

REGULATION COMMITTEE

Wednesday, 5th September, 2012

10.00 am

Council Chamber, Sessions House, County Hall,
Maidstone





AGENDA

REGULATION COMMITTEE

Wednesday, 5th September, 2012, at 10.00 am
Council Chamber, Sessions House, County Hall, Maidstone

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

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

Membership (17)

Conservative (15): Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman),
Mr M J Angell, Mr A H T Bowles, Mr C J Capon, MBE,
Mr H J Craske, Mrs V J Dagger, Mr J A Davies, Mr T Gates,
Mr W A Hayton, Mr R F Manning, Mr J M Ozog, Mr R A Pascoe,
Mrs P A V Stockell and Mr J N Wedgbury

Liberal Democrat (1): Mr I S Chittenden

Independent (1) Mr R J Lees

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. Chairman's Announcement
4. Minutes (Pages 1 - 20)
Committee: 15 May 2012
Member Panels: 15 June 2012
17 July 2012
5. Dates of meetings in 2013
Tuesday, 22 January 2013
Tuesday, 18 June 2013
Tuesday, 3 September 2013
6. Amendments to Regulation Committee Member Panel procedures (Pages 21 - 32)

7. Home to school Transport: to include a presentation on transport policy for 16 Plus Pupils, Free Schools, Denominational Schools and Grammar Schools (Pages 33 - 34)
8. Update from the Commons Registration Team (Pages 35 - 36)
9. Republication of Common Land and Village Green Register Maps (Pages 37 - 40)
10. Update on Planning Enforcement Issues (Pages 41 - 58)
11. Other Items which the Chairman decides are Urgent

EXEMPT ITEMS

(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)

Peter Sass
Head of Democratic Services
(01622) 694002

Tuesday, 28 August 2012

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

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KENT COUNTY COUNCIL

REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Tuesday, 15 May 2012.

PRESENT: Mr M J Harrison (Chairman) Mr A D Crowther (Vice-Chairman) Mr M J Angell (Substitute for Mr T Gates), Mr A H T Bowles, Mr R E Brookbank, Mr I S Chittenden, Mr H J Craske, Mrs V J Dagger, Mr J A Davies, Mr W A Hayton, Mr R J Lees, Mr S C Manion, Mr R F Manning, Mr J M Ozog and Mr J N Wedgbury

ALSO PRESENT: Mr M J Whiting

IN ATTENDANCE: Mr S Bagshaw (Head of Admissions & Transport), Ms C Fenton (Learning Disability and Mental Health Officer), Ms D Divine (Policy Officer - Mental Health), Mr C Wade (Countryside Access Principal Case Officer), Mrs L Wilkins (Definitive Map Team Leader), Mrs S Thompson (Head of Planning Applications Group), Mr R Gregory (Principal Planning Officer - Enforcement) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

8. Membership

(Item 1)

The Committee noted the appointment of Mr I S Chittenden in place of Mr S J G Koowaree.

9. Minutes

(Item 4)

RESOLVED that:-

- (a) the Minutes of the Committee meeting held on 24 January 2012, the Mental Health Guardianship Panel meeting held on 17 January 2012 and of the Member Panel meetings held on 20 March 2012 (2) are correctly recorded and that they be signed by the Chairman;
- (b) subject to the amendment of Minute 35 (b) to read "been rejected in respect of the rest of the application site", the Minutes of the Member Panel meeting held on 16 April 2012 are correctly recorded and that they be signed by the Chairman.

10. Mental Health Guardianship

(Item 5)

RESOLVED that the work of the Mental Health Guardianship Sub-Committee (formerly Panel) in ensuring the County Council's compliance with the Mental Health Act 1983 be noted.

11. Home to School Transport

(Item 6)

(1) Mr M J Whiting was present for this item pursuant to Committee Procedure Rule 2.21. He addressed the Committee in his role as Cabinet portfolio Holder for Education, Learning and Skills on the County Council's newly approved 16+ Travel Policy and explained that most 16+ transport appeals would now be considered by the School or College that the appellants attended.

(2) The Committee noted that Mr Geoff Rudd, the Assistant Democratic Services Manager would be retiring before the next meeting of the Committee. It expressed its appreciation for his many years of loyal service to the County Council and wished him well in the future.

(3) RESOLVED that the report be noted.

12. Update from the Definitive Map Team

(Item 7)

(1) The Senior Public Rights of Way Officer provided the annual update on the position in respect of applications to amend the definitive Map and Statement.

(2) RESOLVED that the report be noted.

13. Update from the Commons Registration Team

(Item 8)

(1) The PROW Team Manager provided a summary of the current position in respect of applications to register Town and Village greens. This included an update on the Newhaven Beach case.

(2) RESOLVED that the report be noted.

14. The National Planning Policy Framework (Oral presentation)

(Item 9)

(1) The Head of Planning Applications Group gave a presentation on the Localism Act 2011 and the National Planning Policy Framework 2012 and their implications for the County Council's Enforcement function. She agreed to send a copy of the presentation slides to all Members of the Committee.

(2) RESOLVED that the report be noted.

15. Update on Planning Enforcement Issues

(Item 10)

(1) The Committee noted that its planned visit to Shaw Grange, Charing would be held on Friday, 13 July 2012.

(2) RESOLVED that the report be noted and that the actions taken or contemplated on the respective cases set out in paragraphs 5 to 29 of the report be endorsed together with those contained within Schedules/Appendices 1,2 and 3 of the report.

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REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Swale 1, Sessions House, County Hall, Maidstone on Friday, 15 June 2012.

PRESENT: Mr M J Harrison (Chairman), Mr A H T Bowles, Mr I S Chittenden, Mr H J Craske and Mr R J Lees

IN ATTENDANCE: Ms C Anley (Head of Libraries, Registration and Archives), Mr A Thomas (Marketing and Licensing Manager), Mr R White (Development Planning Manager), Mr M Rayner (Development Control Engineer) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

7. The Lost Village of Dode

(Item 3)

(1) The Members of the Panel had visited the site prior to the meeting in order to familiarise themselves with its location. This visit was attended by the applicant, Mr D Chapman.

(2) The Chairman notified the meeting that late correspondence had been received from neighbouring residents, Mr and Mrs Mather. The Chairman ruled that as this correspondence was both very late and not pertinent to the matter in hand, it would not be considered by the Panel. He offered Mr Chapman (as a courtesy) the opportunity to comment on this correspondence. The latter strongly questioned the accuracy of the statements contained within it – particularly stressing that Mr and Mrs Mather could not have been disturbed at 11pm on a Sunday evening as the premises was never in use at that time. He also confirmed that the premises was not for sale.

(3) Mr H J Craske informed the Panel that he had in the past conducted marriage ceremonies at the Lost Village of Dode in his former professional capacity. This did not constitute either a personal or prejudicial interest, and he was able to approach the determination of the application with a completely open mind.

(4) The Chairman informed the meeting that the Local Member, Mrs S V Hohler had sent her apologies. He asked the Panel to note the content of her letter set out in the Appendix to the report.

(5) The Marketing and Licensing Manager introduced the report and asked the Panel to note that the date given in paragraph 7.3 of the report as “30 September” should read “31 October.”

(6) The Marketing and Licensing Manager then said that the applicant had asked for the removal of two conditions attached to the current licence. He was therefore requesting an unlimited number of days on which a ceremony could be held (currently 42) with no restriction on the days of the week (currently Thursdays, Fridays and Saturdays).

(7) The Marketing and Licensing Manager explained that the recommendation in the report had been made in the light of advice from Kent Highways. This differed from advice previously given in that it stated that there were no grounds in terms of highway safety for refusing the relaxation of conditions. Following advice received from the Director of Law and Governance, the recommendation was to agree to the relaxation of both the conditions sought by the applicant.

(8) The Marketing and Licensing Manager said that further representations from Mr Chapman, Luddesdown PC and Mr and Mrs Mileson had been received and appended to the agenda papers after the report had been written and the recommendations made. In the light of this correspondence, he had sought advice from the Tonbridge and Malling Borough Environmental Health Officer. He had advised that in order to determine whether a noise constituted a “nuisance”, he had to take into account a number of factors such as regularity, volume and length of time in the context of whether it interfered in some way. An example of this would be if people could not hear their television above the noise. Noise did not become a nuisance simply because it could be heard. He had not received any documented complaints about noise which had led to action being taken in respect of The Lost Village of Dode. The Marketing and Licensing Manager had also received the same response in respect of noise nuisance complaints from the Gravesham Borough Environmental Health Officer.

(9) The Marketing and Licensing Manager concluded his presentation by saying that in the light of the specialist advice received both from Kent Highways Services and from the Borough Environmental Health Officers, he did not believe there were any valid reasons to reject Mr Chapman’s request to remove the two conditions.

(10) In response to a question from the Chairman, the Head of Libraries, Archives and Registration confirmed that the Registration Authority’s responsibilities were restricted to ensuring that the marriage ceremonies themselves did not constitute an unacceptable nuisance. Any other events that took place at this venue (including for example, a reception) were outside of its remit.

(11) The Development Planning Manager said that the reason for Kent Highways Services’ recommendation was that as it was acceptable in highways safety terms for marriage ceremonies to be held on three days of the week, there were no grounds to conclude that it would be unacceptable on the other four. He also confirmed that “nuisance” was not a highways matter and that his advice therefore did not cover this question.

(12) Mr C Mileson, a local resident spoke in objection to the proposed removal of conditions. He prefaced his remarks by saying that his complaints about noise nuisance had formed part of an overall complaint to the Borough Planning Officers and had therefore not been sent to the Environmental Health Officer.

(13) Mr Mileson then said that his family’s quality of life was being adversely affected by nuisance from traffic and noise arising from weddings taking place at The Lost Village of Dode.

(14) Mr Mileson went on to say that the report in front of the Panel only referred to the traffic situation in Wrangling Lane, whereas it was also important to consider the

impact on the single track lanes leading up to Wrangling Lane, such as Buckland Road and Cutter Ridge Road. The concerns were that there were no passing places available in the first 200 metres of Wrangling Lane and none for a quarter of a mile along Cutter Ridge Road; two cars had been written off during the last year from collisions along the blind bend on Buckland Road; there had been damage to an electrician's vehicle and a dent to a plumber's vehicle along Buckland Road; and the great care that needed to be shown by drivers when they passed other vehicles at some places along Buckland Road due to the steep bank between the road and the fields.

(15) Mr Mileson then said that no work had been done to improve the roads since Kent Highways had advised in 2006 that increased traffic movements and frequency of road use would cause a nuisance to road frontages and neighbours to the detriment of road safety. He asked what had changed since that time to lead Kent Highways Services to change its advice.

(16) Mr Mileson continued by saying that the current position was that residents knew that weddings were only taking place on Thursdays, Fridays and Saturdays. This enabled them to plan ahead so that they could avoid meeting wedding party vehicles when they knew ceremonies were going to take place.

(17) Mr Mileson referred to Regulation 6 (1) (b) of the 2005 Regulations concerning the responsibility of the licensing authority to attach special conditions to ensure that weddings did not give rise to a nuisance of any kind. Although there were some weddings which were fairly quiet affairs (where only the ceremony was performed), there were occasions when there was festive loud music, laughing, drinking and shouting.

(18) Mr Mileson said that he disagreed with the Officer report's view that imposing local conditions could be regarded as a restriction on the venue owner's trade. This was because the Regulations did not require this issue to be taken into account. He nevertheless felt that 42 weddings a year would generate a good income and that permitting weddings on Thursdays, Fridays and Saturdays already gave couples 100 days to choose from.

(19) Mr Mileson concluded his remarks by saying that so far from there being no valid reason for imposing conditions, they were in place for a good reason and that there were very good grounds for maintaining them. The fact that the conditions had successfully reduced nuisance did not mean that they should now be removed. The conditions as they stood enabled couples to get married in a beautiful place whilst avoiding an adverse impact on local residents. He therefore asked the Panel not to amend the licence conditions.

(20) In response to a question from the Chairman, the Development Control Engineer confirmed that the Highways Authority had not installed any formal surfaced passing bays in the area. The passing points had been created locally by eating into the verges.

(21) Mrs A Jones (Chairman of Luddesdown PC) said that it was important to recognise that Mr Chapman had rescued the building and to thank him for doing so.

(22) Mrs Jones said that during the first three years that the venue had been used (2000-2003) there had been no restrictions on days of use or on the number of ceremonies. This had led to many complaints which had gradually reduced in number after restrictions were imposed. She noted that both the local MP, Adam Holloway and the local County Councillor, Mr Snelling supported the continuation of restrictions (*although the Panel had no written confirmation of this statement during the meeting, Mr Craske was able to confirm that Mr Snelling had indicated this to him. Mr Holloway's correspondence was not received until after the meeting was over*).

(23) Mrs Jones said that local residents had three areas of concern. These were firstly that the restrictions were working and that their removal would lead to greater nuisance and disturbance; secondly, the venue had recently been put up for sale – although it had now been withdrawn from the market there were lingering fears as to what might happen if another owner made use of the property; and thirdly that the directions to the venue sent vehicles along 3.2 miles of single lane track with few opportunities for passing. There had been occasions when local drivers had been confronted by a minibus. They had found the experience intimidating.

(24) Mrs Jones concluded her remarks by saying that the problems often occurred with events associated with the wedding ceremonies rather than with the actual ceremonies themselves. She believed that the conditions were working in the best interests of the neighbourhood and that it would be wrong to relax them.

(25) The Chairman re-affirmed that the Panel's remit was limited to consideration of the conditions attached to the licence for marriage ceremonies (including renewal of vows or welcoming ceremonies). Anything else that took place (whether in relation to the ceremonies or not) was a matter that would need to be raised with the Borough authorities.

(26) Mr D Chapman (applicant) said that the property had been a drug den when he had purchased it some 20 years earlier. He and his wife had spent seven years restoring it to good condition. This had not been done with an eye to conducting marriage ceremonies. The Law had only been changed to permit him to do so after the restoration had been completed.

(27) Mr Chapman then said that The Lost Village of Dode was probably the only venue in the County dedicated to weddings. It was, however, rated as a Hall – and had been used in that capacity to host receptions and other events.

(28) Mr Chapman continued by saying that people had raised issues in respect of the venue with Tonbridge and Malling BC for 20 years. This was despite the fact that ceremonies were heavily conditioned, and that these conditions had never been breached. Furthermore, neither Gravesham nor Tonbridge and Malling BC had ever upheld any of the complaints made about the venue. He said that he did not accept that there was excessive noise or that there were any highways safety issues arising from wedding ceremonies.

(29) The Development Control Engineer confirmed that there had been no personal injury accidents reported in Wrangling Lane or Buckland Lane or within half a mile of the venue. Over the previous ten years there had been 2 or 3 slight accidents and 1

severe accident in the area but these could not be linked to events at The Lost Village of Dode.

(30) Mr Chapman said that the fee for conducting a ceremony at Dode was £2,000. This would currently bring in a maximum gross income of £80,000 to be offset by rates and expenses. In recent years, couples had indicated that they could not pay the full fee. He therefore considered that if he could conduct more weddings and fit the date to suit the couples, he could reduce the fee and still break even.

(31) Mr Chapman then said that if he could not make the weddings pay for themselves, he would need to use Dode as a Hall for other events.

(32) Mr Chapman went on to say that Dode was a small and beautiful building. The walls were 3 ft thick, the windows 9 inches wide. The nearest neighbouring property was 400 yards away. The conditions were meticulously applied and there had been no complaints from either Borough Council. The only time that local residents complained about nuisance was when the licence came up for renewal or review. The smallness and remoteness of the venue meant that the couples who got married at Dode were not the sort of people who would make a lot of noise.

(33) Mr Chapman concluded by saying that in order for the venue to be cost effective, he needed the freedom to hold them on more than three days of the week. People often asked to hold the ceremony on a particular date or day of the week. He said that he would not have a problem in advising the Parish Council of the dates that the events were taking place if this was considered helpful. The reality was that weddings would not be held every day (indeed, he would not wish to do so). In practice, he would expect a maximum of 4 to 5 in any one week if he was allowed to use whichever date people asked for.

(34) The Chairman asked whether Mr Chapman would be content if he were limited to four days a week but with the ability to choose which ones to use. Mr Chapman replied that an arrangement of this nature might work.

(35) The Marketing and Licensing Manager replied to a question from Mr Craske by saying that the Registration Service had to attend weddings every day of the week. The busiest days for the Service were Fridays, Saturdays and Sundays.

(36) The Chairman asked whether any of the speakers wished to make a final contribution. Mrs Jones asked Mr Chapman how many days he felt he needed in order for his business to be cost effective. Mr Chapman replied that he estimated that he would need to double the number allowed to 84. Mr Mileson said that the current licence, including its conditions was an acceptable compromise and that local residents should not be asked to endure any more.

(37) The Marketing and Licensing Manager confirmed that he had not assessed "nuisance" by any subjective criteria. His recommendation had been based on the professional views of Kent Highways Services, the Director of Law and Governance and the Borough Environmental Health Officers.

(38) In response to a question from Mr Bowles, Mr Chapman confirmed that the number of ceremonies had reduced in recent years as a result of the economic downturn. However, three years earlier the venue had been fully booked.

(39) Mr Chittenden said that if the Panel were to refuse Mr Chapman's request, he would like to propose that the number of weddings should continue to be limited to 42 but that use of the venue for marriage ceremonies should be permitted from Tuesday to Saturdays.

(40) The Chairman asked Mr Chapman how the number of people and vehicles at the venue was controlled. He also asked whether Mr Chapman would be happy to accept the suggestion made by Mr Chittenden.

(41) Mr Chapman replied that the number of people present was limited to 40 guests (including photographers), the couple, two registrars (who would need to report if any breach of condition had occurred) and himself. The limit specified in the Fire Certificate was also 45. He had no interest in amending or breaching that particular condition and had always scrupulously complied with all the conditions set. In response to the Chairman's second question, Mr Chapman said that the suggestion made by Mr Chittenden would not be acceptable to him.

(42) On being put to the vote, the recommendation set out in paragraph 7.2 of the report was lost by 3 votes to 2.

(43) RESOLVED that:-

- (a) the removal of the two licence restrictions requested by Mr Chapman (that a maximum of 42 ceremonies per year be allowed; and that ceremonies be restricted to Thursdays, Fridays and Saturdays) be not agreed; and
- (b) the remaining licence restrictions be retained, namely;
 - (i) that ceremonies be restricted to no more than one per day;
 - (ii) that ceremonies be restricted to the period 1 April to 31 October and 1 December to 23 December each year; and
 - (iii) all other existing local restrictions for example on the number of people attending ceremonies and car parking.

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Hythe Town Hall, High Street, Hythe CT21 5AJ on Tuesday, 17 July 2012.

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

ALSO PRESENT: Mr C J Capon, MBE

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

UNRESTRICTED ITEMS

8. Application to register land known as The Former Airfield at Aldington Road in the parish of Lympne as a new Village Green *(Item 3)*

(1) The Panel Members visited the application site prior to the meeting. The visit was attended by the applicant, Mr D Plumstead, Mr P Jones from the Somerston Group of Companies (Landowner), Mr J Burrows (Chairman of Lympne PC) and some half dozen members of the public.

(2) The Commons Registration Officer introduced the application which had been made by Mr David Plumstead on behalf of the Shepway Environment and Community Network under Section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008.

(3) The Commons Registration Officer explained that the task for the Panel was to consider whether it could be shown that a significant number of the residents of a locality or of any neighbourhood within a locality had indulged as of rights in lawful sports and pastimes on the land for a period of at least 20 years. This meant that the Panel had to consider whether every single test contained in the Commons Act 2006 had been met. It was not open to the Panel to consider the suitability or desirability of registering the land. Nor was it entitled to consider the application in the light of any other possible uses to which the land might be put in the event that registration did not take place.

(4) The Commons Registration Officer said that the applicant had stated that the application site had been used as an airfield before the First World War and had been a frontline operational airfield during the Second. The land had continued to be used as a civilian airfield until the mid 1970s. During this time and until November 2010 access had remained freely available to local residents, without challenge, for recreational purposes.

(5) The Commons Registration Officer then said that the application site was owned by Phides Estates (Overseas) Ltd. Their solicitors, McGrigors LLP had

objected on their behalf on the grounds that informal use had not been “as of right” because until 2006 the landowners had erected and maintained notices and fencing, whilst after that year access had been provided on a permissive basis. Between 1995 and 2006, express revocable permission had been granted to local residents in neighbouring properties. McGrigors had also argued that use by walkers should be discounted, that any recreational use had been interrupted by extensive engineering and infrastructure works, and that the qualifying area had not been properly defined by the applicant, who had been unable to demonstrate significant use.

(6) The Commons Registration Officer went on to consider the legal tests for registration. The first of these was whether use had been “as of right.” All parties were in agreement that there had been no question of secrecy. The main area of dispute was whether use had been by force (i.e. whether use of the land had been contentious). The landowner had claimed that fencing had been in place along the boundaries of the site, together with various notices throughout the entire qualifying period (1990 to 2010). The applicant, on the other hand considered that recreational use had been the subject of neighbourly toleration, as evidenced by the landowner’s relaxed attitude towards the maintenance of fencing.

(7) The Commons Registration Officer said that, having considered the evidence provided, it was possible that the landowner had overstated the commitment to the maintenance of fencing and notices prior to 2006 and that there had been periods when use had been unchallenged. Nevertheless, the landowner had written to a local farmer (who had been permitted to use the land for grazing) in 1995 to warn him of the need to check whether fencing had been torn down in order to satisfy himself that the land was secured. A statutory declaration made in 2002 had referred to “No trespassing” signs and to the fencing along Aldington Road being intermittently torn down or damaged. Her conclusion, therefore was that there would have been times when the fencing was complete and access closed off. Use of the application site would, therefore, have been contentious, against the landowner’s wishes and not “as of right.”

(8) The Commons Registration Officer then referred to the erection of the notice accompanying the stile on the south east corner in 2006 as well as to the letters written to local residents in 1995. These clearly expressed the intention of the landowner to permit access and to be in a position to withdraw that permission at any time. This rendered use of the site “by right” rather than “as of right.”

(9) The Commons Registration Officer then explained that, despite the landowner’s comments, walking was considered to be an example of a lawful sport or pastime. She therefore considered that this test was met (subject to the landowner’s challenges to use).

(10) The Commons Registration Officer also accepted that Lympe qualified as a locality as it was a recognised administrative area. Use seemed to have been by a sufficient number of people from Lympe to indicate to the landowner was in general use by the community. However, when considering whether use had been by a “significant number” this needed to be set against the likelihood that use had been more sparse during the early years of the qualifying period and that use during the later years had either been contentious or permissive.

(11) The Commons Registration Officer said that alleged “as of right” use had clearly ceased in November 2010 due to the removal of the stile and the erection of the notice. The application had been made in February 2011, which was within the two year grace period provided for by Legislation.

(12) The Commons Registration Officer said that the landowner claimed that the gas main installation in 2008 had involved the closure of the whole of the site. This claim was supported by evidence from several of the applicant’s witnesses. The period of closure had been in the region of two months. The *Betterment Properties 2012* case had led to the failure of an application as a result of a four month closure for drainage works. This suggested that it might be concluded that recreational use had not continued uninterrupted for the necessary 20 year period.

(13) The Commons Registration Officer concluded her presentation by confirming that the application could not succeed if it failed any one of the legal tests. In this case, there was sufficient evidence for her to conclude that use of the site had been either contentious or with permission. It could not, therefore have been “as of right.” Consequently, she was in a position to recommend to the Panel that the application should not be accepted.

(14) Mr John Burrows (Chairman of Lympne PC) referred to the four grounds for objection set out paragraph 13 of the report. He said that it was clear from the Officer’s report that two of these objections were invalid as the applicant had sufficiently described the qualifying locality and had also mistakenly assumed that walking was not a lawful sport or pastime.

(15) Mr Burrows then said that paragraph 47 of the report stated that all parties agreed that use “as of right” had expired in November 2010. He suggested that use of the site before that date must surely have been “as of right.” He considered that the *Betterment Properties 2012* case did not apply in this instance because the works on the site had not restricted the use of the land “as of right” for the majority of local residents. This meant that there had not been an interruption to such use in 2008 during the qualifying period. The effect had been the same as having remedial work undertaken on a footpath and then restoring it a short while later. Such work did not render the footpath any less a footpath and the same principle needed to be applied in this case.

(16) Mr Burrows disputed that use of the site had not been as of right. He said that it was the view of the Parish Council that the owner had done nothing to discourage use of the application site during the 20 years in question and had even installed a stile to assist entry. The site had been used extensively by local residents even before 1990 for dog walking, sports and pastimes. Minor restrictions for Health and Safety reasons such as engineering and environmental works had been nothing more than inconveniences, which had not prevented residents from gaining access to the site. The proposal for a skateboard park (referred to in paragraph 18 of the report) had in reality been nothing more than a scoping exercise by a local group from the village. They had approached the Parish Council to determine the viability of a skateboard park in the village.

(17) Mr Burrows summed up by saying that the Parish Council did not agree with the Officer’s recommendations. He therefore suggested that, in the light of the diametrically opposed views on the question, a non-statutory Public Inquiry would be the fairest way to resolve the anomalies between the opposing sides.

(18) Mr John Simpson, a local resident said that he had moved in to the parish in 1999 and that he had always been aware of the integral role played by the Airfield in village life. He had personally walked on the site and made many friends.

(19) Mr Simpson went on to describe the history of the Airfield in both war and peace time. This description covered its construction in 1916, the air races in the 1920s and 30s, the Cinque Ports Flying Club, its role during the Second World War (including Dunkirk, Dieppe, D Day and combating the V1 menace), early jet flights, Skyways, and the 6 lives lost during a parachute club accident in the 1980s. He said that many famous people had had connections with the Airfield, including Winston Churchill, Noel Coward, Roy Orbison, Edward Heath and Lawrence of Arabia. He asked the Panel not to allow such a glorious history to be buried beneath a housing estate.

(20) The Chairman thanked Mr Simpson for his presentation. He said that it was essential to understand that the Panel was not legally permitted to consider either the history of the application site or any alternative use to which it might be put in the event that registration did not take place.

(21) Mr Peter Gaston, a local resident said that he had lived in Lympe since 1980. He said that flying had ceased at the Airfield in 1981/82 and that since then it had been used for dog walking and other leisure activities. In fact the land had been freely used since the end of the Second World War.

(22) Mr Gaston then said that Lympe was witnessing increasing industrial development, including an expanding industrial estate. The Airfield represented a buffer zone between this estate and the village and needed to be maintained as an open area rather than becoming swallowed up for housing and other economic development planned by Shepway DC.

(23) Mr David Plumstead from *Shepway Environmental Community Network (SECN)* (applicant) said that he had lived in Lympe for 45 years and that he had witnessed the destruction of important buildings, fields and wildlife. The SECN had come together in order to put a stop to the destruction of this part of the world. He quoted from Article 1 of the KCC Constitution: "The overriding role of the County Council is to improve the quality of life of the people of Kent." The most appropriate way of achieving this role in Lympe would be to register the application site as a Village Green.

(24) Mr Plumstead then referred to paragraph 51 of the report which described a significant conflict of evidence, absence of evidence and considered the possibility of reference to a Public Inquiry. He said that the sentiments of this paragraph called the integrity of the people of Lympe into question.

(25) Mr Plumstead then turned to paragraph 52 of the report. He said that the *Beresford 2003 Case* had established that the mere management of the land did not imply that use had not been as of right. It was necessary, instead, for the landowner to show that use had been contentious. He questioned the significance of sheep grazing on the land as this activity had not prevented access. He also disputed that the erection of signs by the landowner was in any way relevant. This was because

use by force would only have been demonstrated if they had been torn down and damaged.

(26) Mr Plumstead also disagreed with the interpretation placed in the report on the evidence given to the 2000 Public Inquiry on a contested planning application. Although there had been only one recorded reference to recreational use of the site, this was because the Planning Inspector had not asked questions about it.

(27) Mr Plumstead continued by saying that the report used the words “would have materially interrupted...” when analysing the impact of various works, including the installation of a gas main in 2008. He commented that this was mere surmise. He believed, on the other hand, that because only 7 people had mentioned this in their statements, the general use of the site would have continued uninterrupted at all times.

(28) Lastly, Mr Plumstead said that the erection of the stile by the landowners should be seen as an inducement to local residents to the south east of the site to take advantage of a commonly used facility – rather than as an indication of permissive use.

(29) The Commons Registration Officer commented on Mr Plumstead’s presentation by saying that the installation of the stile had been accompanied by a notice, which had definitely indicated that the landowner was permitting use. She did not consider that local expectations should be raised by holding a Public Inquiry because the landowner had already provided sufficient evidence to demonstrate that use of the land had been contentious before the stile was put up.

(30) Mr Philip Jones from the Somerstone Group of Companies addressed the Panel as the landowner. He said that it had always been the intention Phides Estates to develop the land for residential purposes. The land had always been maintained for this very reason. The fences had been maintained through the qualifying period, although he accepted that this work had not been consistently carried out. However, he had been able to provide the officers with sufficient evidence of bills and invoices to demonstrate the point. “No Trespassing” signs had been in place throughout the 1990s and people had needed to break down the fencing in order to gain access. He therefore believed that there was ample evidence to prove that use had not been “as of right”. He agreed with the conclusions in the report and also believed that there was no need for a Public Inquiry as this would needlessly raise people’s hopes and involve his group of companies in a great deal of unnecessary energy, effort and expense.

(31) Mr Pascoe asked whether there was any confirmation of the existence of a “No Trespassing” sign. The Commons Registration Officer replied that this had taken the form of a Statutory Declaration in 2002.

(32) Mr Craske said that this was clearly an important historical site and that the carefully constructed report had given the application full and appropriate consideration. He considered that the critical question was whether use of the site had been “as of right.” The application failed because of the fencing and signs (and their remains) that had been put up and also because the installation of the stile proved that later use had been with permission.

(33) On being put to the vote, the recommendations of the Head of Regulatory Services were carried unanimously.

(34) RESOLVED that the applicant be informed that the application to register land known as the former Airfield at Aldington Road in the parish of Lympe as a new Village Green has not been accepted.

9. Application to register land known as Fisherman's Beach at Hythe as a new Town Green

(Item 4)

(1) Members of the Panel visited the application site before the meeting. The visit was attended by Mr D Plumstead (the applicant), Councillors Mrs R Griffith and A Mayne accompanied by the Clerk, Mrs M McCormick from Hythe TC, Mr C J Capon (Local Member) and some 10 local residents.

(2) The Commons Registration Officer introduced the application which had been made under Section 15 of the Commons Act 2006. She confirmed that it was possible in Law to register a beach as a new Town Green, provided that the application passed all of the legislative tests. She confirmed that the Registration Authority could not take amenity or desirability criteria into account when deciding whether to register.

(3) The Commons Registration Officer confirmed that the consultation arrangements had been correctly carried out. Hythe TC had stated that it neither supported nor opposed the application but that it wished for a non-statutory Public Inquiry to be held in order to give the residents the opportunity to make their views known. Mr C J Capon (Local Member) had expressed his support for the application, as had the Hythe Neighbourhood Forum.

(4) The Commons Registration Officer went on to describe the application site. The land had been acquired by Shepway DC in 1984 and had been used as a working beach for local fishermen. The site was now set out differently to the way it had been before. Formerly there had been 30 huts, but the beach was now used less intensively.

(5) At this point, Mr J Chambers from Shepway replied to questions by the Chairman and other Members by saying that an area of the site had been fenced off to enable Channel contractors to deal with cyanide contamination on the beach. The area in question would be capped and have its shingle levels raised. A number of huts had been demolished and tenancies had not been renewed since March 2010. This was because the District Council intended to develop the land north of the track. This meant that they could only provide huts for 9 fishermen and the Seabrook Sea Angling Association.

(6) The Commons Registration Officer resumed her presentation by outlining the objections from Shepway DC. These were that the site had not been in continuous use for twenty years as some parts of it had been permanently occupied by huts and boat berths for all or part of the qualifying period; that use had not been by a significant number of local residents; and that use had not been "as of right" as the Council had made intensive use of the land for other purposes.

(7) Shepway DC had included 3 statutory declarations in support of its objections. These included the District Council's Estate Management Officer (Mr P Marshall) who had made many visits to the beach to carry out site inspections. He had stated that a heavy duty metal gate (with padlock) had been installed in 2002 next to Griggs Fishmongers on Range Road. This had been accompanied by a notice reading "No Unauthorised Access". Three further notices had been erected in 2003. These read "Caution – Working Beach Beyond This Point – Be Warned of Possible Dangers Surrounding Boat Winching Operations – This Beach is not Recommended for Bathing."

(8) The Commons Registration Officer moved on to consider the legal tests. The first of these was whether use of the land had been "as of right." She considered that this test had been met because the area of land had not been fenced off and the wording of the signs neither contested recreational use nor signified that such use was permissive.

(9) The Commons Registration Officer briefly set out that the evidence submitted in support of the application suggested that the land had been used for the purposes of lawful sports and pastimes; that it had been used by a significant number of inhabitants of the electoral ward of Hythe Central in Hythe; and that application date of August 2010 was well within the two year grace period prescribed by Law after use of the land became contentious in May of that year.

(10) The Commons Registration Officer then turned to the question of whether use had taken place over a period of twenty years or more. The qualifying period was 1990 to 2010. Shepway DC claimed that since 1984, significant areas of the beach had been used by its tenants for fishing activities. The fishermen's huts would have prevented public access to those portions of land on which they were sited. Shepway DC also believed that large portions of the rest of the site had often been temporarily unavailable for recreational use due to the launching of boats and storage of fishing equipment. These activities had created numerous interruptions to use throughout the relevant period.

(11) The applicants, however, maintained that there had always been recreational use of those areas occupied by boat berths, fishing nets and equipment. This was because they were continually on the move and did not remain in the same position for long or return to the same spot on the beach after each landing.

(12) The Commons Registration Officer summed up her presentation by saying that due to the conflicting nature of the evidence before her, she was unable to determine whether recreational use had continued uninterrupted throughout the relevant twenty year period. For this reason, she was recommending the setting up of a non-statutory Public Inquiry to clarify the issues.

(13) Councillor A Mayne from Hythe TC said that there was overwhelming support for the application in the Town. Councillor Mrs R Griffith said that in her view all the legal tests had been met and the application should be accepted.

(14) Mrs M McCormack (Clerk to Hythe TC) said that the Town Council believed that most of the tests had been met. However, as there was an element of doubt in respect of the 20 year period, the best way to proceed was through the holding of a

Public Inquiry. This would give everyone the opportunity to give their evidence and make their views known.

(15) Mr D Plumstead (applicant) began his presentation by saying that Fisherman's Beach had been home to the Lifeboat Service in the 1800s. The Wakefield family had replaced the original self-righting lifeboat shortly before the Second World War. The beach was an important part of Hythe's heritage and local people felt very protective about their long-established rights to it.

(16) Mr Plumstead then said that the local residents placed far greater value on Fisherman's Beach for its history and ability to attract visitors than on the returns from any future development. Local people enjoyed the disparate collection of pots and nets. This was particularly true of the school children who loved to draw the interesting shape and colours.

(17) Mr Plumstead drew attention to the gradual whittling down of the number of fishing licences issued by Shepway DC, before saying that nobody paid any attention to the notices put up by the District Council as they were not sure what their purpose was supposed to be.

(18) Mrs C Chivers (Head Teacher of Hythe Bay CEP School) said that her school was no more than 50 metres from Fisherman's Beach. The children had no play spaces apart from the Beach and needed the opportunity to visit it as often as possible. KCC's Outdoor Education Unit encouraged the School's pupils to visit Fisherman's Beach and it had become the hub of its curriculum delivery (particularly in respect of artwork). If the Town Green application succeeded, it would enable many more generations of pupils to learn to understand the heritage, beauty and heart of Hythe.

(19) Mrs Z Kerrigan (local resident) said that she had lived in Hythe since 1959 and visited Fisherman's Beach at least once a month. This was true of a number of her friends.

(20) Mr K Jones (local resident) said that he was able to confirm that the fencing that Members had noted before the meeting had been put up 2 ½ years earlier. He also said that Shepway DC had proposed moving the fishermen towards the Rifle Ranges and that they had been threatened with losing their licences if they objected.

(21) Timothy Morshead QC spoke on behalf of Shepway DC. He said that it was Shepway DC's ambition to preserve Fisherman's Beach in order to maintain the certainty of continuing fishing in Hythe. He then asked the applicant to consider whether he had fully realised the potential consequences of registration. For example, there would be no possibility of preventing exercise and recreation in any lawful form, whilst erecting a building or disturbing the beach would be an offence under the Victorian statutes which protected Village Greens.

(22) Mr Morshead asked whether the applicant would be prepared to withdraw his application and produce a revised version which only included the area of shingle and the beach. This was because the application as it stood was too ambitious and could also put fishing at risk.

(23) The Chairman asked Mr Plumstead whether he wished to withdraw the application. Mr Plumstead replied that he wished to continue with it.

(24) Mr Chambers (Shepway DC) said that the District Council's plans for Fisherman's Beach had involved relocating the fishermen and Griggs Fishmongers to the west end of the site. To achieve this they had offered them the western huts which had stood empty. They had been happy with the new arrangement.

(25) Mr C J Capon (Local Member) said that he was the Chairman of the Hythe Neighbourhood Forum, which fully supported the application. He had on numerous occasions invited Shepway DC to send representatives to these meetings, but so far no one had come. If they had done so, they would have realised the strength of feeling in support of registering the application site as a Village Green.

(26) Mr Capon then said that he was very disappointed that rather than come to the Neighbourhood Forum to discuss local concerns, the District Council had chosen to come to the Panel meeting accompanied by a Barrister. Mr Morshead's contribution had possibly put doubts in the applicants' minds, whilst making them an offer (that should have been made much earlier) to enter into discussions.

(27) Mr Capon concluded his remarks by repeating his invitation for Shepway DC to come to meetings of the Hythe Neighbourhood Forum and to listen to its views and those of the Town Council.

(28) Mr Pascoe said that he had personally used Fisherman's Beach as a photographer. He had not been prevented from doing so. He then asked Mr Morshead for clarification of his remarks regarding the future of the fishing activities on the land.

(29) Mr Morshead replied that if Fisherman's Beach were registered as a Town Green, there was a risk of moving from a position of certainty about the site's future to a position of quite considerable uncertainty.

(30) Mr Craske said that the Panel's only consideration had to be the application itself, rather than any possible consequences. He believed that four of the legal tests had been passed but that the fifth test needed further examination. He therefore moved the recommendations, seconded by Mr I S Chittenden.

(31) On being put to the vote, the recommendation set out in paragraph 57 of the report was carried unanimously.

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

10. Application to register land known as Round Wood in the parish of Boxley as a new Village Green

(Item 5)

(1) The Panel considered a report by the Head of Regulatory Services concerning an application by Boxley Parish Council to register land known as Round Wood as a new Village Green.

(2) The Commons Register Officer explained that the Parish Council now wished the application to be withdrawn as the Landowner, Kent County Council had offered

to voluntarily dedicate a much larger parcel of land. This land included all of the area of the application with the exception of the parcel of land next to Windfell Close, which was being considered for development.

(3) The Commons Registration Officer recommended to the Panel that it would be fair and reasonable under the circumstances to allow the Parish Council's original application to be withdrawn in favour of the determination of the new application.

(4) RESOLVED that the applicant's request for the withdrawal of the application to register land known as Round Wood in the parish of Boxley as a new Village Green be agreed.

11. Application to register a new Right of Common at Southborough Common *(Item 6)*

(1) The Committee considered a report by the Head of Regulatory Services concerning an application by Dr P Stookes to amend the Register of Common Land for unit CL35 to enable him to exercise the right of estovers (the right to collect firewood) over the whole of Southborough Common.

(2) The Commons Registration Officer informed the Panel that based on the evidence provided, she was satisfied that the applicant was entitled to make the application and that the owner had consented to the creation of the new right of common.

(3) RESOLVED that:-

(a) the applicant be informed that the application to amend the Register of Common Land to register a new right of common has been accepted; and

(b) the Register of Common Land for Unit CL35 be amended accordingly.

By: Mike Harrison – Chairman of Regulation Committee
Peter Sass - Head of Democratic Services

To: Regulation Committee - 5 September 2012

Subject: Proposed Amendments to Regulation Committee Member Panel procedures

Classification: Unrestricted

Summary: The Committee is invited to agree to make minor amendments to its Member Panel procedures to clarify that it is the local County Member who is invited to address Panel meetings.

1. Introduction

(1.1) The Regulation Committee determines a number of applications by reference to a Member Panel. Each of type of application has its own set of procedures.

2. The Local County Member

(2.1) The procedures for Town/Village Green applications; Public Rights of Way applications; Gating Order applications; and applications for the Registration of a Premises for the Solemnization of Marriages all specify that the Local Member has the opportunity to make representations.

(2.2) Following consideration of a recent application, a local District Councillor referred to the relevant procedure and submitted a complaint to the Chairman that she had not been given the automatic right to address the Panel.

(2.3) This complaint strongly suggested that the term “Local Member” is capable of being misinterpreted as automatically permitting representations by any local representative from any authority.

3. The proposed amendment

(3.1) In order to clarify that it is only the “local Member” from Kent County Council who has this automatic right it is proposed that the words “Kent County Council” are inserted between “local” and “Member” on each occasion that the term is used. The four procedures are set out in the **Appendix** to this report with the proposed additional wording inserted in bold.

4. Recommendations

(4.1) Members are invited to agree to the amendments to the procedures as described in paragraph 3.1 above and set out in the Appendix to the report.

Andy Tait
Democratic Services Officer
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APPENDIX

KENT COUNTY COUNCIL

REGULATION COMMITTEE

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

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

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

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

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

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

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

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

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

(e) The applicant has the right to be the last of the public speakers. There is no further right for the public to speak during the remainder of the meeting.

- (f) The Panel will then discuss the report and its recommendations and will also offer the local **Kent County Council** Member the opportunity to make representations. The application will then be determined.
5. In the event that the decision is to refuse the application or to attach conditions to an approval, the applicant has the right to seek a review of that decision by another Panel (comprising five different Members of the Regulation Committee and meeting on a separate date). There is a separate procedure for any such review.

KENT COUNTY COUNCIL

REGULATION COMMITTEE

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

- 1) The decision as to whether or not to approve an application for the creation, stopping up or diversion of any footpath or bridleway or the reclassification of any public path is taken by Members of a Panel of the Regulation Committee.
- 2) At any such meeting the Council will permit members of the public and other interested parties to speak to the Panel Members.
- 3) The purpose of allowing people to speak is to enable them to add any information that they feel may be missing from the report of the Head of Regeneration, or which they feel has been insufficiently emphasized in it. They will not normally be allowed representation by solicitors or other professional agents.
- 4) If a Panel of Members needs to consider an application, the following procedure applies:-
 - (a) A Panel of Members is selected, consisting of 4 Conservative and 1 Liberal Democrat Member of the Regulation Committee (this confirms proportionally to the overall number of political Group Members in the Council as a whole). The Chairman of the Panel will normally be the Chairman or Vice-Chairman of the Regulation Committee.
 - (b) The Clerk of the Panel writes to all parties who have previously corresponded on the application 5 clear working days before the meeting, enclosing the report which the Panel will be considering and advising them that if they wish to speak about the application they **MUST** contact as follows:

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

- (c) The Panel will normally meet in public unless the Panel resolves to exclude the press and public under the provisions set out in Section 100A of the Local Government Act 1972. Normally, the Panel will listen to representations from up to four parties. These **WILL** include:-

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

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

- (d) At the Panel meeting, the Chairman will explain the procedure for the meeting and then ask the Head of Regeneration or her representative to introduce the report and explain the reasons for its recommendations.
- (e) Each speaker will be allowed up to five minutes to address the Panel about the application. Speakers should bear in mind the following:-
 - (i) The Panel will listen to what each speaker says but will not debate the merits of their opinions with them;
 - (ii) The Chairman will inform the speakers when they have one minute left to speak and when their time is over;
 - (iii) The speakers should concentrate on explaining the points they have already made in writing. They should not attempt to surprise the Panel with new information. Any such information should already have been given to the Head of Regeneration in time for it to have been evaluated professionally.
- (f) The landowner has the right to be the last of the public speakers. There is no further right for the public to speak during the remainder of the meeting.
- (g) The Panel will then discuss the report and its recommendations and will also offer the local **Kent County Council** Member the opportunity to make representations. The application will then be determined.

KENT COUNTY COUNCIL

REGULATION COMMITTEE

PROCEDURE FOR CONSIDERING APPLICATIONS TO MAKE, VARY OR REVOKE GATING ORDERS WHERE SUBSTANTIVE OBJECTION HAS BEEN RAISED OR A POLITICAL PARTY OR THE LOCAL MEMBER REQUESTS

- 1) The decision as to whether or not to make, vary or revoke a gating order on or adjacent to a highway in order to prevent crime or antisocial behaviour is taken by Members of a Panel of the Regulation Committee.
- 2) At any such meeting the Council will permit members of the public and other interested parties to speak to the Panel Members.
- 3) The purpose of allowing people to speak is to enable them to add any information that they feel may be missing from the Director of Environment and Waste's report, or which they feel has been insufficiently emphasized in it. They will not normally be allowed representation by solicitors or other professional agents.
- 4) If a Panel of Members needs to consider an application, the following procedure applies:-
 - (a) A Panel of Members is selected, consisting of 4 Conservative, and 1 Liberal Democrat Member of the Regulation Committee (this confirms proportionally to the overall number of political Group Members in the Council as a whole). The Chairman of the Panel will normally be the Chairman or Vice-Chairman of the Regulation Committee.
 - (b) The Clerk of the Panel writes to all parties who have previously corresponded on the application 5 clear working days before the meeting, enclosing the report which the Panel will be considering and advising them that if they wish to speak about the application they MUST contact as follows:

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

- (c) The Panel will normally meet in public unless the Panel resolves to exclude the press and public under the provisions set out in Section 100A of the Local Government Act 1972. Normally, the Panel will listen to representations from up to four parties. These WILL include:-
 - one local Parish or Town Council representative;

- three individuals or group representatives;

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

- (d) At the Panel meeting, the Chairman will explain the procedure for the meeting and then ask the Director of Environment and Waste or her representative to introduce the report and explain the reasons for its recommendations.
- (e) Each speaker will be allowed up to five minutes to address the Panel about the application. Speakers should bear in mind the following:-
 - (i) The Panel will listen to what each speaker says but will not debate the merits of their opinions with them;
 - (ii) The Chairman will inform the speakers when they have one minute left to speak and when their time is over;
 - (iii) The speakers should concentrate on explaining the points they have already made in writing. They should not attempt to surprise the Panel with new information. Any such information should already have been given to the Director of Environment and Waste in time for it to have been evaluated professionally.
- (f) The Panel will then discuss the report and its recommendations and will also offer the local **Kent County Council** Member the opportunity to make representations. The application will then be determined.

KENT COUNTY COUNCIL

REGULATION COMMITTEE

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

- 1) The decision as to whether or not to approve an application for the registration of a town or village green is taken by Members of a Panel of the Regulation Committee.
- 2) At any such meeting the Council will permit members of the public and other interested parties to speak to the Panel Members.
- 3) The purpose of allowing people to speak is to enable them to add any information that they feel may be missing from the report, or which they feel has been insufficiently emphasized in it. They will not normally be allowed representation by solicitors or other professional agents.
- 4) If a Panel of Members needs to consider an application, the following procedure applies:-
 - (a) A Panel of Members is selected, consisting of 4 Conservative and 1 Liberal Democrat Member of the Regulation Committee (this confirms proportionally to the overall number of political Group Members in the Council as a whole). The Chairman of the Panel will normally be the Chairman or Vice-Chairman of the Regulation Committee.
 - (b) The Clerk of the Panel writes to all parties who have previously corresponded on the application 5 clear working days before the meeting, enclosing the report which the Panel will be considering and advising them that if they wish to speak about the application they **MUST** contact as follows:

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

- (c) Normally, the Panel will listen to representations from up to four parties. These **WILL** include:-
 - one local Parish or Town Council representative;
 - two individuals or group representatives;
 - the applicant; and

- the landowner, who has the right of reply to any of the points made.

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

- (d) The Panel will normally meet in public unless the Panel resolves to exclude the press and public under the provisions set out in Section 100A of the Local Government Act 1972. At the Panel meeting, the Chairman will explain the procedure for the meeting and then ask the Head of Regeneration al Manager to introduce the report and explain the reasons for its recommendations.
- (e) Each speaker will be allowed a reasonable time at the discretion of the Chairman to address the Panel about the application. Speakers should bear in mind the following:-
 - (i) The Panel will listen to what each speaker says but will not debate the merits of their opinions with them;
 - (ii) The speakers should concentrate on explaining the points they have already made in writing. They should not attempt to surprise the Panel with new information. Any such information should already have been given to the Head of Regeneration al Manager in time for it to have been evaluated professionally.
- (f) The landowner has the right to be the last of the public speakers. There is no further right for the public to speak during the remainder of the meeting.
- (g) The Panel will then discuss the report and its recommendations and will also offer the local **Kent County Council** Member the opportunity to make representations. The application will then be determined.

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By: Head of Democratic Services

To: Regulation Committee – 5 September 2012

Subject: Home To School Transport

Classification: Unrestricted

Summary: To provide Members with a brief overview on Home to School Transport appeal statistics for the period between 1 May 2012 and 31 August 2012

1. Introduction

The Chairman has requested that the Committee receive a brief update on Home to School Transport Appeals.

2. Transport Appeal Statistics – 1 May – 31 August 2012

(2.1) For the period between 1 May 2012 to 31 August 2012 a total of 15 Home-to-School Transport appeals were submitted to 4 Transport Appeal Panel meetings. 7 were successful, at least in part (eg, time-limited assistance).

(2.2) 8 of the appellants had Local Member representation at their appeals and 8 different Members sat on the Transport Appeal Panels.

(2.3) There are 33 appeals to date at various stages of the appeals process which will need to be heard by the Transport Appeals Panel. The majority of these relate to the new policy whereby the County Council no longer provides discretionary transport to grammar schools or denominational schools in the same way that it has done in previous years..

3. Statistic Details

(3.1) Details relating to the Admissions and Transport Home to School Transport appeals for Mainstream Pupils and Additional Educational Needs Teams in respect of Statemented Pupils are shown in the attached Appendix.

4. Recommendations

(4.1) Members are asked to note this report.

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

1 MAY 2012 – 31 AUGUST 2012

Grounds for Appeal	Upheld	Not Upheld	Total
Denominational and Grammar Schools New NAS Policy	0	2	2
Distance	1	0	1
Not Attending NAS	4	1	5
16+	1	0	1
Hazardous Routes	0	0	0
Other	0	0	0
Low Income Criteria	0	0	0
TOTALS	6	3	9

APPEALS BY AREA: WEST: 7 - MID: 2 - EAST: 0 - O/S KENT: 0

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

1 MAY 2012 – 31 AUGUST 2012

Grounds for Appeal	Upheld	Not Upheld	Total
Distance	0	2	2
Not Attending NAS	1	3	4
16+	0	0	0
Hazardous Routes	0	0	0
Other	0	0	0
Low Income Criteria	0	0	0
TOTALS	1	5	6

APPEALS BY AREA: WEST: 0 - MID: 2- EAST: 4 - O/S KENT: 0

Update from the Commons Registration Team

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee on Wednesday 5th September 2012.

Recommendation:

I recommend that Members receive this report

Progress with Village Green applications

1. Members have requested that a summary of the current position of applications to register Town and Village Greens be provided at meetings of the Regulation Committee. A copy of the Schedule of Village Green applications is therefore attached at **Appendix A**.
2. Since the last Committee meeting in May, two cases have been considered at a meeting of Regulation Committee Member Panel held in July, one of which was unsuccessful and the other of which was referred to Public Inquiry for further consideration.
3. The Public Inquiries into applications at Herne Bay and Grasmere Pastures have now concluded and the Inspector's reports in relation to these cases are awaited. Further Public Inquiries will take place in the coming months in relation to applications at Cranbrook (commencing on 4th September 2012), Lyminge (commencing on 1st October 2012) and Wickhambreaux (commencing on 12th November 2012).
4. There are currently 23 applications awaiting determination¹, of which 19 are currently under investigation. Although the County Council continues to receive an above-average number of applications at a rate of one per month, officers have been focussing their efforts on reducing the existing backlog of applications. There are now four applications awaiting investigation and the delay in commencing work on applications received, which had previously been six to eight months, has now been reduced to a maximum of four months.

Commons Act 2006 – Pilot project

5. In addition to dealing with the Village Green applications referred to above, work continues on updating the Registers of Common Land and Village Greens, both in terms of KCC-initiated proposals to correct known errors in the Registers and processing applications received from members of the public to make certain amendments to the Registers.
6. In January 2011, authority was sought from the Regulation Committee to initiate five proposals using the new Commons Act 2006 provisions to amend errors in relation to existing Common Land or Village Green registrations. These proposals involved boundary errors arising from the transcription of the original applications plans onto the Register maps. The required consultations were carried out and the proposals

¹ This figure does not include the case at Cranbrook (VGA622) referred to in the preceding paragraph which is being determined by the Planning Inspectorate due to the County Council's interest in the outcome of the application.

were referred to the Planning Inspectorate. The Inspectorate has issued decisions in relation to four out of the five cases, and in every case the proposal has been granted. The Registers of Common Land and Village Greens have therefore been amended to give effect to these decisions and the errors in the Registers have now been rectified.

7. Members may also recall another proposal, reported to the Committee at its May 2011 meeting, that was initiated to resolve an error in the Register of Village Greens for VG235 at Wittersham. The error related to an amendment that was made to the registration to give effect to an exchange of land agreement which was subsequently found to be legally flawed. The Planning Inspectorate has now considered this matter and, despite objections from Ashford Borough Council, has agreed that the registration should be amended to delete the reference to the exchange of land agreement and restore the original registration.
8. In addition to initiating proposals to correct errors discovered in the Registers, the County Council has also been dealing with applications from members of the public using the new provisions contained in the Commons Act 2006. These largely relate to alleged administrative errors in the Registers, but also include an application to deregister Common Land on the basis that the land should never have been registered as such and an application to record a new right of estovers (a right to collect firewood) at Southborough Common.
9. The new provisions in the Commons Act 2006, in addition to enabling the Registers to be amended, also provide for the Register maps to be republished. It is now intended that work begins on republishing Register maps and this is dealt with in a separate report to the Committee at this meeting.

Consultation on the registration of new Town or Village Greens

10. At previous Committee meetings, it has been reported that the County Council is still awaiting further news from DEFRA regarding the outcome of the consultation carried out last autumn in relation to the proposals to reform the system for registering new Town or Village Greens under section 15 of the Commons Act 2006.
11. The County Council is still awaiting the outcome of this consultation from DEFRA but it is understood from colleagues at DEFRA that the results of the consultation will be announced by October. These will be reported to the next meeting of the Regulation Committee in January 2013.

Recommendation

12. I RECOMMEND Members receive this report

Background documents:

Appendix A – Schedule of Village Green applications

Contact Officer:

Melanie McNeir

Public Rights of Way and Commons Registration Officer

Tel: 01622 221628

Re-publication of the Registers of Common Land and Town or Village Greens

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee on Wednesday 5th September 2012.

Recommendation:

I recommend that the County Council proceeds with the proposal to publish fresh editions of the Registers of Common Land and Town or Village Greens

Introduction

1. Kent County Council is the 'Commons Registration Authority' for the purposes of the Commons Act 2006. In this capacity, it is responsible for holding the legal record of Common Land and Town or Village Greens for the county, known as the Registers of Common Land and Town or Village Greens, and for making any necessary amendments to the Registers using the requisite legal processes.
2. The Registers of Common Land and Town or Village Greens are held only in paper format, the vast majority of which were prepared in the early 1970s following the enactment of the Commons Registration Act 1965. Over time these Registers, which are not only a statutory document but also the County Council's *only* definitive record of Common land and Village Greens in the county, have become increasingly susceptible to wear and tear and, in particular, some of the Register maps have been reduced to a very sorry state. Not only are the paper copies irreplaceable if lost or destroyed, but the storage of information in this manner is neither efficient nor practical to meet modern needs.
3. Another significant issue which has caused a great deal of problems over recent years is the small scale and often unclear depiction of the registered extent of the Common Land or Village Greens shown on the register maps. The base mapping used when the Register maps were originally compiled are now substantially out of date and do not depict major infrastructure developments (such as the M20 or Channel Tunnel Rail Link) or large scale residential developments that have taken place on the fringes of many of Kent's urban areas. This is particularly unhelpful in a county where development pressures have never been more pressing and where the County Council needs to be able to supply accurate information on an area which could have a significant impact on a major construction project.
4. The textual parts of the Registers (which record details of the registration, such as description any rights of common exercisable) have fared better than the maps in terms of condition, but are nonetheless in need of improvement. Over the years, various handwritten additions and amendments have been made, some of which are barely legible and would benefit from being typed.
5. In an age where there is an increasing demand (and indeed expectation) for accurate and up-to-date information to be readily available, there is therefore a real need to re-evaluate the importance of the Commons Registers and to seek to improve their effectiveness and utility in line with modern requirements.

The law

6. Members will be aware of the ongoing work to review of the Registers of Common Land and Town or Village Greens as part of the pilot project for the implementation of Part I of the Commons Act 2006. As a result of this work, number of proposals have already been initiated to correct errors identified in the Registers using new powers available in the Commons Act 2006.
7. As well as the new provisions enabling the County Council to update and correct errors contained in the Registers, the Commons Act 2006 includes a provision for the establishment of electronic registers (see section 25) whereby the registers could be kept wholly or partly in computerised form, thereby increasing efficiency and accessibility. Unfortunately, this is the only section in Part I of the Commons Act 2006 which DEFRA has chosen not to bring into force. This is due to financial and resourcing issues relating to converting the registers to electronic format, as well as difficulties in establishing a standardised system that could be used on a national level. As a result, there is no indication as to when (or indeed if) the provision will be brought into force and it will not be possible to publish the Registers in electronic format until such time as these issues have been resolved and section 25 of the Commons Act 2006 is brought into force.
8. Nonetheless, in the meantime, the Commons Registration (England) Regulations 2008 (“the 2008 Regulations”) do contain provisions which allow Commons Registration Authorities to improve the quality of the Registers by preparing ‘fresh editions’ of Register maps. Regulation 12 of the 2008 Regulations allows Commons Registration Authorities to prepare a fresh edition of a Register map (or part thereof) showing only the details of subsisting entries in the Register. Regulation 9(8) of the 2008 Regulations requires that any fresh edition of the Register map prepared must be on a scale of not less than 1:2,500 (which provides an immediate improvement on the current mapping which is at 1:10560 scale).
9. In relation to the textual part of the Registers, Regulation 8 of the 2008 Regulations provides that a register sheet may be replaced at the discretion of the Commons Registration Authority, provided that all entries recorded on that sheet, apart from any entries which have been cancelled or deleted, are transferred onto the appropriate replacement sheet.
10. It is important to note that, until such time as the provision in respect of electronic registers is brought into force, the old register sheets and maps will remain part of the official Register; the current Regulations do not allow for these older sections to be dispensed with altogether. However, the fresh editions of the sheets and maps will be the first point of reference and will provide a substantial visual and utilitarian improvement compared to the older sections.

Work to be undertaken

11. The re-publication of the Registers of Common Land and Village Greens is by no means a simple exercise; there are currently 192 registered Village Greens and 109 areas of Common Land, each with a separate Register sheet, as well as 187 Register map sheets.

12. Much of the groundwork in relation to the Register maps has already been undertaken as the County Council already has a very basic digitised version of the maps. Although this version was prepared some 15 years ago and contains a number of known errors and inaccuracies, it nevertheless provides a helpful starting point which can be used to identify required amendments. Having recently undertaken a consolidation project in respect of Public Rights of Way data (which involves the eventual publication of new Definitive Maps at 1:2500 scale), there is a large degree of existing expertise in relation to digital mapping within the Countryside Access Service and this expertise will be an invaluable asset in preparing the fresh editions of the Register maps.
13. In respect of the textual part of the Registers, no work has yet been done to attempt to convert these to electronic format and this will involve a considerable amount of data entry into a template. It is anticipated that the impending restructure of the Regulatory Services division will provide additional capacity for administrative support that could assist with this project.
14. Once created, the fresh editions of the Register sheets and maps will of course need to undergo a very thorough and careful checking process prior to final publication. This final step will be undertaken by experienced Officers and is intended to minimise the risk of any new errors being introduced into the fresh editions of the Registers.
15. It should be noted that there is no provision within the legislation for any formal consultation to be undertaken in relation to the publication of fresh editions. This is because the older sections will remain part of the Registers and the scope and purpose of preparing fresh editions is limited to providing an exact copy of the matters already registered, albeit using more up-to-date base mapping and the assistance of more advanced technology to depict the registrations. Any anomalies encountered during the checking process will need to be addressed by reference to the original applications for registration. Any dispute as to the information shown on the fresh edition can be resolved by way of the making of an application by the affected party under section 19 of the Commons Act 2006 to correct an alleged error in the Registers.

Recommendation

16. I recommend that the County Council proceeds with the proposal to publish fresh editions of the Registers of Common Land and Town or Village Greens

Background documents:

None (but this report will be accompanied by a powerpoint presentation at the meeting)

Contact Officer:

Melanie McNeir

Public Rights of Way and Commons Registration Officer

Tel: 01622 221628

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Update on Planning Enforcement Issues

Item 10

Report by Head of Planning Applications Group to the Regulation Committee on 5th September 2012.

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 15th May 2012 Regulation Committee.
2. Summary schedules of all current cases have been produced (see Appendices 1, 2 and 3). They cover unauthorised breaches of planning control and those occurring on permitted sites, primarily waste-related. The emphasis is on live and active cases along with those resolved between Meetings. Those cases resolved or sufficiently progressed to be removed from our immediate workload are highlighted in bold.

Report Format

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

Meeting Enforcement Objectives

Consolidation of workload streams

5. Two main workload streams are becoming more evident within the planning enforcement field. There are those sites with no form of planning control, needing urgent and sustained enforcement action (i.e. the type of cases normally quoted under Schedule 1 / Appendix 1 of these papers) and sites already with planning permission (Schedules / Appendices 2 and 3) that need to be returned to compliance.
6. The pressure of work in the first category continues but has been abated it seems by the recession and the deterrent effect of the cases that we have successfully enforced. The

new Environment Agency (EA) Permitting régime is another reason, with enhanced parallel controls. A sub-set of unauthorised sites (under planning and EA legislation) have started to emerge, prompted in part by this new régime. Lancebox Ltd and Sheerness Recycling Ltd (Schedule 1, Appendix 1 No. 3 and 8, respectively) are two examples. The response in each case to this increased scrutiny has been the submission of applications for Lawful Use. Nevertheless, under negotiation the first of the two applications has been withdrawn and the second is due to be returned very shortly.

Retrospective planning applications

7. The two Lawful Use submissions just mentioned have been (or are intended to be) withdrawn in favour of retrospective planning applications. These offer in general the opportunity to settle complex enforcement issues on site within the context of fully detailed schemes, capable if granted of being controlled through planning conditions and possible legal agreements. In fact, Members will notice a general increase in the number of retrospective applications reported within the attached schedules. These mainly arise from the seeking of enforcement solutions through a formal planning route. Permissions usually offer the best management framework for dealing with mainstream planning infringements. That particularly applies in the case of existing permitted or potentially permissible sites in the right type of locations.
8. A different enforcement style is needed in relation to permitted sites. On-site problems should be kept in perspective and any intervention has to be proportionate to off-site amenity impacts. It is also important to take into account the current economic difficulties that the business community face. Of equal importance in my view, is a related need to ensure that an equal and compliant 'playing field' exists for all businesses. Without such planning discipline, non-compliant operators would be able to gain an unfair competitive advantage.

Targeted monitoring

9. It is true that retrospective planning applications are by definition '*after the event*' but targeted and more frequent site monitoring will help to reduce that possibility. Site monitoring guided in particular by a good understanding of new surges and trends within the waste management field, is a useful way to focus the compliance efforts of officers. An example at the moment is the surplus volumes of waste wood on the market, seeking an outlet. New handling capacity may be needed and any proposals would be channelled through the Planning Applications Group. In the meanwhile, compliance issues through the over-use of existing sites (however temporary) might reasonably be anticipated.
10. With that in mind I am planning to conduct a review of all current waste wood handling sites to ensure that planning permissions are being kept to and that stockpiles at alleged contravention sites are being run-down and not increased in height and footprint. Within that exercise. I shall review the claims of some operators that permitted development rights exist (i.e. planning permission is not required) within dock-side locations, to receive, store and despatch such waste wood materials and their derivatives. I intend to report back to Members with a compliance review of this sub-waste sector at the next Meeting. The Group will be particularly focussing on the Ridham area.

Wider involvement of the Group

11. The wider Planning Applications Group is gradually becoming more involved in the planning compliance field. The aim is to provide more capacity and to allow more opportunities for staff development. A greater number of retrospective applications in the first phase of this transition could be viewed in the positive. It reflects, for instance, a tightening of scrutiny and audit on permitted sites and highlights the dynamic and combined involvement of the Regulation and Planning Application Committees.

Emerging Protocol

12. Notwithstanding possible planning solutions through the application route, the original alleged breach must not be overlooked. I am developing a more detailed protocol to cover this area but in essence the owner / occupiers must be left in no doubt that they are in breach and that submission of a planning application whilst in many cases may be welcome, in no way excuses or exonerates any wrongful activity. The duty to comply with Planning Law is overriding and enforcement action may be taken at any time. It is also of note that retrospective planning applications are determined on the basis that the development has not taken place, underlining that no benefit should be construed for activities undertaken prior to the necessary planning permissions being in place.
13. The use of enforcement powers may be reserved by this Committee. However, in return I would usually seek to impose interim controls and restraint on any alleged contraveners. I would also expect to see a timetable for the submission of a valid application and to receive open co-operation from the owner / occupier. Should any of these requirements not be forthcoming, I would look to act. The initiative in such cases must always be with officers and this Committee and not left in the hands of any errant party.

Co-ordinating and Advisory Role

14. Within the two main workload streams, I am also continuing to offer advice on a number of district enforcement cases. That includes case strategies, project management and guidance on the wider controls and powers available. County Officers have adopted a supportive role and acted in a co-ordinating capacity where appropriate. The 'Milton Creek' case in Sittingbourne (see no. 7 of Schedule 1 / Appendix 1) is a good example of this advisory approach and contribution.

Consultation on proposed revisions to the registration of New Town or Village Greens

15. Village Green Policy comes under the remit of this Committee and has general planning aspects. Members may recall that under the Chairman's guidance a response was made to DEFRA on the recent proposed revisions to the registration of New Town or Village Greens. The response was jointly prepared by the Planning Applications Group and Public Rights of Way and on Commons Registration and signed-off by the respective Cabinet Members.
16. Given the year or so that has elapsed since the County Council's submission, an update has been sought from DEFRA. They have said that they hope to publish the outcome of the consultation by this October. That will be beyond this current Meeting but I shall ensure that the Chairman at least is informed at the first opportunity. I shall

otherwise report back to Members at the next Meeting in January 2013.

Case focus

17. Since the last Meeting resources have been focussed on 4 sites where formal enforcement action has been taken, 5 cases where investigations are underway and a further 5 cases that have been satisfactorily progressed.

Achievements / Successes [including measurable progress on sites]

Milton Creek, Sittingbourne (Members: Mike Whiting & Alan Willicombe)

18. In company with Swale Borough Council, the Environment Agency and Medway Ports Authority a formula has been found for resolution of the land and navigation issues at this Creek-side soil manufacturing yard.
19. I have used my negotiating influence with the operator and his planning consultant to ensure that their intended regularising application to the Borough Council and remedial package covers all required elements. Key is a retraction of the use and inescapable written commitments by the operator to return the site and its features, along with the adjoining navigation channel, to their former undamaged state. I have further suggested a range of conditions which should help to consolidate this negotiated and multi-agency solution.

New Cases, especially those requiring action / Member support

20. Three new cases have arisen since the last Meeting:

Appendix 1 / Schedule 1: Larkey Wood Farm, Chartham (see entry no. 2); Cube Metal Recycling, Folkestone (see no. 6) and Wey Street Farm, Hernhill (see no. 9).

21. These alleged contraventions have been (or are being) investigated and addressed as summarised within the attached schedules.

Significant on-going cases

22. I would refer Members to the 'Achievements' section under paragraphs 18 and 19 above. Negotiations for the restoration of Woodgers Wharf, Upchurch (see Schedule 1, no. 10) have been noticeably advanced.

Other cases / issues of interest and requests from Members

23. I would refer Members to the extended section on 'Meeting Enforcement Objectives' between paragraphs 5 to 14 of this report, concerning a consolidation of workload steams, the wider involvement of the Planning Applications Group within general planning compliance and a growing advisory and co-ordinating role in complex multi-agency cases.

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

24. In addition to our general visits to sites as a result of planning application work, we also undertake routine visits to formally monitor sites. Since the last Regulation Committee, we have made a further 23 chargeable monitoring visits to mineral and waste sites and 6 non-chargeable visits to sites not falling within the chargeable monitoring regime. I would also refer Members to paragraphs 9 and 10 of this report, on targeted Group monitoring with a multi-site purpose. On this occasion in the field of waste wood handling.

Resolved or mainly resolved cases requiring monitoring

25. Alongside the chargeable monitoring regime there is also a need to maintain a watching brief on resolved or mainly resolved enforcement cases which have the potential to recur. That accounts for a significant and long-established pattern of high frequency site monitoring. I have pointed to the importance of this effort under paragraphs 9 and 10 above. Targeted monitoring, offers a means to prevent and curtail alleged breaches; reducing the need for retrospective applications, which are generally perceived to bring the credibility of planning enforcement into doubt.

26. Cases are periodically removed to make way for others when the situation on site has been stabilised; restoration (or acceptable restoration) has been achieved, a district or Environment Agency (EA) remit confirmed (or with action being a realistic possibility by them). Another occasion is where a planning application would address the various issues and there is the realistic prospect of one being submitted. Cases then go onto a 'reserve' data base, with an in-built monitoring commitment; ready to be returned to the Committee's agenda should further enforcement issues emerge or a positive planning solution becomes available. Examples this time are Larkey Wood, Chartham (see Schedule 1, Appendix 1, no.2) and Raspberry Hill Park Farm, Iwade (see Schedule 1, Appendix 1, no.11).

27. There is a running list of sites which fall within this category, against which priorities are drawn and enforcement monitoring checks are made. The frequency is usually high but may vary according to the site under surveillance.

Conclusion

28. This report points to a consolidation of workload streams both within high-profile enforcement scenarios and on a wider Group footing, around compliance work on permitted sites. A more focussed and determined Environment Agency is helping to underwrite the County Council's efforts. The use of retrospective applications to help resolve enforcement situations on site is a valid approach. However, I am ensuring that pending the outcome of any application the relevant site is monitored, the use is constrained and unwavering co-operation with this Authority is regarded as a non-negotiable pre-condition for the reserving of any enforcement action. Also, that a contingency plan is drawn up, should an application not be submitted, is unaccountably

delayed or on the grant of permission is not properly followed. Any escalation of the original breach in the knowledge of all these stipulations would naturally be grounds for action.

Recommendation

29. I RECOMMEND that MEMBERS:

- (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 5 to 27 above and those contained within Schedules / Appendices 1, 2 and 3.

Case Officer: Robin Gregory

01622 221067

Background Documents: see heading

Active Enforcement Cases

Schedule 1: Contraventions on (part) unauthorised sites

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
1	<p>Ashford</p> <p>DC3/AS/03/COMP/0090 Shaw Grange, Charing (Member: Richard King)</p>	<p>Previous multiple breaching of landfill permissions, Enforcement Notices and High Court Injunctions.</p>	<p>To secure restoration of the site in the public interest.</p>	<p>The site has now been restored and is being monitored and landscaped.</p>	<p>A site visit by Members to view the overall progress reached is to be re-arranged from its original 13th July 2012 date.</p>
2	<p>Canterbury</p> <p>DC3/CA/03/COMP/OO53 Larkey Wood Farm, Chartham (Member: John Simmonds)</p>	<p>A recent Environment Agency visit to this site has found new alleged unauthorised waste –related activities taking place, including the depositing and storage of waste materials.</p>	<p>This site is the subject of a confirmed Enforcement Notice, whose terms prohibit the importation, stockpiling and storage of waste materials and processing equipment. The Notice is underwritten by County Court Injunctions and a County Court Control Order.</p>	<p>Compliance was reached with the Enforcement Notice in late 2009, following a staged site-recovery plan.</p> <p>Regrettably, this has started to slip again, with stockpiles of waste wood, soils and hardcore appearing on site.</p>	<p>The aim is to return the site to the way it was left in 2009, through strict enforcement monitoring. Nevertheless, I would still seek Members support on a contingency basis, for prosecution under the Enforcement Notice and / or contempt proceedings, should they be needed.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
3	<p style="text-align: center;">Dartford</p> <p>KCC/DA/0123/12 LanceBox Ltd Plot 14 Manor Way Business Park, Swanscombe</p> <p>(Member: Richard Lees)</p>	Alleged receipt, storage and processing of construction / demolition waste, including wood waste.	<p>A ‘4-point’ plan has been devised, in return for KCC reserving enforcement action. The terms include:</p> <p>a) Withdrawal of a Lawful Use Application (LDC)</p> <p>b) Submission of delayed planning application;</p> <p>c) Continued trading only under tight KCC / EA interim controls.</p> <p>d) Reduction of stockpiles / ‘stand-off’ distance from adjoining chalk cliff face.</p>	<p>Concerning the ‘4-point - plan’: the LDC has been withdrawn; the planning application has been progressed through a series of consultant reports, which are now being drawn together; trading has continued under interim controls and the stockpile of wood has been noticeably reduced.</p> <p>I am currently monitoring the site to evidential standard on a monthly basis, combining as necessary with the EA.</p>	<p>I am satisfied that the owner / occupiers are making genuine efforts to subdue the use and finalise the outstanding draft planning application. I have asked for a timetable for submission, in time for the Meeting. In the meanwhile, the operators are urgently seeking authorised outlets for the remaining quantities of wood-waste.</p> <p>In order to ensure continued progress towards compliance, I would seek Member support for the taking of enforcement action on a contingency basis. That would include the serving of an Enforcement Notice; underwritten if necessary by a County / High Court Injunction.</p>

	Site & Case Reference	Alleged Breach	Objectives / Actions	Progress	Notes / Remarks
4	<p style="text-align: center;">Shepway</p> <p>DC3/SH/10/COMP/A02 Keith Cornell Waste Paper Ltd, Lympne Industrial Park, Lympne</p> <p>(Member: Ms Susan Carey)</p>	Alleged unauthorised waste-related recycling use on industrial land, resulting in noise complaints and related disturbance to local residents.	<p>To achieve a reduction in the current amenity impacts through voluntary restraint, pending the outcome of an application for retention of the use.</p> <p>A meeting of regulators (including the local EHO) has agreed that further enclosure of site activities represents the most appropriate solution to the main noise impacts.</p>	<p>The applicant is willing to amend the current application to allow for further site enclosure. Noise consultants are advising accordingly, in a case of form following function</p> <p>The applicant hopes to be in a position to submit the amended details before the Meeting.</p>	<p>Revised proposals involving extended site enclosure are still awaited. I am seeking a written explanation for the delay and timetable for submission.</p> <p>I shall inform Members on the latest position at the Meeting. Meanwhile, I am seeking continued Member support for enforcement action on a contingency basis, should the required scheme be any further delayed.</p>
5	<p>DC3/SH/11/COMP Johnsons Recycling Ltd, Unit 1 Park Farm Close, Folkestone</p> <p>(Member: Richard Pascoe)</p>	Shepway DC reported this alleged unauthorised waste scrap metal recycling use within an industrial estate, near other independent waste uses.	To investigate and establish whether the reported activity falls within the County Council's planning enforcement remit.	It was established that the current operator had re-located to this site from a residential area in Folkestone.	A retrospective planning application is overdue. A draft scheme has been prepared but submission is now required. I am seeking a timescale from the planning agent in order to update Members at the Meeting.

	Site & Case Reference	Alleged Breach	Objectives / Actions	Progress	Notes / Remarks
6	DC3/SH/12 Cube Metal Recycling Unit A Highfield Industrial Estate Folkestone (Member: Roland Tolputt)	This site was brought to the attention of KCC by Kent Police and the Environment Agency (EA). Its operation consists of the importation, sorting and processing of scrap metals, for later despatch.	To achieve planning compliance and supportive control through an EA Permit. I am adopting the same consistent approach with numbers 4 (Cornell's) and 5 (Johnsons) above.	I have sought submission of a retrospective planning application. I shall continue to monitor the site in the interim.	The use appears capable of officer level support but I would still seek Member support on a contingency basis for the serving of an Enforcement Notice , should full co-operation not be achieved and an application not be made.
7	Swale DC3/SW/11/COMP/ Milton Creek Sittingbourne. (Member: Mike Whiting & Alan Willicombe)	Over stacking and stock-piling of site materials causing collapse to the banks of the creek, resulting in blocked water flow within the creek and obstruction to navigation. This partly involves an alleged trespass onto Medway Ports Authority land.	To see whether enforcement of the district planning permission for production of 'growing media' (i.e. soil-based compost) at the site, warrants the further intervention of the County Council? A multi-agency approach has been adopted involving KCC, Swale BC (SBC), the Environment Agency (EA) and Medway Ports Authority (MPA).	I have negotiated submission of a planning application, for a return to the scope of the original permission and a remedial package. That has been made to Swale BC and includes a scaling down of site activities and repair to the land and navigation channel. KCC has been consulted, lending support and technical guidance (including suggested conditions and legal controls) to the scheme.	I am confident that the negotiated scheme if granted and implemented (with suggested controls), would address the alleged contraventions on site and reverse the severe damage caused to land and water interests. The owner / occupiers in the ultimate would otherwise be exposed to concerted enforcement action from SBC, KCC, the EA and MPA. I shall keep Members informed on this case.

	Site & Case Reference	Alleged Breach	Objectives / Actions	Progress	Notes / Remarks
8	KCC/SW/0136/12 Sheerness Recycling Ltd Unit 34 Klondyke Industrial Estate, Queenborough (Member: Ken Pugh)	Alleged importation of construction and demolition spoil, with mechanical screening.	To ensure compliance with planning control.	I remain unconvinced on the lawful use arguments. Indeed, agreement has now been reached with the operator, for withdrawal of the Lawful Use application in favour of a retrospective planning application. That is due to be submitted on conclusion of related and commercially confidential negotiations.	The operator's planning consultant is keeping me informed on progress. The required planning application is being compiled and the EA Permit is already drafted. As a contingency , pending submission of the planning application, I would seek Member's continued support for the service of an Enforcement Notice .
9	DC3/SW/12 Wey Street Farm Hernhill (Member: Andrew Bowles)	Alleged unauthorised land- raising under the presumption of agricultural permitted development rights.	To investigate and establish the planning status of the activity, along with jurisdiction. In the opinion of officers, planning permission is required and the Borough Council would seem to be the relevant authority.	It has been agreed that the County Council (subject to Members' views) would defer to Swale Borough Council, on the basis that retrospective permission is sought and that this authority is consulted on the scheme. The EA are separately advising on drainage details.	The owner / occupier is prepared to accept these stipulations and I understand that a planning application is in the process of being submitted. I propose to leave the case with the Borough Council and remove from these schedules , with an open offer of technical advice as required.

	Site & Case Reference	Alleged Breach	Objectives / Actions	Progress	Notes / Remarks
10	SW/05/COMP/0016 Woodgers Wharf, Horsham Lane, Upchurch (Member: Keith Ferrin)	Unauthorised use of marine wharf for screening and crushing of imported concrete beams and alleged related waste management breaches.	<p>To arrest the alleged breaches and return the site to its lawful wharf-related use.</p> <p>A County Council confirmed Enforcement Notice (EN) requires restoration of the site, largely through the direct removal of the central stockpile of concrete beams.</p> <p>Crushing of the greater quantity of waste beams for sale to the open market is prohibited under the EN.</p>	<p>Potential sea defence contracts offered the prospect of complete removal by barge. However, the contracts have failed to materialise.</p> <p>Independent advice organised by the County Council through Remade South-East, has similarly failed to find alternative outlets for removal of the beams as they stand.</p> <p>In all the circumstances, negotiation has now switched to active pursuit of an 'on-site' solution i.e. using the beams in whole, broken or in a highly specified crushed form to create a hard-surface platform, ready for a beneficial after-use.</p>	<p>Negotiations have progressed, with draft plans and proposals under active consideration. These will be informed by new and updated site surveys.</p> <p>An 'on-site' solution would ensure that any amenity impacts arising from 'off-site' haulage were avoided. This represents a potentially sustainable solution, within the spirit and purpose of the new National Planning Policy Framework. Subject in this case, to nature conservation interests being adequately safeguarded.</p> <p>The parking of boats has been suggested as a Borough Council controlled surface use, compatible with the wharf.</p> <p>I shall keep Members informed on this potential site solution whilst reserving action under the Enforcement Notice.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
11	<p>DC3/SW/04/COMP/0049 Raspberry Hill Park Farm, Iwade</p> <p>(Members: Mike Whiting & Allan Willicombe)</p>	<p>Unauthorised importation, burning and depositing of mixed construction spoil, stationing of mobile homes and haulage distribution use on the waste deposit</p>	<p>KCC and Swale BC's 3 Enforcement Notices were upheld on Appeal. They require the unauthorised uses to be removed from the site, within given timescales, which have since expired.</p> <p>Restoration of the deposited material has been pursued but complications have arisen. Key site personnel are in custody and there is a Court Restraining Order, preventing removal of potential further evidence from the land.</p>	<p>I am reporting this case again to Committee, in the prospect of a different approach to restoration of the County Council interest in the site.</p> <p>Swale BC has an application for 5 gypsy / traveller caravans and 1 touring caravan. This effectively covers the area the subject of KCC's Enforcement Notice.</p>	<p>Swale BC has invited the County Council's view. The line I have taken is a pragmatic one.</p> <p>Levelling, ground preparation and the construction of multiple caravan pitches, with associated surfacing and circulation spaces, could be argued to represent an alternative, though no less exacting form of restoration than that envisaged under our own Enforcement Notice.</p> <p>A tightly specified scheme with planning conditions could well offer a more precise and controllable solution to the site, than the generic steps within the Notice.</p> <p>I would seek Members endorsement of the position taken in relation to the Borough Council application.</p>

Schedule 2: Alleged breaches on Permitted Minerals & Waste Sites

Appendix 2

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
1	<p>Dartford</p> <p>DA/09/853 Crossways Recycling Ltd, Manor Way Business, Park, Manor Way, Swanscombe</p> <p>(Member: Richard Lees)</p>	<p>Planning permission for the continued operation of the site as a waste transfer station was granted in December 2009. That includes the provision of a materials recycling building amongst other infrastructure to support the use.</p> <p>Following a site monitoring visit it became apparent that the recycling building has been erected approximately 1 metre out from the agreed position, moving the building closer to the adjacent industrial estate road. Additional ancillary development, which was not included within the permitted site layout, has also been provided on site.</p>	<p>To ensure compliance with the base planning permission or seek a new application to regularise the built development on site. That includes container storage and an additional office/welfare building.</p>	<p>We have met with the operator and impressed upon them the importance of having the correct permissions in place for the physical development on site in order to support the ongoing operation of the transfer station.</p> <p>The Company has been invited to make a planning application to regularise the development.</p>	<p>The Company has responded positively and are in the process of drawing up a retrospective application.</p> <p>I am viewing these alleged internal site breaches in a pragmatic way. The operator has in general submitted to planning control and is currently in negotiations with me over finding ways to optimise the waste management capacity on site.</p> <p>I shall maintain monitoring contact and report further on any planning submissions. In the meanwhile, I shall remove from these schedules.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
2	DC3/DA/11/COMP Waste Recycling Centre 2-8 Little Queen Street, Dartford (Member: Avtar Sandhu MBE)	Complaints from local residents regarding the use of large goods vehicles damaging and blocking the approach route to the site in alleged contravention of the lawful Established Use Certificate for the site, granted on appeal in 1993.	To help KHS, Dartford BC, the Traffic Commissioners and the Police in alleviating the problem of damage to the highway, pavements, street furniture and buildings when LGVs approach and exit the site. At the same time, encouraging re-location of this historic use.	We have met with the operator and his planning consultant and impressed upon them the sensitivity of the site and the Company's responsibility towards local residents. They have agreed to institute tighter operational procedures.	Discussions are now firmly focussed on the subject of relocation. Contact has been arranged with our Minerals & Waste Development Framework Team and invitation dates for a follow-up meeting have been sent. I shall keep Members informed of progress.
3	Swale SW/10/1436 Countrystyle Recycling Ltd, In -Vessel Composting (IVC) and Materials Recovery Facility (MRF), Ridham Dock Road, Iwade. (Member: Mr Whiting / Mr Willicombe)	A number of breaches have been previously reported to Members, including: open/broken roller shutter doors; external storage / processing of wood waste; dust control problems and containment issues; a concrete pad outside of the permission area and some minor alterations to the approved site layout.	To seek redress thorough means of retrospective planning applications.	Planning permission for the concrete pad has now been granted and the further operational issues are subject to another application which is currently being processed.	I am satisfied that contingency support from Members for the service of Breach of Condition Notices offers sufficient sanction and control in this instance.

	Site & Case Reference	Alleged Breach	Objectives / Actions	Progress	Notes / Remarks
4	<p>Tunbridge Wells</p> <p>DC3/TW/12 CLC Construction Ltd Westdene Five Oaks Green</p> <p>(Member: Alex King MBE)</p>	<p>Material change of use from a former scrapyards to the servicing of utility contracts, with the stockpiling of spoil on site and the exchange of material between jobs, with the remainder being sent for processing and alternative re-use.</p> <p>The site is within the countryside and the Metropolitan Green Belt. It is also close to housing.</p>	<p>To control the level of use on the site pending the outcome of the current retrospective planning application.</p> <p>The stockpile is growing in height. I am therefore imposing an interim restriction to the height of the lorry cab of the vehicles bringing the material to the site. That would be clear to all parties and visibly enforceable.</p>	<p>The application is currently delayed (in part) by the applicant's reluctance to properly include screening and crushing (on a campaign basis), within a full description of the proposed use. The term '<i>ancillary process</i>' is being used, which in my view unduly relegates in importance the key processing element on site.</p>	<p>I recommend overall that County Council enforcement powers are reserved in this instance but only on the basis that:</p> <p>a) stockpile levels are no higher than the top of any lorry cabs on site and</p> <p>b) a full description of the proposed use is given or the screening and crushing element excluded altogether from the proposal, without further delaying the retrospective application.</p> <p>Should co-operation and compliance be lacking on either of these counts, I would seek Members' support for the servicing of an Enforcement Notice.</p>

Schedule 3: Alleged breaches on Permitted County Council Developments

Appendix 3

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
1	<p>Swale</p> <p>KCC/SW/0155/2012</p> <p>Tunstall CE (Aided) School, Sittingbourne.</p> <p>(Members: Mr. Whiting & Mr. Willicombe)</p>	<p>External storage for outdoor play and maintenance equipment.</p>	<p>To seek regularisation through the planning route.</p>	<p>A retrospective planning application was granted at the 24th July Planning Application Committee (Item D3 for reference).</p>	<p>This minor planning infringement is now resolved and I shall remove from these schedules.</p>
2	<p>Thanet</p> <p>KCC/PRE/TH/0288/2012</p> <p>Cliftonville Primary School, Northumberland Avenue, Cliftonville, Margate, Kent, CT9 3LY</p> <p>(Members: Mr C Wells and Mr M Jarvis)</p>	<p>A complaint was received from nearby residents about a 'number of portacabin like out buildings' erected on the site and the 'outlook onto the school not being an aesthetically pleasing view but a large number of large shed like rooftops'.</p>	<p>To investigate and seek to regularise through a retrospective planning application.</p> <p>An investigation was carried out which found that some seven sheds, cabins and/or garages had been erected on the site over the last few years.</p>	<p>Some of the sheds are used for Special Education Needs and others for storage purposes. Four of these are covered by permitted development rights, one was granted planning permission in 2007, and the remaining two neither benefit from permitted development rights nor planning permission.</p>	<p>The School were advised of the position and agreed to submit an application for the retention of these two sheds.</p> <p>That is imminent.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
3	<p>KCC/TH/0195/2012</p> <p>Ellington and Hereson School, Newlands Lane, Ramsgate, Kent, CT12 6RH</p> <p>(Members: Elizabeth Green & John Kirby)</p>	Erection of 2.4m metal palisade replacement fencing along the school playing field boundary.	To regularise through a retrospective planning application	A retrospective planning application has been received and is being processed.	I shall inform Members of the outcome of the application.
4	<p>Tunbridge Wells</p> <p>KCC/TW/0192/2012</p> <p>The Skinners Kent Academy, Blackhurst Lane, Tunbridge Wells, Kent. TN2 4PY.</p> <p>(Member: Mr J.Tansley)</p>	Alternative flood lighting specification relating to previously permitted Multi-Use Games Area on Site 1 of the Academy.	To regularise through a retrospective planning application.	Retrospective planning permission was granted at the 24 th July Planning Application Committee (Item D4 for reference).	Conditions attached to the permission hold the use of the lighting to these alternative specifications.