights of Way, Mr C Wade; the Assistant Democratic Services Manager, Mr G Rudd; and the Democratic Services Officer, Mr A Tait.

### UNRESTRICTED ITEMS

#### 1. Minutes

RESOLVED that the Minutes of the meetings of the Committee held on 18 September 2007 and of the Member Panel held on 29 November 2007 are correctly recorded and that they be signed by the Chairman.

#### 2. Application to register Public Rights of Way on the former Bayham Estate, Lamberhurst and Pembury

*(Item 5 – Report by Director – Environment and Waste)*

*(Mr A J King was present for this item pursuant to Committee Procedure Rule 2.24 and spoke)*

(1) This item was brought forward with the concurrence of the Chairman and the Committee.

(2) RESOLVED that:-

(a) the report be noted; and

(b) Counsel's opinion be sought as to the stance the County Council should take in the event that it receives a direction from the Secretary of State for Communities and Local Government to make a Definitive Map Modification Order to add Public Rights of Way across the former Bayham Estate.

**3. Presentation on Home to School Transport (including Home to School Transport Statistics)**

*(Item 4 – Report by Head of Democratic Services)*

(1) Members of the Committee requested further information as set out in paragraph (2)(b) and (c) below.

(2) RESOLVED that:-

- (a) the report be noted;
- (b) Members of the Council be written to inviting them to identify Home to School routes that may be incorrectly defined as hazardous or non-hazardous; and
- (c) a report to be sent to all Members of the Committee and the Cabinet Portfolio Holder for Environment, Highways and Waste clarifying the relationship between Home to School Transport and the Kent Freedom Pass.

**4. Update on Village Green issues**

*(Item 6 – Report by Director – Environmental Waste)*

RESOLVED that the report be noted.

**5. Application made by Oxfordshire County Council under Section 116 of the Highways Act 1980**

*(Item 7 – Report by Director – Environment and Waste)*

RESOLVED that the report be noted.

**6. Update on Planning Enforcement issues**

*(Item 8)*

RESOLVED to:-

- (a) endorse the actions taken or contemplated on the respective cases set out in paragraphs 10 to 42 and 59 to 61 of the report and those contained within Schedule 1 to 3 of Appendices 1 to 3 on pages 8:13 to 8:28 of the report;
- (b) note with approval the guiding principle that the County Council will not hesitate from taking any necessary formal action;
- (c) note the progress made in implementation of the chargeable monitoring regulations that allow the County Council to charge for monitoring of minerals and landfill permissions at a prescribed fee; and
- (d) support the development of the chargeable monitoring scheme in accordance with the provisional programme set out in paragraphs 53 to 58 of the report.

## EXEMPT ITEMS

### (Open Access to Minutes)

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

**7. Update on Planning Enforcement issues at Woodgers Wharf, Upchurch**  
*(Item 11 – Report by Head of Planning Applications Group)*

- (1) The Head of Planning Applications Group reported the latest enforcement position concerning the Woodgers Wharf site, Upchurch.
- (2) RESOLVED to endorse the strategy outlined in paragraphs 4 to 11 of the report.

**8. Update on Planning Enforcement Issues at Deal Field Shaw, Charing**  
*(Item 12- Report by Head of Planning Applications Group)*

- (1) The Head of Planning Applications Group reported the latest enforcement position concerning Deal Field Shaw (Shaw Grange), Charing.
- (2) RESOLVED to:-
  - (a) endorse the enforcement strategy outlined in paragraphs 3 to 8 of the report; and
  - (b) convene a meeting of the Committee's Member Panel to consider in detail how to further progress the County Council's Enforcement Strategy in relation to this site.

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# KENT COUNTY COUNCIL

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## REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held at Sessions House, County Hall, Maidstone on 11 February 2008.

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

ALSO PRESENT: Mrs P A V Stockell.

OFFICERS: The Principal Case Officer – Public Rights of Way, Mr C Wade (with the case Officer Miss M McNeir); and the Democratic Services Officer, Mr A Tait.

### UNRESTRICTED ITEMS

#### **1. Application to register land at Valley Road, Barham as a new Village Green.**

*(Item 3 – Report by Director - Environment and Waste)*

RESOLVED to inform the applicant that the application to register the land at Valley Road, Barham has been accepted; and to formally register the land subject to the application as a Village Green.

#### **2. Application to register land at Huntington Road, Coxheath as a new Village Green.**

*(Item 4 – Report by Director - Environment and Waste)*

*(Mrs P A V Stockell was present for this item pursuant to Committee Procedure 2.24 and spoke)*

- (1) A site visit to the site at Huntington Road, Coxheath had taken place prior to the meeting. It was attended by representatives from Coxheath Parish Council and the applicant, Ms K Hodgkiss.
- (2) Mr B Mortimer, a local Parish Councillor and Borough Councillor and Ms K Hodgkiss, the applicant addressed the Panel in support of the application.
- (3) RESOLVED to inform the applicant that the application to register the land at Huntington Road, Coxheath has been accepted; and to formally register the land subject to the application as a Village Green.

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# KENT COUNTY COUNCIL

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## REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held at Sessions House, County Hall, Maidstone on 21 February 2008.

PRESENT: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr I S Chittenden, Mr T Gates and Mr I T N Jones.

ALSO PRESENT: Mr D L Brazier.

OFFICERS: The Principal Case Officer – Public Rights of Way, Mr C Wade (with the Case Officer Miss M McNeir); and the Democratic Services Officer, Mr A Tait.

### UNRESTRICTED ITEMS

#### **3. Application to register land at Hartley Woods, Hartley as a new Village Green.**

*(Item 3 – Report by Director - Environment and Waste)*

*Mr D L Brazier was present for this item pursuant to Committee Procedure Rule 2.24 and spoke.*

- (1) A site visit to Hartley Woods, Hartley had taken place prior to the previous meeting of the Panel at which this application had been considered (29 November 2007).
- (2) Mrs I Sharp addressed the Panel in opposition to the application. Mr P Laister spoke in support. Mr J Gaywood, Chairman of Hartley Parish Council addressed the Panel as the applicant. Southwark London Borough, the Landowner was represented by Mr M Mayne and Mr T Kemp.
- (3) RESOLVED that the advice from Counsel be endorsed and that a non-statutory Public Inquiry be held into this case in order to clarify the issues.

*Carried Unanimously*

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# KENT COUNTY COUNCIL

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## REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held at Sessions House, County Hall, Maidstone on 7 April 2008.

PRESENT: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr I S Chittenden, Mr T Gates and Mr I T N Jones.

ALSO PRESENT: Mr C J Capon and Mr R L H Long.

OFFICERS: The Principal Case Officer – Public Rights of Way, Mr C Wade (with the Case Officers Miss S Coventry and Miss M McNeir ); the Director of Regeneration and Economy (represented by Mr M Hatton); the Principal Planning Officer, Mr R Gregory (with Mr A Goodison) and the Democratic Services Officer, Mr A Tait.

### UNRESTRICTED ITEMS

#### **4. Application to register land at Tenterden Road, Rolvenden as a new Village Green.**

*(Item 5 – Report by Director - Environment and Waste)*

- (1) A visit to the site at Tenterden Road Rolvenden had taken place prior to the meeting. It was attended by the applicant, Mr A Button; the landowner, Mr T Lodge and three members of the public.
- (2) A letter from Mr A Button dated 31 January 2008 was tabled.
- (3) Mr A Button addressed the Panel in support of the application. Mr T Lodge spoke in opposition.
- (4) RESOLVED that the applicant be informed that the application to register the land at Tenterden Road, Rolvenden as a Village Green has not been accepted.

*Carried 4 votes to 0 with 1 abstention.*

#### **5. Application to register a public footpath from Victoria Drive to Kings Hill Permissive Equestrian Route, Kings Hill, West Malling.**

*(Item 5 – Report by Director - Environment and Waste)*

*Mr R L H Long was present for this item pursuant to Committee Procedure Rule 2.24 and spoke.*

- (1) A visit to Victoria Drive, Kings Hill had taken place prior to the meeting. It was attended by the applicant, Mr M Hatton (KCC Regeneration and Economy); the local Member, Mr R L H Long; and the landowner, Mr A Notman.
- (2) Further correspondence from Mr A Notman had previously been circulated to the Panel together with a copy of the land registration document and maps.
- (3) Mr G Hall from Kings Hill Parish Council addressed the Panel in support of the application. Mr M Hatton spoke as the applicant. Mr A Notman spoke in reply.

- (4) RESOLVED that an Order be made to modify the Definitive Map and Statement by showing at Public Footpath status a route running between 21 Victoria Drive and Kings Hill Permissive Equestrian Route, Kings Hill, West Malling.

*Carried 2 votes to 1 with 2 abstentions.*

## **6. Application to register land at South Road Recreation Ground, Hythe as a new Village Green.**

*(Item 4 – Report by Director - Environment and Waste)*

*Mr C J Capon was present for this item pursuant to Committee Procedure Rule 2.24 and spoke.*

- (1) A visit to the site at Hythe had taken place prior to the previous meeting which had considered this matter on 2 August 2007.
- (2) The second part of the Inspector's report had previously been circulated to the Panel together with a letter from the applicant, Mr M Ross.
- (3) Mr C J Capon asked for his request to be recorded that Hythe Town Council should place a covenant over the land to protect it indefinitely from being sold off for any future development.
- (4) Mr A Metherell addressed the Panel in support of the application. Mrs A Williams spoke in opposition on behalf of Hythe Town Council, the landowner. She informed the Panel that Hythe Town Council regarded the land as public open space and would aim to ensure that it was included as such in the appropriate local plans.
- (5) RESOLVED that the applicant be informed that, for the reasons stated in the Inspector's report dated 22 February 2008, the application to register the land at South Road Recreation Ground, Hythe as a Village Green has not been accepted.

*Carried unanimously.*

## **EXEMPT ITEMS**

*(Open Access to Minutes)*

*(Members resolved that under Section 100A of the Local Government Act 1972, the public be excluded from the meeting for the following business on the grounds that it involved the likely disclosure of exempt information as defined in paragraphs 6 and 7 of Part 1 of Schedule 12A of the Act)*

## **7. Enforcement Strategy at Four Gun Field, Otterham Quay, Upchurch**

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

- (1) The Principal Planning Officer reported alleged unauthorised activities at the Four Gun Field site, including recently taken aerial photographs of the site.
- (2) RESOLVED to endorse the enforcement strategy set out in paragraphs 6 to 12 of the report.

*Carried unanimously*

# KENT COUNTY COUNCIL

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## REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held at Sessions House, County Hall, Maidstone on 11 April 2008.

PRESENT: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr I S Chittenden, Mr T Gates and Mr I T N Jones.

OFFICERS: The Director, Community Safety and Regulatory Services – Mr C Bainbridge (with Mr M Alford); the Senior Transportation Engineer, Mr C Martin; and the Democratic Services Officer, Mr A Tait.

ALSO PRESENT: Ms G Ward from Landmark Chambers (representing Legal Services) and Mr D Chapman, the applicant.

### UNRESTRICTED ITEMS

#### **8. Consideration of a request for a review of a number of the special conditions attached to the licence of a premise for the solemnization of marriages at The Lost Village of Dode, Luddenham.**

*(Item 2 – Report by Director – Community Safety and Regulatory Services)*

- (1) A visit to the site at The Lost Village of Dode had taken place prior to the meeting. It was attended by all Members of the Panel and the applicant, Mr D Chapman.
- (2) A letter from Ms M Twycross in opposition to the requested review was tabled together with representations from Mr and Mrs Phelps in support.
- (3) The Director of Community Safety and Regulatory Services explained the County Council's reasons for imposing the special conditions under review. Mr D Chapman addressed the Panel in support of the review.
- (4) RESOLVED that following review, the Special Conditions set out below be applied as follows:-
  - (a) Special Condition 7: The number of ceremonies (marriage, baby naming, renewal of marriage vows and any other ceremonies that may be offered by KCC) be restricted to 42 per year for the duration of the licence;
  - (b) Special Condition 8: Ceremonies may only be held on Thursday, Friday and Saturday each month;
  - (c) Special Condition 10: The latest start time for a ceremony from April to September inclusive will be 4.00pm. During October and from 1 December to 23 December this will be 3.00pm BST or 2.00pm GMT;
  - (d) Special Condition 11: Ceremonies may only be held between 1 April and 31 October and also between 1 December and 23 December inclusive each year;

- (e) Special Condition 12: The number of persons attending within the marriage/ceremony is restricted to 45 persons in total (to include the owner, registrars, photographer, videographer, musicians etc. and any other persons wishing to attend a ceremony); and
- (f) all other Special Conditions remain as set out in Appendix 1 to the Director of Community Safety and Regulatory Services' report.

*Carried unanimously*

08/aa/rgcmp/041108/Minutes

**Update on Planning Enforcement Issues**

Report by Head of Planning Applications Group to the Regulation Committee on 20th May 2008

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 22<sup>nd</sup> January 2008 Regulation Committee. A new format was trialled for that Meeting to help produce a more 'user-friendly' style of report. I circulated a questionnaire at the time for Members feedback. The approach was generally well received with helpful comments being offered on points of detail (see paragraph 4 to 5 below).
2. Summary schedules of all current cases have again been produced (see Appendices 1 to 3 on pages 4(i) to (xix)). The cases are organised by District and the local County Member(s) identified in each case. Members are already notified on any new County enforcement cases under the existing Enforcement Protocol arrangements. The summary tables cover unauthorised breaches of planning control and those occurring on permitted sites, whether minerals or waste related or those further connected with County Council developments.
3. This enforcement effort has now been recognised in one of the national professional journals. I attach as Appendix 4, extracts from the February and April 2008 editions of 'Waste Planning'. There is now a regular section on County Council enforcement matters and I am pleased to inform Members that KCC features prominently.

**Report Format***Member Feedback*

4. In the feedback questionnaire circulated at the last Meeting, I asked if Members preferred the new style of report, including the revised structure with its use of summary schedules and new list of report categories.
5. There were 8 replies. The comments were all positive, pointing to a more clear and concise format and general improvement in presentation. Some suggestions were made to help produce an even more 'user-friendly' report. Acting on the first, local Members have now been identified in the longer report section as well as in the schedules of cases. There was one preference for an A4 portrait, as opposed to 'landscape' layout for the appended schedules. That has been experimented with but not introduced because it constrains the amount of information that can be inserted and read in one sweep. A further idea was to share the contents of the schedules with all Members to publicise the work of the Committee. I am open to that suggestion, subject to the advice of the Head of Democratic Services and Local Leadership on protocol and any practical

## **Update on Planning Enforcement Issues**

issues.

### *Revised Layout*

6. 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
7. 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 overall aim is for selective cases to be drawn from the set of schedules for longer reports to be produced, in a more targeted way. That has already helped in managing officer time more efficiently and should hopefully allow more time at Committee for discussion of enforcement trends and themes and our work with other agencies. Planning enforcement is of course one part of a wider public enforcement effort.
8. The report continues to give details of site monitoring and progress on chargeable site monitoring arrangements for minerals development.

### **Meeting Enforcement Objectives**

9. As a discretionary service, albeit a very important one, the resources available to the service have to be balanced against those directed to support statutory requirements and to meet corporate BVPI targets. Efforts have been concentrated chiefly on defending formal actions that have previously been taken and have progressed or are likely to progress to planning inquiry. Resources have been focussed on 5 sites where formal enforcement action has been taken, 28 cases where investigations are underway and a further 10 cases have been satisfactorily progressed or resolved. Amongst monitoring visits on permitted sites there have been 9 chargeable visits. Significant time is being absorbed in preparation for a public inquiry on a site at Upchurch in Swale and in responding to a further alleged contravention nearby. This type and calibre of work requires a great deal of legal interchange with Counsel across a series of complex cases. That aspect involves very time-consuming and intensive work.
10. Each case has to be considered on its own merits and as a discretionary function. Action should only be taken as a last resort and only where it is expedient to do so. Resources are targeted in accordance with the Council's Enforcement Protocol to those sites where the activities being carried out have the potential to create the greatest and potentially the most irreversible environmental damage. These cases are investigated as a priority.
11. The imperative in strategic enforcement action is to ensure that the breach and any further damage to the environment are stopped at the first opportunity. The County Council has a notable track record in this regard. The next aim is to attempt to achieve restoration. That may take considerably longer, for two main reasons. Firstly, there is the need at any given point to switch resources from protracted restoration cases to the



**Update on Planning Enforcement Issues**

urgent protection of land from new contravenors. That is precisely the position with the two cases in Swale, mentioned under paragraph 9 above.

12. The other reason is that we do not have immediate call on prosecution powers. This is only available to us once earlier enforcement action has been exhausted and the breach still remains. Reluctant contravenors / landowners, with little funding, equipment or expertise have to be cajoled into restoring sites largely through 'out of court' means. Successes are achieved but the speed depends on the circumstances of the case, appeal turnaround times by the Planning Inspectorate and the workload and inclination of the Courts. Officers, especially in serious unauthorised cases have to sustain a high level of concentration and effort over extended periods of time. The length of time to achieve acceptable levels of final or even interim restoration and what those requirements might be will vary on a case by case basis.
13. The main objective in terms of restoration is to '*remedy the breach*'. In other words, to seek a return of the land to its original state. However, often there are highway limitations in seeking this remedy and more practically speaking we may only be able to '*alleviate the injury to amenity*'. In general, that involves correcting the breach as far, as is practicable without creating further environmental damage and harm to amenity. A balanced judgement is required on the individual set of circumstances of each case.

**Achievements / Successes [including measurable progress on sites]****Roman Road, Dover (Member: Gordon Cowan & Bill Newman)**

14. This case, referred to us by Dover District Council concerns the unauthorised depositing of imported waste materials on agricultural land. The waste was in part surplus from a redevelopment of the landowner's local business. The remainder was from general sources.
15. I immediately arranged for the imports to cease, followed by a Planning Contravention Notice. This was served on 29 February 2008, requiring the landowner to formally account for the actions on the land. A vague land improvement motive was given. However, within the Notice there is provision for a personal hearing. The option was taken up and there was a focussed discussion on ways to achieve an acceptable restoration. It was made clear to the contravenor that the County Council on securing a confirmed Enforcement Notice could require removal of all the imported material.
16. Realising the level of control and severity of sanction available to the County Council, a negotiated solution was quickly agreed. The submission of a scheme of restoration, respecting adjoining contours and capable of being properly enforced is imminent. This strong style of negotiated settlement is proving very effective in selective cases in achieving swifter and better restoration than normal.

**D&D Waste Recycling, Units 6, 13 & 14 Detling Airfield Industrial Estate, Detling (Local Member: Lord Sandy Bruce-Lockhart OBE)**

17. I brought this site on the Detling Airfield Industrial Estate, to Members attention at the

**Update on Planning Enforcement Issues**

last Meeting (also see number 14 of Appendix 1, page 4(vii) for summary). On that occasion, some 3 years ago, unauthorised waste management activities were taking place.

18. As background, the County Council permitted a waste transfer station in 1995 on Unit 6 of the above site. In 2005 this Authority served an Enforcement Notice on Units 6 and 13, which was upheld on appeal, as the previous operator, Coopers Waste Management, was using both sites in a combined way for unauthorised waste related activities. The terms of the Enforcement Notice were eventually complied with in 2006. D&D Waste Recycling assisted in that and subsequently took over operation of the original facility on Unit 6.
19. However, a monitoring visit carried out in November 2007 revealed that Unit 13 was in breach of the terms of the confirmed Enforcement Notice. Stockpiles of waste materials were being stored therein together with empty skips, which were clearly ancillary to the primary use of waste processing at the adjoining Unit 6. The unauthorised waste related activities, which included wood shredding, had also expanded in to Unit 14, which is located immediately to the west of Unit 13. The operator of D&D Waste Recycling was confirmed as the lessee of all three Units and has accepted responsibility for the various waste-related breaches. Those include the stockpiling of imported mixed waste for sorting, wood for chipping, installation of a weighbridge and the presence of a wood chipping machine and power screener.
20. The alleged breach of a confirmed Enforcement Notice is a criminal offence, attracting a fine of up to £20,000 on conviction. Having been reminded of the seriousness of the situation the operator became contrite. He agreed to urgently resolve the breaches on a voluntary basis by 11 January 2008. I reinforced the position by also reminding the landowner of his overarching responsibility for breaches of planning control on his industrial estate. As a series of previous breaches can be cited, he was told that unless the current alleged contraventions were dealt with forthwith that he could be subject to injunctive action in the County or High Court.
21. I can report that by the deadline, Unit 13 was close to being cleared of all unauthorised stockpiles of materials. The listed plant & machinery however, remained. Given that a serious attempt had been made to comply, along with time lost over the Christmas period and recent poor weather I agreed to extend the deadline to 31<sup>st</sup> January 2008. I shall be formally inspecting the site before the Meeting for final confirmation on compliance.
22. *Should there be any 'slip-back,' I would seek Members continuing support for prosecution under the confirmed Enforcement Notice and the seeking of injunctions against the operator and landowner should that again prove necessary.*

**Chapel Lane, Lower Halstow (Local Member: Keith Ferrin)**

23. In this case (see number 25 of Appendix 1, page 4(x) for a summary), a large area of marshland to the north of Chapel Lane, Lower Halstow has been subjected to waste tipping through the importation and disposal of construction materials, including road planings. A joint investigation has been conducted with the Environment Agency.

**Update on Planning Enforcement Issues**

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24. I have previously reported that without due authority waste materials have been imported and tipped on to the land to the north of the above site. The tipped materials had been spread to raise the existing levels of the land. The tipping ceased on my advice and a productive meeting was held with the landowners resulting in their agreement to restore the land through the strictly controlled removal of 20 lorry-loads of tipped waste materials. Restoration had been required by 31 March 2008. However, weather conditions conspired against that and I extended the deadline until 16 May 2008. I shall monitor the site and report on my findings at the Meeting.
25. *Should the landowners fail to resolve this breach of planning control on the agreed basis, with Members endorsement, I should wish to retain the option of serving an Enforcement Notice to secure restoration and to protect surrounding land. As a similar planning breach has already occurred on their land, I would seek further endorsement for the geographical area covered by the terms of any Enforcement Notice to include the landowners' entire land holdings. Additionally should the tipping of waste materials resume on any part of their land I would seek your continued support for the immediate service of a free-standing Temporary Stop Notice and / or a full Stop Notice attached to any Enforcement Notice served to secure compliance.*

**Ripley's Scrapyard, Tennyson Road, Ashford (Member: George Koowaree)**

26. I have previously advised that a building to meet the requirements of the End of Life Vehicle Regulations had been erected on the site without planning permission (see number 2, Appendix 2, page 4(xiii) for a summary). In accordance with the County Council's Enforcement Protocol the operator was invited to submit a retrospective planning application. A submission was eventually made and granted conditional permission under delegated powers. The scheme involves a wider rationalisation of the site and its use with several dilapidated buildings having already been demolished and with a new and properly appointed replacement building under construction.
27. As part of these negotiated improvements on site, local residential amenity is due to be further safeguarded by 4m high, inner movable concrete block screening along the more residentially sensitive sections of the site perimeter. To the credit of the operator that concession was offered voluntarily and screening trials have taken place in consultation with local residents. The opportunity has further been taken to update the existing permissions and to make them clearer and in that way more readily enforceable.
28. *The site is being monitored and I shall be seeking further improvements following a recent noise complaint. I intend to test in particular the effectiveness of the moveable amenity screens. They offer the most immediate and flexible potential for protecting and improving the quality of life of near residents.*

**Woodgers Wharf, Upchurch (Local Member: Keith Ferrin)**

29. This site and waste management activity concerns the use of land connected to a marine wharf at Otterham Quay, Upchurch for the screening and crushing of largely inert materials. The planning history of the wharf is complex. Considerable efforts have been made to resolve this case and to ensure that all relevant parties, the local community

**Update on Planning Enforcement Issues**

and their representatives have been kept informed of progress. To that end, an Enforcement Notice has been served to help arrest the alleged breaches on site and as a means to secure restoration.

30. The operator has now left the scene and there are currently no waste-related vehicles entering or leaving the site. That is an achievement within its own right. As predicted however, the landowner has appealed the Enforcement Notice and a Public Inquiry is to be heard on 22 – 23 July 2008.

**New Cases, especially those requiring action/ Member support****Lympne Primary School, Octavian Drive, Lympne (Local Member: Ms S. Carey)**

31. Lympne Primary School is located to the south of the village of Lympne, accessed via Octavian Drive. The whole of the school site is within the Kent Downs Area of Outstanding Natural Beauty and a Special Landscape Area. In September 2006, a fire broke out at Lympne Primary School, which took hold of the building, and the school was destroyed. A planning application for a replacement Primary School was submitted in February 2007, and proposed the erection of a single storey school, to be built upon the foundations of the previous school building. Due to objections to the proposal on the grounds of proximity to the boundary, the application was considered at the Planning Applications Committee meeting on the 17 April 2007, where Members resolved to grant planning permission subject to conditions.
32. Following the grant of planning permission on the 20 April 2007, works commenced on site. As works progressed on site to roof level, a neighbouring resident expressed concern over the height of the building, suggesting that it was taller than as approved. Upon investigation it became apparent that the building was being constructed approximately 1 metre higher than permitted. This has since been confirmed as 1.027metres. The increase in height relates to the higher clerestorey element of the roof to both classroom blocks, and not the lower pitched element or the sports hall, which are constructed to the correct height.
33. In considering the planning application in April 2007, the Planning Applications Committee were concerned about the height of the proposed building, bearing in mind the proximity of local residents, the impact on the Area of Outstanding Natural Beauty and the Special Landscape Area, and the increase in height over the original school building. In light of this earlier concern, Officers could not be certain of the Planning Application Committee's views on the change to the roof and, therefore, in accordance with good enforcement practice, advised that all work on the roof should cease whilst steps were taken to address the breach.
34. The applicant was keen to ensure that the breach is resolved as swiftly as possible so that the school could be re-opened for the next school year in September (the intention had been to open sometime late this academic year). To this end, the applicant submitted 2 proposals, which are to be considered by Members of the Planning Applications Committee on the 13 May 2008.
35. In summary the two amended proposals are as follows:

## Update on Planning Enforcement Issues

- Option 1a proposes that the height of the clerestorey element of the roof remains as built, 1.027 metres higher than permitted. The applicant also proposes to cut back the four ends of the clerestorey roof as built, replacing them with four hips. The hips would pitch back from the same height above ground level as the apex to the gable of the approved scheme.

Should option 1a be refused, then the Planning Authority is asked to consider option 2a;

- Option 2a proposes to reduce the ridge height by 600mm (0.6m) across its entire length from the height as built. This would be an increase in height of 400mm (0.4m) above the height as permitted. As a result of this reduction in height, the two windows to the western gable elevation would be removed. In addition, the applicant is proposing to hip the four ends of the clerestorey roof on the 2 classroom blocks;
36. In addition to the increase in height, a number of minor amendments to the elevational treatment of the building are proposed. These amendments are included, and to be considered, as a part of both options 1a & 2a.
37. The applicant advised that the increase in height occurred as a result of a discrepancy between the approved planning drawings and the construction working drawings. I am advised that the position of the original foundations, which had to be used as a base for the replacement school, was not known until works commenced. That resulted in the width of the 'activity area' (below the atrium) becoming slightly larger which, in turn, resulted in a change to the roof pitch, increasing the atrium height. A number of constructional changes/details including better flashing, additional steel support for the trusses, roof insulation, steel aligning with brick coursing and an increase in the height/size of the windows by approximately 15 cms has also added to the height of the clerestorey element of the building. The increase in height applies to the two classroom blocks.
38. I shall update Members of this case at the Meeting. My recommendation to the Planning Applications Committee is to refuse variation 1a on the basis that this scheme is an inappropriate design solution for this location, bearing in mind the protected landscape and proximity to neighbouring properties. It would give rise to a detrimental effect on the amenity of local residents and the character and appearance of the Special Landscape Area and the Kent Downs Area of Outstanding Natural Beauty. In my opinion, this option is contrary to the general thrust of relevant Development Plan Policies. I have therefore recommended to Members of the Planning Applications Committee that they find option 1a to be unacceptable in planning terms, and subsequently consider the merits of option 2a.
39. In terms of option 2a, I consider that this option incorporates the key components of the previously permitted scheme and on balance conclude that this proposal does not raise unacceptable amenity impacts or material harm and is in accordance with development plan policy. I have recommended accordingly to Members of the Planning Applications Committee. *I now seek support from this Committee for the stance taken, especially in relation to the cessation of work on site pending the resolution of the application.*
40. In addition, there are new cases listed in the appended schedules. Under Schedule 1, nos 2 – 5, Parkgate Business Centre Park; Browns Yard; Pilgrims Way / Toll Lane; Church Lane, Sellindge and no. 7 Greengate Woods; no. 10 Roman Road; no. 12

## Update on Planning Enforcement Issues

Tutsham Farm; no. 18 Deerleap Lane and no. 19 Warren Court Farm.

### Significant on-going cases

#### Woodgers Wharf, Upchurch (Local Member: Keith Ferrin)

41. This alleged waste management activity at Upchurch is reported under paragraphs 29 and 30 in the 'Achievements' section.

#### Deal Field Shaw, Charing

42. This landfill site requiring restoration is the subject of an exempt report to these papers (Item 8; also see summaries under number 1 of Schedules / Appendices 1 and 2 on pages 4(i) and (xiii), respectively).

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

43. On this occasion, there are no cases in this category.

### Monitoring

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

44. We have updated our guidance to operators. Since 1<sup>st</sup> January 2008 and up to 9<sup>th</sup> May 2008, further monitoring visits have been carried out, 9 of which were formal chargeable monitoring visits and 7 of which were to sites not falling within the chargeable monitoring regime. Since the introduction of the regime, we have continued to implement the chargeable monitoring regime and have now carried out a total of 53 chargeable visits to active mineral and landfill sites.

#### Resolved or mainly resolved cases requiring monitoring

45. Alongside the chargeable monitoring régime there is also a need to maintain a watching brief on resolved or mainly resolved enforcement cases which have the potential to reoccur. It is intended that cases in this category should continue to be removed from the reporting lists (now the appended schedules 1 to 3, to this and subsequent reports) on the understanding that officers will keep them under review. Any recurrence will be reported back under the '*new cases, especially those requiring Member endorsement for action*' section at the front of subsequent reports to Committee according to the new revised format.
46. The current and running list of sites which fall within this category include: Hoath Wood, Lavenders Road, West Malling; Russell Surfacing, Detling Aerodrome Estate, Maidstone; Wissenden Lane, Pluckley; Whiteladies Gas Control Compound, Offham Landfill Site, Offham; Detling Quarry, Detling; Kemberland Wood, Fox Hill, Sturry and Foley Site, Plantation Lodge, School Lane, Iwade, Rear of Dunes Road, Greatstone, New Romney, Land near junction of Thames Rd/Burnham Rd/Clive Dunn Way, Dartford Marshes; Oast Park Farm Golf Club, Snodland; Chapman's Scrapyard, Tenterden; Durrants Farm, Maidstone Road, Paddock Wood; Meadows School, London Road,

**Update on Planning Enforcement Issues**

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Southborough and Standford Bridge Farm, Pluckley.

47. Since the last Meeting I have removed: Chalkwell Bridge Farm, Lydden; Highview, Longfield; Red Lion Wharf, Northfleet; Biffa Waste, Ashford Road Hollingbourne; Waste Water Treatment Works, Reading Street, Tenterden; Aylesford WWTWs; Dunbrik Composting, Sundridge, Sevenoaks; Cartwright School and Kelsey Primary School, Ash and Minster College, Minster-On-Sea.

48. I intend to transfer the list of sites onto an appropriate database, on an annual basis.

**Working protocols with the Environment Agency**

49. The Committee has previously endorsed the development of better working protocols between the County Council and the Environment Agency with regard to its enforcement work. Close dialogue with the Environment Agency has ensued including bi-monthly meetings to discuss cases and agree enforcement strategies. A closer understanding has also been achieved over our respective priorities and on ways to offer mutual support at Inquiry and in court. The interrelationship on selective cases has noticeably improved. However, more detailed work is required on the 'dovetailing' of both sets of powers to achieve the overall level of public enforcement expected.

**Conclusion**

50. Timely and decisive intervention since January 2008 has allowed further successes and measurable progress on a number of enforcement cases. The sure knowledge that the County Council will not hesitate from taking any necessary formal action and our appeal successes is a strong negotiating tool. It often helps to achieve results in its own right. It is pleasing that this committed effort has been recognised in one of the national professional journals, as appended.

51. As a guiding principle, resources are targeted to those activities that have the potential to create the greatest environmental damage in accordance with the adopted Enforcement Protocol. However, actions once taken invariably result in appeals and public inquiries. Those involve as at present, extensive work and diversion of resources.

**Recommendation**

52. I RECOMMEND that MEMBERS:

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 14 to 42 above and those contained within Schedules 1 to 3 of Appendices 1 to 3, on pages 4(i) to (xix) and
- (ii) NOTE the independent publicity given to the County Council's enforcement work in the national professional journal 'Waste Planning', as Appendix 4.

**Update on Planning Enforcement Issues**

Case Officers: Robin Gregory / Alan Goodison

01622 221067 / 1064

Background Documents: see heading



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

	<b><u>Site &amp; Case Reference</u></b>	<b><u>Alleged Breach</u></b>	<b><u>Objectives / Actions</u></b>	<b><u>Progress</u></b>	<b><u>Notes / Remarks</u></b>
1	Ashford DC3/AS/03/COMP/0090 Shaw Grange, Charing (Member: Richard King)	Multiple breaching of landfill permissions (q.v. No.1, Schedule 2, p4(xiii)). Enforcement Notices and High Court Injunctions	To prevent further breaching and secure restoration of the site	Breaching has ceased but restoration has proved protracted for complex legal reasons	This landfill site in need of restoration is the subject of an exempt report to these papers (see Item 8)
2	DC3/AS/07/COMP/0006 Parkgate Business Centre Park, Tenterden (Member: Mike Hill OBE)	Unauthorised recycling reported by Ashford BC	To investigate and see if the activity falls within the County Council's waste-related remit.	On investigation no material County waste related development was being carried out	The case has been referred back to Ashford BC, who intend to serve an Enforcement Notice to address the various breaches. I have given written support to the Borough in their handling of the case.

3	DC3/AS/08/COMP/0002 Browns Yard, Biddenden (Member: Mike Hill OBE)	Unauthorised waste recycling facility reported by the EA and Ashford BC	To investigate and see if the activity falls within the County Council's waste related remit.	On investigation no material County waste related development, in its own right, was being carried out. A mix of alleged contravening uses were found, which under the Enforcement Protocol falls to the Borough Council to enforce	The EA are considering prosecuting the site operator for offences identified under the Environment Protection Act 1990. The planning case has been referred back to Ashford BC. They have in turn served an Enforcement and Stop Notice, with drafting support from this Authority.
4	DC3/AS/08/COMP/0005 Pilgrims Way/Toll Lane, Charing (Member: Richard King)	Unauthorised importation, depositing and stockpiling of waste materials in the AONB / SLA, partly in the form of un-engineered earthbund. This makes use of and is in part an attempt to enhance a working rural platform, granted by Ashford BC.	To prevent further breaching and secure restoration of the site.	Planning Contravention Notice served. Breaching has ceased. The site operator has agreed to remove the deposited waste stockpiles and restore the site through informal resolution by 30 June 2008.	The site will be progressively monitored towards restoration. Some progress has been made.

5	DC3/AS/08/COMP/0006 Church Lane, Sellindge (Member: Charles Findlay)	Alleged unauthorised waste management activity at a rural location. It involves the construction of a new access and hardsurface receipt of two streams of waste (sewage sludge and wood chippings), their mixing and informal composting, before being deposited on adjoining land.	To investigate and see if the activity falls within the County Council's waste related remit.	Planning Contravention Notice served on 28 April 2008. This requires the landowner to declare his position and to give details of the use. Failure to supply information under the Notice carries a fine on conviction of £1,000.	The EA have taken the initial enforcement lead pending a full planning assessment by KCC on the planning status of the activity. A retrospective planning application to Ashford BC for retention of the access and hardsurface held in abeyance pending the outcome of enforcement investigations.
6	<b>Canterbury</b> DC3/CA/03/COMP/0089 Larkey Wood, Chartham (Member: John Simmonds)	Unlawful deposit of construction spoil on SLA valley side and related waste processing.	A County Court Injunction requires removal of surplus materials and waste related items and a return to agriculture with original slope profiles.	Of the three original land parcels; the two larger areas have been restored to agriculture, leaving remedial works to the remaining smaller area.	Under the action of the injunction, the contravenor has fully returned to agriculture. He now has an incentive to complete the restoration of the land.

4(iii)

7	<p>DC3/CA/08/COMP/009 Greengate Woods, Denstead Lane, Chartham Hatch (Member: John Simmonds)</p>	<p>Unauthorised waste depositing to raise the land in the vicinity of trees protected by a TPO.</p>	<p>To investigate and see if the activity falls within the County Council's waste related remit.</p>	<p>The breach has stopped and is subject to an Injunction sought by Canterbury City Council, who are also prosecuting the alleged contravenor</p>	<p>Canterbury CC have enforcement control of the case. I am satisfied that a proportionate and effective response has been achieved. I do not propose to intervene at this stage, apart from offering technical and enforcement support to CCC.</p>
8	<p><b>Dartford</b> DC3/DA/03/COMP/0029 Dartford Gun Club, Dartford Marshes (Member: John Muckle)</p>	<p>Apparent waste importation and depositing on confirmed County Council Enforcement Notice area, with a part lawful / district permitted Gun Club now resident on site</p>	<p>The EA have taken the enforcement lead. An application to Dartford BC to retain the material has been anticipated. The County Council has reserved its enforcement position pending the outcome of both matters</p>	<p>The district council application is still awaited. The EA have apparently completed their investigation of the tipped material and its source and content</p>	<p>The EA are deciding on whether to intervene in the case. The application to DBC has so far failed to materialise. Members continuing support is therefore sought on a contingency basis (and subject to Counsel's advice), for potential prosecution under the confirmed Enforcement Notice.</p>

	<u>Site &amp; Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
9	DA/00/72 & DA/04/993 150a Lower Hythe Street, Dartford (Member: Tom Maddison)	Unauthorised extension to an existing permitted waste transfer station into adjoining area (with lawful use for vehicle dismantling), with related waste processing	To pull back the extended use to the original permitted footprint area.	Achieved. The immediate level of breaching has been successfully challenged by KCC	Operational breaches of the original permission will need attention when resources allow. Support for serving BCNs is sought (see also No 4, Sch. 2, p4(xiv)).
10	<u>Dover</u> DC3/DO/O8/COMP/0007 Roman Road, Dover (Member: Gordon Cowan & Bill Newman)	Unauthorised depositing of waste materials on private agricultural land	To investigate and see if the activity falls within the County Council's waste related remit.	A Planning Contravention Notice was served 29/2/08, halting the tipping and prompting a discussion on achieving restoration.	A negotiated solution has been found, short of formal action. The submission of a scheme of restoration, respecting adjoining contours and capable of being enforced, is imminent.

11	<p><b>Maidstone</b></p> <p>DC3/MA/05/COMP/0010 Riverfield Fish Farm, Staplehurst (Member: Mrs Paulina Stockell)</p>	<p>Alleged breaches of planning permission granted by Maidstone BC for a fish farm. There is concern at the quantities of waste materials entering the site</p>	<p>Maidstone BC has primary enforcement responsibility. It is being advised by specialist retained Counsel under the recommendation of County Officers.</p>	<p>The EA has issued an Exemption from Site Licensing but continues investigating the activity along with Maidstone BC</p>	<p>KCC holds no apparent remit on available evidence. However, I am maintaining 'a seat at the table' and offering enforcement and technical advice. Maidstone BC has apparently now served a Temporary Stop Notice on more recent tipping.</p>
12	<p>DC3/MA/04/COMP/0060 Tutsham Farm, West Farleigh (Members: Mrs Paulina Stockell)</p>	<p>Depositing of builders waste on the southern bank of the River Medway</p>	<p>Cessation of tipping and to secure restoration.</p>	<p>Tipping had previously been stopped but has recently resumed. The EA has retained the enforcement lead, given their waste, pollution control, river protection remit and waste removal powers. That includes the ability to trace the origin of the tipped material through transfer documentation.</p>	<p>I have served an immediate Planning Contraventions Notice on the landowner as a precursor to any further action. Should a full reply not be received by the due date (i.e. within 21 days) I intend to prosecute. <i>Support is sought for that action along with the service of an Enforcement Notice and if necessary the seeking of an injunction, to protect the landholding from any further deposits.</i></p>

13	DC3/MA/06/COMP/0030 Longton Wood, off A249 Detling Hill (Member: Lord Sandy Bruce-Lockhart OBE)	Importation and depositing of construction spoil on site	Cessation and reinstatement	The breach has been stopped	Restoration will follow when resources allow.
14	DC3/MA/04/COMP/0005 D&D Recycling, Detling Airfield (Member: Lord Sandy Bruce-Lockhart OBE)	Unauthorised extension to permitted waste transfer station and alleged breach of Enforcement Notice	To halt further breaches and have waste stockpiles and processing plant & machinery removed by 11 January 2008.	Significant progress made with most of the unauthorised waste stockpiles removed	Reported in more detail in paragraphs 17 to 22 of the main papers.
15	DC3/MA/06/COMP/0004 Land off Church Hill, Boughton Monchelsea (Member: Eric Hotson)	Unauthorised waste recycling facility reported by the EA	To investigate and see if the activity falls within the County Council's waste related remit	On investigation no material County waste related development was being carried out	Case referred back to the EA and Maidstone BC.
16	<b>Sevenoaks</b> DC/SE/03/COMP/0085 Poll Hill Gypsy Site, Halstead, Sevenoaks (Member: Roger Gough)	Unauthorised deposit of significant quantities of spoil on land immediately to the north of the Poll Hill Gypsy Site, in the MGB and AONB	The original objective was to cover flytipping with soil but the quantities used were excessive and included spoil. The best form of restoration and resolution in the circumstances is sought under detailed guidance from the EA	A number of technical studies have been carried out concerning the content, integrity and stability of the tipped mass. The EA wish to add to that data through extended monitoring.	In my view, sustained analysis of the deposit will help inform the best and most appropriate form of restoration. Monitoring will meanwhile give an early warning of the need for any of the tipped waste to be removed. <i>I seek support for that stance.</i>

17	DC3/SE/07/COMP/0014 Morley's Farm, Morley's Road, Sevenoaks (Member: Nick Chard)	Unauthorised waste recycling facility reported by the EA.	To investigate and see if the activity falls within the County Council's waste related remit	Long established use of minor waste recycling facility through hand sorting of waste materials, in part for agricultural purposes.	An invalid application for Lawful Use to retain the activity has been submitted to this Authority. The implications of that and the content of the application are being assessed.
18	DC3/SE/08/COMP/0001 Deerleap Lane, Rushmore Hill, Knockholt (Member: Richard Parry)	Unauthorised waste recycling facility reported by Sevenoaks DC	To investigate and see if the activity falls within the County Council's waste related remit.	On investigation no material County waste related development was being carried out.	Case referred back to Sevenoaks DC
19	DC3/SE/08/COMP/0010 Warren Court Farm, Knockholt Road, Halstead (Member: Richard Parry)	Unauthorised depositing of waste materials (including 'soils' and wood chippings) reported by Sevenoaks District Council	To investigate and see if the activity falls within the County Council's waste related remit	Site inspection booked for 14 May 2008 to assess the level of alleged breach and the need for removal / restoration	The tipping of 'soils' had been stopped for 2 weeks but I understand may have now resumed. <i>I therefore seek Members support for the serving of an Enforcement Notice and Temporary Stop Notice if required.</i>
20	DC3/SE/07/COMP/0009 Leydenhatch Lane, Swanley (Member: Mark Fittock)	EA reported alleged unauthorised waste stockpiling		A confirmed Sevenoaks DC Enforcement Notice was found to cover the site.	Case referred back to Sevenoaks DC



	<u>Site &amp; Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
21	<p><b>Shepway</b> SH/05/1425. A20 Scrapyard, Rear of Airport Café, Main Road, Sellindge  (Member: Susan Carey)</p>	<p>Storage and breaking of disused vehicles without planning permission</p>	<p>To establish the planning status of the activity. If deemed to be unlawful to ensure removal of the use and restoration of the site.</p>	<p>A Certificate of Lawful Use Application has been expected but has not as yet been submitted.</p>	<p>I intend to conduct a review of the case, including the likelihood of receiving a credible and supportable Lawful use application. I am concerned to ensure consistency with other enforcement cases. Members support is sought for the serving of an Enforcement Notice, if required.</p>
22	<p><b>Swale</b> DC3/SW/05/COMP/0016 Woodgers Wharf, Upchurch  (Member: Keith Ferrin)</p>	<p>Unauthorised use of marine wharf for screening and crushing of imported spoil and alleged related waste management breaches</p>	<p>To arrest the alleged breaches and return the site to its lawful wharf-related use</p>	<p>An Enforcement Notice has been served and a Public Inquiry into the action is scheduled for 22 July 2008.</p>	<p>This case is reported in slightly more detail in the main papers (see paragraphs 29 to 30)</p>

23	DC3/SW/04/COMP/0059 Four Gun Field, Upchurch (Member: Keith Ferrin)	Alleged and sporadic waste-related use on a former brickfield with related lawful use	To ensure that no waste-related use develops on site, particularly given its sensitivity close to housing	The site has been monitored to guard against any alleged waste management breaches. Counsel has been retained given the legal complexity of the case	Continued support on a contingency basis for an EN/Injunctions. is sought. The case is reported in further detail on an exempt basis as Item 7, on these papers.
24	DC3/SW/04/COMP/0049 Raspberry Hill Park, Farm, Iwade (Members: Brenda Simpson / Roger Truelove)	Unauthorised importation, burning and depositing of mixed construction spoil, stationing of mobile homes and haulage distribution use on the waste deposit	KCC and Swale BC's 3 Enforcement Notices were recently upheld at Appeal (see paragraphs 10 to 19 of the main papers). They require all traces of the unauthorised uses to be removed from the site, within given timescales.	The Enforcement Notice deadlines for restoration have yet to expire. Removal is required by 22 May 2008 and restoration by 22 June 2008.	The operators are currently either in prison or on remand. However, in relation to the KCC EN, the landowners (if the terms are not met) would ultimately be pursued for removal of the waste deposit and full restoration.
25	DC3/SW/07/COMP/0004 Chapel Lane, Lower Halstow (Member: Keith Ferrin)	Unauthorised importation and depositing of waste	To secure removal of a required quantity of waste according to road and site conditions	A figure of 20 vehicle loads to remove has been agreed with the landowner. The extended deadline for removal to take account of adverse weather conditions is 16 <sup>th</sup> May 2008.	Failure to meet the deadline will, with Members continuing support, lead to the service of an Enforcement Notice on the entire landholding. The case is reported in more detail in the main papers (see paragraphs 23 to 25)

26	<p>DC3/SW/05/COMP/0023 Church Marshes, Sittingbourne (Members: Brenda Simpson / Roger Truelove)</p>	<p>Alleged waste related uses, including land raising connected with Swale Borough Council's Country Park development on the former Church Marshes landfill site</p>	<p>Swale BC owns the land and has employed contractors to carry out the development. Internal controls should be sufficient to ensure that the planning permission is adhered to and County Council waste related breaches do not occur</p>	<p>I understand that the development is in its later phases. Also Swale BC have apparently already adjudged that the alleged tipping does not bring site levels above those already granted</p>	<p>There should be no need for the County Council to intervene in this type of publicly sponsored development. Nevertheless, I shall still be seeking more detailed assurances from SBC that land raising has not occurred. The County Council's enforcement position must be safeguarded.</p>
27	<p>DC3/SW/05/COMP/0014 Lime Kiln Wood, Wormshill, Sittingbourne (Members: Lord Sandy Bruce-Lockhart OBE / Keith Ferrin</p>	<p>Part-infilling of wooded depression with unauthorised residential use.</p>	<p>To assist Swale BC who are taking the enforcement lead to protect the remaining TPO'd trees and secure acceptable restoration</p>	<p>The breaches to date have been challenged largely by Swale BC with on-site support from County Officers</p>	<p>To reinforce the Borough Council's actions and to secure eventual restoration to woodland, the service of a KCC Enforcement Notice may eventually be necessary.</p>
28	<p><b>Thanet</b> DC3/TH/07/COMP/0005 Down Barton Road, St Nicholas at Wade, Margate (Member: C. Hibberd)</p>	<p>Tipping on farmland and creation of earthbunds reported by Thanet DC.</p>	<p>To investigate and check for any County Council remit</p>	<p>The primary use of the land and related engineering works were regarded on investigation to be district matters.</p>	<p>Case referred back to Thanet DC.</p>

29	<p><b>Tonbridge &amp; Malling</b> DC3/TM/07/COMP/0010 Fre Mel Farm, Offham, West Malling (Member: Sarah Hohler)</p>	<p>KCC Environmental Crime Team relayed a report from T&amp;M BC of car breaking and waste disposal at this site</p>	<p>To investigate and check for any County Council remit</p>	<p>Only district operational breaches were found including the construction and use of a hardstanding</p>	<p>Case referred back to TMBC</p>
30	<p><b>Tunbridge Wells</b> DC3/TW/06/COMP/0011 Eaglesden Farm, Mill Street, Iden Green, Benenden (Member: Roger Manning)</p>	<p>Importation of waste spoil into a small valley</p>	<p>To ensure no further tipping and arrive at the best form of restoration in the circumstances, including the required quantities of material to be removed</p>	<p>The land has been shaped and contoured. The EA's advice is being sought on restoration options</p>	<p>The EA are currently pursuing a prosecution against the landowner / operator. On the planning front, if negotiations fail, an Enforcement Notice will ultimately be required to achieve and enforce the required level of restoration.</p>
31	<p>DC3/TW/06/COMP/28 Durrants Farm, Maidstone Road, Paddock Wood (Member: Alex King)</p>	<p>Unauthorised waste recycling facility reported by the EA.</p>	<p>To assist in the support of an EA prosecution.</p>	<p>Prosecuted by the EA. Site operator convicted in the Magistrates Court in April 2008. Fined £10,000 with £2,500 costs</p>	<p>Site will continue to be monitored. Recent reports of further breaches may prompt the need for KCC intervention. In that event I seek Members support for the service of an Enforcement Notice and Temporary Stop notice, if required.</p>

**Schedule 2: Alleged breaches on Permitted Minerals & Waste Sites**

*Appendix 2*

	<b><u>Site &amp; Case Reference</u></b>	<b><u>Details of Alleged Breach</u></b>	<b><u>Objectives / Actions</u></b>	<b><u>Progress</u></b>	<b><u>Notes / Remarks</u></b>
1	<b>Ashford</b> DC3/AS/03/COMP/0090 Shaw Grange, Charing (Member: Richard King)	Multiple breaching of landfill permissions, Enforcement Notices and High Court Injunctions (q.v. No.1, Schedule 1, p 4(i)).	To prevent further breaching and secure restoration of the site	Breaching has ceased but restoration has proved protracted for complex legal reasons	This landfill site in need of restoration is the subject of an exempt report to these papers (see Item 8)
2	DC3/AS/04/COMP/0003 Ripley's Scrapyard, Tennyson Road (Member: George Koowaree)	Unauthorised End of Life Vehicle facility on existing permitted scrapyard. Also, local complaints of noise and vibration	To regularise the building and use and help improve the level of local amenity protection	An application to incorporate the breach and further improve and rationalise the site layout and safeguarding has been granted permission under delegated powers.	Although the site is being upgraded a noise complaint has still been received. I need to inspect and monitor the site to see if the best level of amenity safeguarding has been achieved. [Reported in more detail in the main papers (see paragraphs 26 to 28)]

3	<p>DC3/AS/04/COMP/0013 Naccolt Brickworks, Wye (Member: Charles Findlay)</p>	<p>Series of site managerial problems at this local neighbourhood recycling centre</p>	<p>To regularise the position through an updated application and close liaison with the EA</p>	<p>A planning application (yet to be made valid) designed to address the issues on site is currently being held in abeyance. That is to allow ongoing discussions concerning potential relocation of the use.</p>	<p>The support of Members is sought for enforcement powers to be reserved, pending a permanent planning solution being found, in close negotiation with the operator, to current issues with the use.</p>
4	<p><b>Dartford</b> DA/00/72 &amp; DA/04/993 150a Lower Hythe Street, Dartford (Member: Tom Maddison)</p>	<p>Unauthorised waste-related extension to existing permitted waste transfer station into adjoining area</p>	<p>To pull back the extended use to the original footprint area and then attend to less serious operational breaches under the original waste transfer permission</p>	<p>First objective achieved.</p>	<p>Secondary and operational breaches of the original permission will need attention when resources allow (see also No. 9, Schedule 1, p 4(v)).</p>
5	<p>DA/04/770 &amp; DA/04/787 FM Conway site, Rochester Way, Dartford (Member: Tom Maddison)</p>	<p>Complaints concerning alleged breaches of stockpile heights attached to the relevant and retrospective planning permission at this waste recycling site received</p>	<p>This was not apparent from inspection.</p>	<p>The plant visible on top of the stockpiles was removed. No further complaints have been received</p>	<p>I now intend to remove from this schedule but monitor as required</p>

6	<p><b>Maidstone</b></p> <p>MA/08/TEMP/0065 Shepherds Farm, Lenham (Member: Lord Sandy Bruce- Lockhart OBE)</p>	<p>Operational breaches at this permitted sand extraction site, including departures from the working scheme and slope stability issues</p>		<p>Planning permission has now been granted for importation of inert waste and associated measures to remedy the alleged breaches.</p>	
7	<p><b>Sevenoaks</b></p> <p>DC3/SE/03/COMP/0071 Brasted Sandpits, Sevenoaks (Member: Richard Parry)</p>	<p>Breach of the planning permission to extract sand from this site in the MGB, AONB and SLA</p>	<p>To secure early restoration of the site within the scope of the materials already on site.</p>	<p>Following long investigation and intervention by the EA on the waste tipped at the site, restoration may now resume. The EA will continue to safeguard pollution and public health interests.</p>	<p>The Company operating the site has been wound up, seemingly now unable to carry out the restoration. Legal advice is required on this point. Meanwhile, a revised scheme of restoration will be required within the scope of the remaining quantity of (re)usable restoration materials on site.</p>

8	<p><b>Shepway</b></p> <p>SH/05/53 Waste Water Treatment related kiosk, Spitalfield Lane, off Lydd Road, New Romney (Frederick Wood-Brignall)</p>	<p>As part of the New Romney and Greatstone –on- Sea Waste Water Treatment Scheme, a control kiosk was placed marginally in the wrong location. There is sensitivity given the close proximity of housing</p>	<p>To see whether an acceptable and practical solution can be found, short of having the kiosk re-positioned</p>	<p>A proposed screening/landscaping solution has been granted planning permission.</p>	<p>I now propose to remove this case from the schedules.</p>
9	<p><b>Tonbridge &amp; Malling</b></p> <p>DC3/TM/04/COMP/0019 Borough Green Sand Pit, Platt Industrial Estate, Borough Green (Member: Peter Lake)</p>	<p>Complaints of windblown sand, noise, extended hours of working and mud on the road</p>	<p>To ensure compliance with the relevant planning permission</p>	<p>Three planning applications pertaining to the site and in part covering these issues have a resolution to grant planning permission, subject to completion of a S106 Agreement.</p>	<p>The issues raised have been considered in the context of the applications, including a Members Site Visit and where possible further amenity safeguards have been introduced. The S106 Agreement has yet to be concluded, allowing release of the planning permissions.</p>



	<b><u>Site &amp; Case Reference</u></b>	<b><u>Alleged Breach</u></b>	<b><u>Objectives / Actions</u></b>	<b><u>Progress</u></b>	<b><u>Notes / Remarks</u></b>
10	TM/01/3081/MR95 Pearson Sand Pit, Addington Lane, Trottscliffie  (Member: Sarah Hohler)	Delayed restoration of former and now backfilled sand quarry.	To secure an early completion of restoration	The site has now been largely restored with the exception of the remaining section of the access track. However, an application for its downgrade is expected.	I shall inform Members when the access issue has been resolved.
11	TM/04/2028 Work House Quarry, Ryarsh  (Member: Sarah Hohler)	Complaints from local residents of out of hours working and excavating outside of the permitted northern site boundary		The out of hours complaint was found to be an isolated incident and the works on site was slope profiling to achieve the best aesthetic result on site	The site is being monitored and I can report that restoration is progressing well.
12	DC3/TM/03/COMP/0005 Addington Sandpit, Addington  (Member: Sarah Hohler)	A series of technical breaches on site, including slope stability and delayed restoration in part of the site	For the alleged breaches to be urgently addressed, with comprehensive remedial plans submitted for prior approval	The outstanding information and schemes are now overdue but need in any event to be considered in the context of the northern extension application, submitted under TM/07/2545	I shall report to the next Meeting on progress in dealing with these outstanding matters.

**Schedule 3: Alleged breaches on Permitted County Council Developments**

***Appendix 3***

	<b><u>Site &amp; Case Reference</u></b>	<b><u>Alleged Breach</u></b>	<b><u>Objectives / Actions</u></b>	<b><u>Progress</u></b>	<b><u>Notes / Remarks</u></b>
1	<p><b>Canterbury</b></p> <p>CA/06/1187 Barton Court Grammar and Chaucer Technology Schools, Canterbury (Member: M.Northey)</p>	<p>Perimeter fencing partly erected without prior permission</p>	<p>To regularise the planning situation and agree appropriate specifications</p>	<p>Fencing has been completed in accordance with approved specifications</p>	<p>The breach has been resolved pending landscaping works.</p>
2	<p><b>Dover</b></p> <p>DO/05/729 St Edmund's School, Old Charlton Road, Dover (Members: K. Sansum / W.Nerwman)</p>	<p>Construction of Business Resource Centre, in part outside of permitted footprint area.</p>	<p>To correct the constructional error as far as practicable. Also, to respond to the Ombudsman's requirement for a review and tightening of KCC's internal enforcement procedures, so avoiding similar problems in the future.</p>	<p>The development has regularised, leaving the Ombudsman's criticisms of the time taken by the Education Authority to halt the unauthorised building.</p>	<p>Whilst the on-site issues have been addressed, work on the Ombudsman's recommendations is continuing. That includes the search for more definitive legal advice on the issue of internal enforcement.</p>

3	<p><b>Shepway</b></p> <p>SH/07/261 Lympne primary School, Octavian Drive, Lympne (Member Ms S Carey)</p>	<p>Roof and upper level design details not carried out fully in accordance with the planning permission.</p>	<p>To regularise the planning position.</p>	<p>Potential design solutions are to be considered at 13 May 2008 Planning Applications Committee</p>	<p>The case is reported in more detail in the main papers (see paragraphs 31 to 39).</p>
4	<p><b>Swale</b></p> <p>SW/02/221 Preston Depot, Canterbury Road, Faversham (Member: T.Gates)</p>	<p>Extension of site for waste aggregate recycling outside of the original permitted area</p>	<p>To regularise the position.</p>	<p>The content of a retrospective planning application to address (amongst other matters) the breach has been discussed with KCC Highways.</p>	<p>The breach has been contained and a planning application is in draft form. I shall keep Members informed.</p>
5	<p><b>Tunbridge Wells</b></p> <p>TW/07/421 The Sunrise Childrens' Respite Centre adjacent to Meadows School, London Road, Southborough (Member: R.Bullock)</p>	<p>Access road through Southborough Conservation Area constructed in advance of planning permission</p>	<p>To regularise the planning situation and agree more appropriate specifications</p>	<p>Retrospective application has since been permitted but amended specifications have still to be approved</p>	<p>The start of the scheme had been delayed by third party legal challenge, which is unable to proceed. A start date is now being negotiated between the applicant and the contractor.</p>

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## Development control

- At Ridings Lane, Holtspur, in 2004 the landowners were found guilty of not complying with a 2001 Enforcement Notice to restore the site. The site had not been restored strictly in compliance with the consent and a site survey was to be undertaken to enable the consideration of merits of a further prosecution.
- At Pyebush, Beaconsfield, the Council's enforcement notice required waste to be removed and the land to be restored. The Environment Agency was considering prosecution for waste offences which could influence the situation.
- At Seaburrow Farm, Iver, an Enforcement Notice was issued in 1999 requiring the cessation of waste deposits and the removal of waste. In 2006 Wycombe Magistrates fined the owner £10,350 for allowing waste to be dumped and burnt on his land. On 28 March 2007 officers entered the site with contractors and the police to undertake removal of the remaining waste. The owner was sent the bill of £2,846 for removal of the waste and the officers' costs.
- At Taplow Paper Mill an Enforcement Notice was issued on 19 February 2007 but was appealed; a Public Inquiry was scheduled for November. A further enforcement notice was issued in August to provide the Inspector with the option of requiring the use to cease within six months rather than the 12 months in the February notice. An Inspector's decision was likely to be issued in January 2008.
- At Tera Ghar, Iver, inert waste was tipped, raising land to the rear of the house by up to 2m. An Enforcement Notice and Stop Notice were issued on 13 July 2007. Tipping had ceased and an appeal submitted which challenged the notice on legal grounds and sought permission for the use of the site.
- At Stoney Lane, Burnham, an Enforcement Notice was issued on 15 August to require the waste to be removed and the site restored. An appeal was submitted which challenged the notice on the legal ground that the development is not a waste use but an agricultural activity.

### East Sussex

East Sussex CC in October considered enforcement activity in the 3 months since July 2007. Twenty new complaints had been received and all the cases except one related to waste activities. Of these new cases, nine were resolved within the last quarter and eighteen older cases were also resolved. Accordingly, the number of sites

currently being investigated or subject to formal action stood at eighty two, a reduction of seven in the total number of cases that were outstanding at the end of the previous quarter. This had been achieved by a diversion of staff resources concentrating on resolving some of the older and less complex cases and several days were spent visiting sites and confirming that the breaches had been remedied. However, there were still a high number of outstanding cases and additional staff for enforcement had been an ongoing issue for some time. Due to officer time being spent on the new ICT system, the implementation of the site monitoring regime and more complex cases, less time had been spent on general enforcement work and there had, therefore, been a steady increase in the number of outstanding cases over the past few years. However, funding had been made available for an additional temporary enforcement officer for an initial period of twelve months.

The new ICT system utilised by the Development, Minerals and Waste Group, is next to have a link from the website to information held regarding planning applications and enforcement cases. Subject to there being no major problems arising, it was hoped that the new website facility would be available in October. This would enable members of the public to search, either by data fields or using an interactive map, for planning applications and enforcement cases via the website, to comment on a current planning application or report an alleged breach of planning control directly. Work was continuing on backdating the historical data stored in the database.

As part of the Departmental Service Plan for 2007-2008, a target was set of undertaking a site visit within 5 working days of a complaint about a potential breach of planning control in 75% of the cases. During the last quarter, 100% of site visits were carried out within five days of the complaint being received.

For the period July to September 2007 (inclusive) a total of 38 applications were determined (5 County Matter and 33 County Council applications); 80% of County Matter applications were determined within 13 weeks.

The Council had been dealing with a number of breaches of planning control at the Rock Robin Scrapyard in Wadhurst and there were two planning applications to regularise some of the works. In trying to resolve the breaches, it was necessary to serve information requisition notices on the operator and

landowner to ascertain all those who have an interest in the site; although a response was finally received from the landowner, no response was received from the operator, which was an offence. It was decided to prosecute the operator for failing to respond to the notice within the specified time at the Mid Sussex Magistrates Court on 12 October.

At Watermill Lane, Bexhill, where a large amount of soil had been deposited, an enforcement notice was served and, following failure to comply with the notice, the landowner was successfully prosecuted in 2005. Despite the landowner being found guilty of failing to comply with the notice, the materials remained on site, a continuing offence. A further prosecution of the landowner took place at Hastings Magistrates Court in August. The landowner was, again, successfully prosecuted and the Magistrates fined him £500 with £200 in costs to the Council. Unfortunately, although the prosecution was successful, this has not remedied the breach of planning control and further consideration is also being given to what other action could be taken to resolve the matter.

With regard to the unauthorised bunding on Telscombe Tye, the timescale for the removal of the bunding was extended to 19 August following an appeal against the Enforcement Notice. Subsequent to this, a revised deadline of 14 September was agreed with the South Downs Joint Committee. However, this deadline had not been met and discussions were ongoing.

### Kent

Kent CC in September considered an update on planning enforcement matters since May 2007. This included those cases where formal enforcement action had been taken; which were currently under-investigation; and that had been resolved since the last meeting. Also considered was an update on developing working protocols with the Environment Agency.

Since May, progress had been made on a number of complex enforcement cases including the successful appeal outcome at the Raspberry Hill public inquiry and negotiations leading to the withdrawal of an appeal at Meopham. Where possible Kent CC continued to resolve cases without the need for formal action; there were a number of successes halting unauthorised waste disposal activities by negotiation, although Enforcement Notices were still required in some cases to restore sites and afford long term

protection. Resources are targeted to those activities that have the potential to create the greatest environmental damage in accordance with the adopted Enforcement Protocol.

Since May work had been affected by staffing changes and had concentrated chiefly on defending formal actions previously taken and progressed to planning inquiry. Resources were focussed on 5 sites where formal enforcement action was taken, 25 cases where investigations were underway and a further 12 cases were satisfactorily resolved. In addition, 20 monitoring visits on permitted sites were undertaken, including 16 chargeable visits.

Cases considered included:

- Deal Field Shaw, Charing, a former landfill site the subject of an exempt report.
- Woodgers Wharf, Upchurch, where waste management activity was also the subject of an exempt report. The case concerned the use of a marine wharf at Otterham Quay for the screening and crushing of largely inert materials.
- Larkey Wood, Chartham, a case concerning the unlawful deposit of construction spoil and related waste processing activities on a protected Special Landscape Area at Chartham, near Canterbury. An uncontested injunction required restoration by 30 September 2005. Progress had been made in reinstating the land to agriculture but further works were required. In the context of the case, the work achieved was notable but did not represent full compliance with the Injunctive Order.
- Brasted Sandpits, Sevenoaks, was an ongoing complex case. Resolution had been hampered by separate and potentially contrary requirements arising from breaches of the waste management licence and enforcement action taken by the Environment Agency. The case concerned a former sand extraction site within an AONB, the Metropolitan Green Belt and a Special Landscape Area. Waste material for the landfill was derived in part from a temporary Waste Transfer Operation, the planning permission for which expired in 2004. In summary, the principal ongoing breaches of planning control at the site related to phasing of the infilling, tipping of waste material above permitted heights, and restoration. The operator company and directors were successfully prosecuted in March 2004 for non-compliance with a Breach of Condition

Notice and an Enforcement Notice. Given the extent of the works required to complete the site the landowner and former operator were on notice that they were exposed to further legal action from the County Council. Nevertheless in 2004 the Environment Agency served a Compliance Notice requiring the operator to address a situation which potentially involved removing large quantities of waste material off site which could affect restoration. Notwithstanding these complications the County Council had been pressing for the restoration of phases unaffected by the Agency actions. The position of the Agency was pivotal to a successful restoration outcome. The Agency had carried out its own prosecutions on this site; the company was successfully prosecuted in 2006 and a further prosecution culminated in a trial by jury at Maidstone Crown Court between 26 February and 1 March 2007. The case fell on an evidential technicality. A further twist in the case was that the Insolvency Examiner confirmed that Brasted Sand Pits Ltd was wound up by the High Court on 11 July 2007. The significance was that an insolvent waste management licence holder was likely to be considered to have ceased to be "fit and proper", lacking the necessary funds to continue waste management work on site. That had implications for achieving the remaining restoration work. While the Agency requested that the insolvency examiner not to disown the licence as there is a need for ongoing monitoring, it does not have powers to prevent the licence lapsing if this is decided by the insolvency examiner. However, as planning enforcement powers run with the land, whoever owned the land at the point of any formal action held a proportionate responsibility for meeting the obligations under the confirmed Enforcement Notice; the County Council also had the option to take direct action to complete the restoration.

- Raspberry Hill, Park Farm, Iwade. This case concerned the importation, deposit and burning of waste material on a site in the open countryside and impinging on nearby orchards. There was also an unauthorised mobile home and an apparent commercial distribution use, and a range of District planning and enforcement matters so Kent CC jointly handled the case with Swale Borough Council. An area of District breaches became extended beyond the original enforcement

boundaries through the depositing of largely inert waste. This prompted a need for the County Council to serve an all embracing Enforcement Notice (extending over the full footprint of the series of contraventions and including all of the breaches). This Enforcement Notice was also appealed, prompting a new co-joined public inquiry, heard in May 2007, a joint case under shared Counsel which ensured the most cost-effective and robust defence of the various Enforcement Notices. In August 2007, the Planning Inspectorate advised that the County Council's Enforcement Notice concerning the waste related breaches was upheld in its entirety. All waste deposited on site and that buried was to be removed and the land restored to agriculture. The first of the Borough Council Notices concerning unauthorised industrial and distribution uses was quashed largely on drafting issues, and the second was amended but upheld in key respects, not least that in this instance the case for countryside protection in its own right was able to override the appellant's case to remain resident on the land, essentially on human rights grounds. It was possible that the upheld Borough Council Notice given its impact on the appellant's living arrangements and the potential precedent it might set would be appealed in the High Court on a point of law.

Among several other cases where enforcement response was under consideration was that at Highview, Longfield Road, Meopham, site of the refusal of two applications for a Certificate of Lawful Use (CLEUD) in connection with the use for storage of vehicles, vehicle parts, breaking and dismantling of vehicles, sale of vehicles and vehicle parts. The landowner and operator appealed against the latest refusal and a Public Inquiry was to be held in August 2007. However, the appeal was withdrawn at a late stage, potentially in favour of a further lawful use application to Gravesham Borough Council. The case was legally complex and in the meanwhile a barrister was to advise both planning authorities jointly on planning enforcement options for the remaining alleged breaches and any lawful use issues on site. That helped to cover the 'cross-over' nature of the case and to ensure that a robust enforcement front was maintained. The site also attracted the attention of the Environment Agency which had recently prosecuted the landowner and operator

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for waste related offences; this resulted in a guilty plea and fines amounting to £15,000 with £3,777 in costs. The action taken by the Agency resulted in a major clearance of the site. The Agency also consulted Kent CC on an application for a Waste Management Licence; an objection was made to the issuing of any such Licence given the absence of any planning basis for the use.

Working protocols with the Environment Agency were also considered with regard to enforcement work. Close dialogue with the Agency included a workshop attended by officers from both regulatory functions to consider a range of issues and an agreement to meet on a bi-monthly basis to discuss cases and agree enforcement strategies. A closer understanding had been achieved over respective priorities and on ways to offer mutual support at Inquiry and in court. A residual issue of concern was whether under the new regulations, exemptions from waste management licensing could still be issued in the absence of planning permission. The companion question was whether existing exemptions could be de-registered in the knowledge that planning permission was originally required for the activity. There had been very useful discussions on the subject with Agency officers there was a need for the definitive position for operational reasons. The Agency had been sharing available data on exemptions which proved most helpful and presented an example of the way shared working can bring enforcement dividends.

### Leicestershire

In November Leicestershire CC updated the position following the service of an Enforcement Notice in October relating to the importation and deposition of inert waste materials on land at Moorbarns Lane, Lutterworth, within open countryside. The 17.5ha site comprised agricultural grassland and an associated barn, erected under the provisions of the Town and Country Planning (General Permitted Development) Order 1995. In 2002, the County Council was notified of the importation of inert wastes to the site by local residents; it was determined that the raising of bunds was not Permitted Development and a Stop Notice and Enforcement Notice were duly served.

Following a consent, issued by Harborough DC, for an extension to the existing barn and screening

bunds, further tipping of inert waste commenced to complete the proposed screening bunds rendering the Enforcement Notice issued by the County Council unenforceable. A letter confirming the validity of the planning permission (and approval to import inert waste to construct the screening bunds), was received by the County Council in October 2004. Thereafter, the monitoring and enforcement of the planning permission, to ensure the construction was in compliance, became a matter for the District Council to undertake and no longer the County Council. The importation of the aforementioned waste was considered ancillary to the approved development.

The County Council continued to monitor the site in response to numerous complaints during the importation period. The County and District Council's worked together to find a resolution to the situation and the adverse impacts that the development had caused. Importation ceased following completion of the bunds, confirmed by officers in May 2006. All hardcore stocks had been removed, landscaping of the bunds began, with planting to help mitigate the visual impact of the development. The Enforcement Notice was withdrawn in September 2006.

In March and April 2007 the County Council received reports of waste tipping and burning of waste late at night at the site. The Environment Agency agreed to carry out an investigation, but as of May 2007 had not been unable to substantiate the claims and took no action.

The Enforcement Notice came into effect on 5 November 2007 and required the land owner to cease the importation and deposition of inert waste materials, and hardcore, unless in association with permitted development, or ancillary to permitted building works, with the provision that it was used 'forthwith'; and remove the hardcore stock, all deposited inert wastes and restore a defined area. It was deemed expedient to take formal enforcement against the land owner to protect the open character and appearance of the countryside, to ensure that development did not spread to the flood zone of the River Swift, to prevent diversion of inert wastes from the mainstream licensed sites, where it is required for approved restoration projects, and avoid an unacceptable danger to local residents and members of the public using the highway.

### Norfolk

Enforcement at SPC Atlas Works, Lenwade, was considered by Norfolk CC in September. In April 2007 monitoring of the site indicated that the permitted 5m height of stockpiles was once again being exceeded. In May 2007 access was found to be blocked by stockpiles of material.

In August at Norwich Magistrates Court Easco Ltd was fined a total of £2,600 for 3 offences of non-compliance with 2 Breach of Condition Notices. Full costs of £2,400 were also awarded in favour of the Council. Guilty pleas were entered in response to 2 charges of contravention of the requirements of the Breach of Condition Notices relating to height of stockpiles and 1 charge of contravention of the requirements of the Breach of Condition Notices relating to access. In mitigation, the magistrates took into account that Easco pleaded guilty at the first opportunity and that Easco stated that it had implemented procedures to prevent the breaches of planning control reoccurring. The magistrates acknowledged that it was the second time that these offences had occurred and fined Easco Ltd £800, £900 and £900 respectively for the offences.

At a previous prosecution for similar breaches at Norwich Magistrates Court in 2006 (see Waste Planning 62 p.20) magistrates also took into account that Easco pleaded guilty at the first opportunity.

### Suffolk

In October outstanding enforcement matters and appeals were considered by Suffolk CC.

- At Brunton Lane, Sudbury, non-compliance with a condition attached to a landfill permission related to improvement of the access track. A Breach of Condition Notice was served in April 2007 and a specification received and approved. Further legal action was held in abeyance.

- At Camperdown Cottage, Spinney Lane, Flowton, deposit of imported waste had recommenced and the site remained open to the public highway. The landowners were found guilty in the Ipswich Magistrates' Court on 17 September, on all three counts of the continued disposal of waste, and were fined, £1,500 on each count, and ordered to pay the Council's costs. Non-compliance with a 2001 appeal decision was previously pursued with a Magistrates' Court Hearing in 2001; the landowner received a Conditional Discharge for two years.



planning pages on the website. The next two phases will increase the available documents, such as application forms and plans, and also backdate the historical data stored in the database.

With regard to particular cases, the Council had been dealing with a number of breaches of planning control at the Rock Robin Scrapyard in Wadhurst. Two planning applications to regularise some of the works were submitted but subsequently refused on 10 October 2007 and Enforcement Notices requiring the removal of the unauthorised structures and the reinstatement of the site were being prepared. It was necessary to serve information requisition notices (S330 Notice) on the operator and landowner to ascertain all those with an interest in the site; no response to this notice was received and it was decided to prosecute the operator for failing to respond to the notice within the specified time. Accordingly, the operator was summoned to appear before the Mid Sussex Magistrates on 12 October 2007. The operator failed to turn up and the Magistrates heard the case in his absence. He was found guilty of failing to respond to the notice, given a £300 fine and ordered to pay costs of £607.

There had been progress with the appeal at Ren's Shaw in Staplecross in respect of the Council's decision in December 2006 to refuse a planning application for the variation of a condition to allow submission of a scheme for the remodelling and landscaping of the site by 31 October 2007 and approval of the scheme by 31 October 2008. The appeal was initially being dealt with by way of the written representations procedure. However, due to the complexity of certain elements of the appeal, the Planning Inspectorate decided that the matter should be dealt with at a Public Inquiry. The Inspector required the Council and appellant to agree on a statement of common grounds, which included a timetable for the submission of geotechnical and landscaping details. A formal decision on the appeal was awaited. Further breaches of planning control involving the importation and deposit of waste at Ren's Shaw were being investigated and a Planning Contravention Notice served on the landowner.

## Kent

In January Kent CC considered an update on enforcement and monitoring work carried out since September 2007. Work had been affected by staffing

vacancies and statutory requirements to support corporate BVPI targets. Efforts had been concentrated chiefly on defending formal actions previously been taken and progressed to planning inquiry. Resources had been focussed on 5 sites where formal enforcement action had been taken, 23 cases where investigations were underway; a further 9 cases were satisfactorily resolved and 3 partly resolved. Amongst monitoring visits on permitted sites there had been 9 chargeable visits. Significant time had been spent on preparation for a public inquiry in Swale and the need for meetings with retained Counsel on a series of complex cases.

Since September 2007, successes and measurable progress had been made on a number of complex enforcement cases. That included amongst others: Chalkwell Farm, Lydden; Ripleys Scrapyard, Ashford; Chapel Lane, Lower Halstow and even on the Woodgers Wharf case. Where possible cases were resolved without the need for formal action. The most recent contravention at D&D Recycling on the Detling Airfield Industrial Estate was a good example of timely and decisive intervention. The sure knowledge that the County Council will not hesitate from taking any necessary formal action and its string of appeal wins such as at Raspberry Hill Park Farm was a strong negotiating tool and could help achieve results in its own right. Nevertheless, Enforcement Notices were still required in some cases to secure the restoration of sites and afford permanent protection of land. As a guiding principle, resources were targeted to those activities that had the potential to create the greatest environmental damage in accordance with the adopted Enforcement Protocol.

- At Raspberry Hill, Park Farm, Iwade, the case concerned the importation, deposit and burning of waste material on a site in the open countryside (see **Waste Planning 67** p.15). The Planning Inspectorate upheld the County Council's Enforcement Notice concerning the waste related breaches in its entirety. All waste deposited on site and that buried will have to be removed and the land restored to agriculture. No legal challenge was made. Nevertheless, while awaiting the deadlines for compliance with the Notice the land will still need to be protected from any resumption of the breach experienced, when the waste depositing and commercial distribution and related uses were at their peak. Both original

contraventions have been suspended, the latter following a police action concerning a range of vehicles on site and network of activities surrounding them. Of particular note in this appeal decision was increased support for the principle established in appeal case law by previous County Council actions that waste deposits fashioned crudely into the appearance of bases for development should not automatically be classed as 'hardstandings'. Those district related engineering developments required proper construction to industry standards and specifications. Consequently, such cases are able to remain within the County Council's remit and waste related sphere of expertise. Any surface uses (whether district related or not) then become unauthorised because the base, which they operate from (in this case haulage and distribution type uses), is in itself unlawful. Added to this, complete removal of strategic quantities of imported construction spoil has again been upheld. In short, the land has to be returned to its original state whatever the scale and cost of the task. Overall, this decision crucially underpinned the determined enforcement stance taken by the County Council along with Swale BC against this large-scale contravention in the open countryside. Timescales for compliance were still running; removal must be achieved by 22 May 2008 and restoration by 22 June 2008. A practical problem in this case was that the operators were either in prison or on remand. Ultimately, however it was the landowners (who were known and traceable) that were responsible under the Enforcement Notice for ensuring full compliance. Continuing support for the seeking of a County or High Court Injunction, should it become necessary, was requested in order to underpin the County Council's Enforcement Notice.

- At Chapel Lane, Lower Halstow, a large area of marshland had been subjected to waste tipping through the importation and disposal of construction materials, including road planings. A joint investigation was conducted with the Environment Agency. The tipping ceased on the County Council's advice and a productive meeting was held with the landowners resulting in their agreement to restore the land through the strictly controlled removal of 20 lorry-loads of tipped waste materials. Restoration was required by 31 March 2008. Should the tipping of waste materials resume on any part of the land support was sought for the immediate



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service of a free-standing Temporary Stop Notice and / or a full Stop Notice attached to any Enforcement Notice served to secure compliance.

- At Chalkwell Farm, Lydden, where an alleged unauthorised stone crushing, screening and stockpiling use was in the open countryside, Dover DC had served 3 Enforcement Notices and by prior agreement within the County Council's Enforcement Protocol, mixed use contravention sites would be for the respective District Council to enforce. The County Council's enforcement powers in this context are confined to waste management breaches, yet as found in the Raspberry Hill case Borough enforcement is often required in order to access the full range of powers necessary to cover all interrelated breaches on site.

- At D&D Waste Recycling, Units 6, 13 & 14 Detling Airfield Industrial Estate, Detling, site of previous unauthorised waste management activities, in November 2007 it was found that Unit 13 was in breach of the terms of the confirmed Enforcement Notice. Stockpiles of waste materials were being stored together with empty skips, which were clearly ancillary to the primary use of waste processing at the adjoining Unit 6. The unauthorised waste related activities, which included wood shredding, had also expanded in to Unit 14, immediately to the west of Unit 13. The operator D&D Waste Recycling was confirmed as the lessee of all three Units and accepted responsibility for the various waste-related breaches. Those include the stockpiling of imported mixed waste for sorting, wood for chipping, installation of a weighbridge and the presence of a wood chipping machine and power screener. Having been reminded of the seriousness of the situation the operator became contrite and agreed to urgently resolve the breaches on a voluntary basis by 11 January 2008. The landowner was told that unless the current alleged contraventions were dealt with forthwith, he would be subject to injunctive action in the County or High Court. By the deadline, Unit 13 was close to being cleared of all unauthorised stockpiles of materials. The listed plant and machinery however, remained. It was agreed to extend the deadline to 31 January 2008. Support was requested for prosecution under the confirmed Enforcement Notice and the seeking of injunctions against the operator and landowner should that again prove necessary.

- At Woodgers Wharf, Upchurch, the site and waste management activity was the subject of an exempt report. The case concerned the use of a marine wharf at Otterham Quay, Upchurch, for the screening and crushing of largely inert materials. An Enforcement Notice had been served to help arrest the alleged breaches on site and as a means to secure restoration. The landowner had appealed the Enforcement Notice and a provisional Public Inquiry date of 22 July had been set.

### Nottinghamshire

Nottinghamshire CC in February considered the outcome of the prosecution proceedings taken against the owner of the land at Sunnyside, Balderton, Newark, for failing to comply with the enforcement notice upheld following appeal on 1 November 2006.

The enforcement notice was issued in February 2006 in relation to the unauthorised use of the land for waste transfer activities. The enforcement notice was appealed by Mr Tony Briggs-Price who owns and operates the site. The Inspector upheld the enforcement notice and retained the 11 steps specifying the works required to remedy the breach of planning control with minor amendments to the times for compliance and the works needed. The enforcement notice took effect on 1 November 2006. When no progress had been made to secure compliance with the notice appropriate proceedings were undertaken, and the matter was initially heard at Newark Magistrates Court on 20 August 2007 with 9 offences being charged. Various adjournments and delays were encountered before the matter was finally committed to the County Court in November 2007. In this period the site continued to operate and a further set of 9 charges were laid before the Court, mirroring the initial 9 charges, but covering the extended period of operation.

The case was heard at Nottingham County Court on 8 January 2008. No defence case was lodged. Following plea bargaining the first set of 9 charges were dropped and Mr Briggs-Price put in guilty pleas against the second set of 9 charges lodged for dates up to the end of October 2007. The Judge found Mr Briggs-Price guilty on the 9 charges and said that Mr Briggs-Price had brought the prosecution upon himself and that he should now comply with the notice. After lengthy debate regarding the financial position of the defendant the

Judge fined Mr Briggs-Price £2,500 for the first of the offences, but did not fine the remaining 8 offences; he also ordered Mr Briggs-Price to pay the Council's costs of £7,000. The fine was to be paid in £500 instalments, the first due by 31 January 2008 and the Council's costs were to be paid within 6 months, namely by July 2008.

### Suffolk

Suffolk CC in January considered progress being made on matters relating to breaches of planning control.

- At land adjacent Brunton Lane, Sudbury, non-compliance with a planning condition attached to the landfill permission requiring improvement of access track with a bound surface was subject to action. The Notice required compliance by 22 October 2007; works were not completed until 29 November. A Hearing to seek prosecution of the site operator in the Sudbury Magistrates' Court for non-compliance with the Breach of Condition Notice was adjourned in December and finally heard on 4 January.

- At land adjacent to Ten Tree Road Industrial area, Great Waldingfield, there was non compliance with conditions of planning permission for a waste recovery and transfer site in November, the Council issued a Temporary Stop Notice to prevent the unauthorised receipt of waste. This was withdrawn following the operator signing a Licence from Suffolk CC committing the operator to providing temporary kerbing at the highway junction to overcome the planning priority of securing highway safety at the junction prejudiced by the increased use if the junction arrangements remained unimproved. The reason for the temporary works was that neither the operator nor the council could insist on permanent works until all parties entered into Agreement to have their rights of access changed. The temporary works were implemented as required in the Licence. If the provision of the permanent works had not been provided by the 30 January, the requirement for reinstatement and removal of the temporary works would be invoked on the operator, and in default would have to be undertaken by Suffolk CC by 15 February with costs to be recovered. This action would be coupled with an Enforcement Notice and Stop Notice on the receipt of waste to the waste transfer site to address the continuation of the breach of planning control.

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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 7

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Agenda Item 8

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