



AGENDA

REGULATION COMMITTEE

Tuesday, 24th January, 2012, at 10.00 am Ask for: **Andrew Tait**
Council Chamber, Sessions House, County Telephone **01622 694342**
Hall, Maidstone

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

Membership (17)

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

Liberal Democrat (1): Mr S J G Koowaree

Independent (1) Mr R J Lees

UNRESTRICTED ITEMS

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

1. Membership: To note the appointment of Mr W A Hayton to the Committee in place of Mr M J Whiting.
2. Substitutes
3. Declarations of Interests by Members in items on the Agenda for this meeting.
4. Minutes (Pages 1 - 18)
 - (a) Committee: 7 September 2011
 - (b) Member Panels: 11 November 2011
15 November 2011
13 December 2011
5. Home to School Transport (Pages 19 - 22)
6. Update from the Commons Registration Team (Pages 23 - 26)

7. Town and Country Planning Act 1990 - Public Rights of Way Diversions and Extinguishment Orders: Service Level Agreement with District and Borough Councils (Pages 27 - 36)
8. Update on Planning Enforcement Issues (Pages 37 - 58)
9. 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

Monday, 16 January 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.

KENT COUNTY COUNCIL

REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Wednesday, 7 September 2011.

PRESENT: Mr M J Harrison (Chairman) Mr A D Crowther (Vice-Chairman)
Mr R E Brookbank, Mr C J Capon, Mr A R Chell (Substitute for Mr J M Cubitt),
Mr J A Davies, Mr R J Lees, Mr S Manion, Mr R F Manning, Mr J M Ozog,
Mr R Tolputt (Substitute for Mr H J Craske), Mr J N Wedgbury Mr M J Whiting

ALSO PRESENT: Mr R W Gough

IN ATTENDANCE: Mr G Rudd (Assistant Democratic Services Manager),
Mrs A Hayward (Manager for Primary Admissions & Transport), Miss M McNeir
(Public Rights Of Way and Commons Registration Officer), Mr G Rusling (Public
Rights of Way Operations Manager), Mr R Gregory (Principal Planning Officer -
Enforcement) Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

17. Minutes

(Item 3)

RESOLVED that the Minutes of the Committee meeting held on 17 May 2011 and of the Member Panel meetings held on 13 June 2011, 28 June 2011, 12 July 2011 and 19 July 2011 are correctly recorded and that they be signed by the Chairman.

18. Dates of meetings in 2012

(Item 4)

The Committee noted the following meeting dates in 2012:-

Tuesday, 24 January 2012;

Tuesday, 15 May 2012;

Wednesday, 5 September 2012.

19. Transport Appeals Terms of Reference - Verbal Update

(Item 5)

(1) The Assistant Democratic Services Manager tabled a draft Home to Schools Transport Appeals Procedure which would be considered at the next meeting of the Committee. He briefly commented on the draft Procedure and the issues which had led to its preparation.

(2) The Chairman invited Committee Members to contact the Assistant Democratic Services Manager if they had any comments or suggested amendments to the draft.

(3) RESOLVED that the report be noted.

20. Transport Appeal Statistics

(Item 6)

(1) The Committee noted that the second table in the Appendix to the report referred to Stated Pupils' Home to School Transport Appeals between 1 April 2011 and 31 August 2011.

(2) The Committee asked for future reports to include figures for those appeals which had been settled without being considered by an Appeal Panel.

(3) RESOLVED that the report be noted.

21. Update from the Commons Registration Team

(Item 7)

(1) The Public Rights of Way and Commons Registration Officer updated the Committee on progress with Village Green applications, the Commons Act 2006 Pilot Project and on the DEFRA consultation on the registration of new Town or Village Greens.

(2) RESOLVED that the report be received.

22. Update on the Definitive Map Team casework

(Item 8)

(1) The Public Rights of Way Operations Manager reported on the reduced backlog of Public Rights of Way cases and on progress in respect of Gating Orders.

(2) The Committee recorded its appreciation for the many years of excellent work by Mr Chris Wade on its behalf.

(3) RESOLVED that the report be received.

23. Gating Orders - Un-named footpath to the rear of Henley Fields, Tenterden

(Item 9)

(1) The Public Rights of Way Operations Officer reported on the effectiveness of the Gating Order made in September 2008, excluding the public from an un-named footpath to the rear of Henley Fields, Tenterden.

(2) In agreeing to continue the Gating Order, the Committee agreed that it should be reviewed after two years, or earlier if circumstances permitted, and that the basis on which the order would be reviewed would be an analysis of reported crime and anti-social behaviour in the area.

(3) RESOLVED that:-

- (a) the Gating Order for the un-named footpath to the rear of Henley Fields, Tenterden continue in operation; and

- (b) the Gating Order be reviewed after a further two years or earlier if circumstances permit, with a report being made to the Committee on its findings.

(3) RESOLVED that:-

- (b) the Gating Order for the un-named footpath to the rear of Henley Fields, Tenterden continue in operation; and
- (b) the Gating Order be reviewed after a further two years or earlier if circumstances permit.

24. Update on Planning Enforcement Issues

(Item 10)

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

(2) The Principal Planning Officer reported on the County Council's Enforcement co-ordinating work, various national consultations and progress on new and ongoing cases.

(3) RESOLVED that the report be noted and that the actions taken or contemplated on the respective cases set out in paragraphs 5 to 24 of the report be endorsed, together with those contained within Schedules 1, 2 and 3 in 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 Tenterden Town Hall on Friday, 11 November 2011.

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

IN ATTENDANCE: Miss M McNeir (Public Rights Of Way and Commons Registration Officer) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

16. Application to register land known as The Playing Field in the parish of Marden as a new Village Green

(Item 3)

- (1) The Public Rights of Way and Commons Registration Officer informed the Panel that Marden Parish Council wished to voluntarily register the land in question as a Village Green under the provisions of the Commons Act 2006.
- (2) The Public Rights of Way and Commons Registration Officer explained that the County Council needed to establish that Marden PC had the capacity to register the land. This entailed being able to demonstrate that the Parish Council owned the land (which it did) as well as being able to identify the locality in which the users of the land resided. In this case, the locality was the parish of Marden. As these two tests had been passed, she was able to recommend registration.
- (3) Mr Richard Adam (Marden Parish Council) said that the case was sufficiently straight forward that the land could have been registered even if the Parish Council had not offered to do so. Registration would enable the land to become an asset that was safeguarded for future generations. He also pointed out that a strip of land to the east and south side of the site (comprising Public Footpath KM280) was not owned by the Parish Council and that it would be essential to ensure that the boundary was carefully drawn.
- (4) RESOLVED to inform the applicant that the application to register the land known as the Playing Field at Marden has been accepted and that the land subject to the application be formally registered as a Village Green.

17. Application to register land known as Dawbourne Wood in Tenterden as a new Village Green

(Item 4)

- (1) Members of the Panel visited the application site shortly before the meeting. Mr M Billick was present on behalf of the applicant. Mr J Mills, the landowner was also present together with his representative, Mr M Wood from Landnet Ltd.

(2) Mr Billick, Mr Mills and Mr Wood were also present at the meeting together with some 9 members of the public.

(3) The Public Rights of Way and Commons Registration officer introduced the application, which had been made under Section 15 of the Commons Act 2006 by Dr R Crawford on behalf of the St Michael's Village Community Group. It had been accompanied by 26 letters of support. Support had also been given by High Halden PC whilst no comment had been received from Tenterden TC.

(4) The area of land subject to the application was a portion of Dawbourne Wood, some 7½ acres in size. It was in the ownership of Lakehurst Developments Ltd, who had objected. Its formal access was through a gate along Ashford Road. This gate was normally locked but had been opened for the purposes of the site visit that morning. There were no Public Rights of Way (PROWs) across the site. An Order designating four routes across the land as PROWs in 2007 had not been confirmed. Some of the points made during the PROW application had informed the consideration of this application.

(5) The Public Rights of Way and Commons Registration Officer briefly explained that there was no dispute that the land had been used for lawful sports and pastimes by a significant number of inhabitants in the locality of St Michael's in Tenterden. The outstanding issues were whether it had been used "as of right" for a period of twenty years up to the date of application or met one of the criteria set out in Sections 15 (3) and (4) of the Commons Act 2006.

(6) The Public Rights of Way and Commons Registration Officer explained that in order for use of the land to have been "as of right"; use would have needed to be without force, stealth or permission. It was clear that stealth had not been used. There was no evidence of permission having been given. There was, however, a question as to whether use had been by force.

(7) The Public Rights of Way and Commons Registration Officer explained that when establishing whether force had been used, the law of prescription relied on acquiescence on behalf of the landowner. The wooden gates had been locked in 1997 and replaced by a metal gate in 2004, when signs and notices had also been put up. People had continued to access the land through a hole in the fence. However, this did not qualify as "as of right" use because use of the land had become contentious on the basis that the landowner had clearly taken steps to discourage entry onto his land.

(8) The articles published in the local newspaper on 29 May 1997 and 16 December 2004 (shown in Appendix D of the report) clearly demonstrated that there was a general local awareness that public use of the land was contested by the landowner. Consequently, the Public Rights of Way and Commons Registration Officer had concluded that use of the land had certainly not been "as of right" since 2004 and possibly, in her view, not since 1997.

(9) The Public Rights of Way and Commons Registration Officer then examined the question of whether use had taken place over a period of twenty years or more. She said that the period in question had to be 1984 until 2004 because use "as of

right had definitely ceased in the later year (if not before). The user evidence indicated that use had been continuous over that period.

(10) The Public Rights of Way and Commons Registration Officer explained that the application had been made under Section 15 (4) of the Commons Act 2006 which allowed applications to be made in cases where “as of right” use ceased prior to April 2007, provided that the application had been made within 5 years of the date when the application ceased. She said that in this instance, the application had been made on 11 January 2010. This meant that the application had been made more than 5 years after “as of right” use had definitely ceased. As a consequence, the application had definitely failed the “date of application” test. As a consequence, she recommended that the application should not be accepted.

(11) Mr M Wood (Landnet Ltd) responded to a question from Mr Hayton by saying that the site in question was bordered by only two private residential properties. Neither of them had an express right of entry onto the site. He added that use had been continually challenged, particularly during the period when the County Council was considering the Public Rights of Way application during the early years of the previous decade. In addition, Mr Verrall who had carried out the coppicing work had always challenged people who came on site – as he was duty bound to do. Signs and fencing had been put up at the same time to warn people not to enter. The fencing had, however, been broken down.

(12) Mr M Billick spoke on behalf of the applicant. He said that the Public Inquiry on the PROW application had taken place in 2008. The Inspector had ruled that the date for when use of the routes had ceased was between December 2004 and January 2005. She had definitely ruled out an earlier date. The Inspector had also found no evidence to suggest that use of the route had been challenged between 1997 and 2005. Furthermore, the date of submission of the application had been 9 November 2009. The 11 January 2010 date referred to by the Public Rights of Way and Commons Registration Officer was in fact the date of re-submission.

(13) The Public Rights of Way and Commons Registration Officer responded to Mr Billick’s point by saying that the first attempt at a submission had indeed been received in November 2009. However, as it did not meet all the legal criteria, the County Council had not been in a position to accept it at that time. She explained that the “Winchester” case had established that an application could not be deemed to have been submitted until it had met all the criteria and been “duly made.”

(14) In respect of the claim that the January 2010 application had been made in time, the Public Rights of Way and Commons Registration Officer said that the evidence relied upon to prove that use had been challenged in 2004 was the user evidence contained in Appendix C and the newspaper article dated 16 December 2004 (Appendix D).

(15) The Public Rights of Way and Commons Registration Officer then replied to a question from Mr Billick by saying that the evidence given in respect of the Public Right of Way application could not simply be transferred to an application for a Village Green. This was because a Village Green registration conveyed a general right to recreate whereas a PROW related purely to the route in question. Demonstrating that walking had taken place along a linear route would not be sufficient to demonstrate that lawful sports and pastimes had occurred generally on the application site.

(16) Mr M Wood addressed the Panel on behalf of the applicant. He agreed with the conclusions of the Public Rights of Way and Commons Registration Officer and said that the 5 year deadline was statutory. This meant that there was no provision for the County Council to waive this particular test.

(17) A member of the public said that she walked through the woodland and neighbouring orchard. This was very easy to do as the Electricity Board cleared paths whilst working on the pylons. She said she was able to walk freely in the woods using the unofficial paths.

(18) On being put to the vote, the recommendations of the Head of Countryside Access were carried unanimously.

(19) RESOLVED to inform the applicant that the application to register a section of the land known as Dawbourne Wood at Tenterden has not been accepted.

KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Westgate Hall, Canterbury on Tuesday, 15 November 2011.

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

ALSO PRESENT: Ms S J Carey and Mr M J Northey

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

18. Application to register land at Woodland Road at Lyminge as a new Village Green *(Item 3)*

(1) Members of the Panel and Ms S C Carey (the Local Member) visited the application site shortly before the meeting. Mr S Huntley, the applicant was present as were Ms A Rodgers, the landowner's representative and some 12 members of the public.

(2) Ms S J Carey was present for this item pursuant to Committee Procedure Rule 2.21 and spoke.

(3) Correspondence from Lyminge Parish Council was tabled at the meeting. This set out that although the Parish Council neither supported nor opposed the application, it believed that the criteria for registration had been met.

(4) Mr Huntley and Ms Rodgers were also present at the meeting together with Mrs H Burr (supporter) and some 9 members of the public.

(5) The Public Rights of Way and Commons Registration Officer introduced the application, which had been made under Section 15 of the Commons Act 2006 by Mr S Huntley. She acknowledged that a question had been raised during the site visit about the exact boundary of the southern part of the application site and informed the Panel that this question would be thoroughly addressed at the earliest opportunity.

(6) The Public Rights of Way and Commons Registration Officer said that the application had been accompanied by 85 user evidence questionnaires together with supporting correspondence and the view from Lyminge Parish Council that the application passed all the necessary tests.

(7) Objections had been received from Cripps Harries Hall Solicitors on behalf of the Tory Family Foundation which owned the land. The grounds for objection were that the application had not specified its neighbourhood or locality within the

neighbourhood; that use had been infrequent; that use had been “by right” on the Public Right of Way; that use had been interrupted during the summer of 2010 by the archaeological dig which had resulted in the site being cordoned off; and that there had not been sufficiently general for the landowner to realise that a public right was being asserted.

(8) The Public Rights of Way and Commons Registration Officer then considered the legal tests. The first of these was whether use of the land had been “as of right.” It was clear that neither force nor secrecy had been used to access the site. Although fencing had been erected, this had been a recent development and could not form part of the Panel’s considerations of this particular test. There had, however, been a few occasions when the landowner had stated that permission had been granted for certain specific events. The applicant, on the other hand contended that even though permission had been granted on occasion, this did not apply to informal recreational use and therefore did not negate the general assertion by the public of “as of right” use. The landowner had also contended that much of the use of the land had been “by right” walking of the Public Right of Way.

(9) The Public Rights of Way and Commons Registration Officer said that the use “as of right” question was very difficult to resolve on paper. The best way to do so was to scrutinise the evidence through careful cross-examination.

(10) The Public Rights of Way and Commons Registration Officer then considered the question of whether use of the land had been for the purposes of lawful sports and pastimes. The user forms did include such activities as sledging, cycling and playing. However, most of the responses stressed walking. It was difficult for her to assess on paper whether this activity was something which had occurred through use of the Public Right of Way, and a closer examination of the evidence would be able to clarify this particular question.

(11) The Public Rights of Way and Commons Registration Officer said that, on balance, it was likely that use had been by a significant number of inhabitants of the parish of Lyminge – although there was a dispute on the part of the objector about the actual degree of use.

(12) The Public Rights of Way and Commons Registration Officer said it was clear that use of the site had continued up to the date of the application. The question of whether this use had been for a period of twenty years or more was more complex because the applicant was contending that use had been interrupted by the archaeological dig in 2010, by sheep grazing and car parking. The applicant argued that the application had been made before the archaeological dig, that the sheep grazing had encouraged public use and that the car parking was for such a short duration that it became inconsequential in the context of a period of 20 years.

(13) The Public Rights of Way and Commons Registration Officer concluded her presentation by saying that due to the complexity of the issues involved (particularly in respect of the use of the public right of way) she was recommending that a non-statutory public inquiry should be held to clarify the issues.

(14) The Chairman asked whether permission to use the site had ever been refused by the landowner. Ms Rodgers (on behalf of the landowner) replied that permission had been refused since the application had been made.

(15) Mr Stephen Huntley (applicant) said that he loved and respected the countryside and would never knowingly trespass on someone else's land. He would always stick to rights of way unless he believed that there was open access.

(16) Mr Huntley said that he had lived in Lyminge since 1983 and that he had played as a child on the field. He produced photographs of BMX riding, pointing out that this activity took place on bumpy ground which was not on a public right of way.

(17) Mr Huntley continued by saying that many people of all ages had used the whole field. He highlighted a number of activities including playing, walking, petting the grazing sheep and tobogganing. He showed a photograph of sledging on the site, pointing out that no one in the picture was doing so on a right of way. He said that such activities had continued into his children's generation. He showed a number of other photographs of other activities taking place on the site.

(18) Mr Huntley showed a picture of the site taken from GoogleEarth in 2004. He asked the Panel to note that it was difficult to distinguish the public rights of way because there were other tracks on the site where people had also walked. He said that no one had ever told anyone to not use the field or to stick to the public right of way. The fencing and gates that Members had seen during the site visit had only been installed during the last few months.

(19) Mr Huntley said that his motive for bringing forward the application was to preserve the right for local people to continue to use the land as before whilst also preserving its agricultural and amenity value. He had deliberately chosen not to widely publicise the application. Nevertheless, it had achieved widespread support, with 85 people completing user forms and the Parish Council stating its view that the land met the required legal tests for registration.

(20) Mr Huntley concluded his presentation by saying that the site was a special place for him and for other people. Many people had used the land regularly for lawful sports and pastimes in an open and unchallenged manner; and this use had mainly been on parts of the site which had not been designated as public rights of way. He had personally used the land since 1983, whilst others had used it well before that time.

(21) Mrs Rodgers said that she had a written statement from the landowner, Mr Tory. Because of the recommendation in the report, she did not feel that it would be appropriate to ask the Panel to consider it in detail at this stage.

(22) The Panel agreed unanimously that it would defer consideration of this matter pending a non-statutory Public Inquiry for the reasons set out in the report and explained at the meeting by the Public Rights of Way and Commons Registration Officer.

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

19. Application to register land known as Seaton Meadow at Wickhambreaux as a new Village Green
(Item 4)

(1) Members of the Panel visited the site prior to the meeting. The visit was attended by Mrs C Le Jeune (Wickhambreaux Parish Council - applicant), Mr. J. Holdstock (Tenant Farmer) and Mr C Perkins (one of the affected landowners). Some 40 members of the public were also present at the visit.

(2) Mr M J Northey was present for this item pursuant to Committee Procedure Rule 2.21.

(3) Mrs C Le Jeune (Chairman of Wickhambreaux Parish Council - applicant) and Mr C Perkins (landowner) were present for this item together with some 30 members of the public.

(4) The Public Rights of Way and Commons Registration Officer introduced the application which had been made under section 15 of the Commons Act 2006 by Wickhambreaux Parish Council. This application had been accompanied by 115 user evidence forms as well as letters of support from Ickham and Well Parish Council (whose boundaries accommodated some of the site); the Local Member, Mr Northey; the local City Councillor; Ickham, Littlebourne and Wickhambreaux Conservation Society; Wickhambreaux CEP School; and Wickhambreaux Village Hall Management Committee. These letters all stated that use of the application site had been without restriction for many generations by local people.

(5) The Public Rights of Way and Commons Registration Officer then said that the land had originally been owned by the Church Commissioners before being auctioned and sold to 4 separate landowners in 2009. All four landowners had objected to the application. One of them (Mr Locke from the Premier Trust) had stated that the land had not been accessed at the times during the year when it had been used for grazing. Mr and Mrs Perkins had stated that use had been by virtue of permission and that non-permitted access had been challenged by the Tenant farmer during the grazing season. Three local residents had also disputed the user evidence. In addition, Mr J Holdstock (the tenant farmer since 1991) had said that use of the site had not been significant and had mainly consisted of people using the Public Right of Way in the north east corner of the site or the path on the north bank of the River Stour. He had also stated that the site had been closed off during the Foot and Mouth epidemic in 2001.

(6) The Public Rights of Way and Commons Registration Officer went on to consider the legal tests. The first of these was whether use of the land had been "as of right". Whilst it was clear that neither force nor secrecy had been employed to gain access, there was an objection which claimed that use had been with permission. The landowner had claimed that permission had been granted for a number of events. The applicant's response to this was that such permission had not been sought for general recreation. The question for the Panel to consider was whether permission had been communicated to the community as a whole. This did not appear to be the case. Objection had also been raised on the grounds that use had been challenged by the Tenant Farmer. This was disputed by the applicant who said that such challenges had only been made in instances of inconsiderate use of the land and did not amount to a challenge to general recreational use. The Public Rights of Way and Commons Registration Officer said that in the light of these factors, she had come to the view that use had probably been as of right but that a

further investigation of the alleged challenges would be necessary before an informed conclusion could be reached.

(7) The second test was whether use of the land had been for lawful sports and pastimes. The Public Rights of Way and Commons Registration Officer said that many activities had been claimed. These included walking, playing, fishing, kite flying and bird watching. The objectors disputed this, saying that they had seen very few examples of such activities and that, in any case, it would have been difficult to play with balls or to fly kites due to the overhead pylons. There was also a dispute over the type of use. It would be necessary to establish how much of the use claimed had been in exercise of the right to walk along the public footpath. This was a very difficult question to consider on paper, whereas a non-statutory Public Inquiry would be able to provide clarity on this question.

(8) The Public Rights of Way and Commons Registration Officer said that the application had specified “the neighbourhood of Wickhambreaux village with Seaton hamlet within the localities of Wickhambreaux and Ickham parishes. This definition appeared to have satisfied the legal test relating to locality. The question of whether use had been by a significant number of inhabitants within that locality was, however, disputed – particularly in relation to the frequency of recreational use of the site. This was a matter which required further examination.

(9) The Public Rights of Way and Commons Registration Officer confirmed that the application had been made well within the two year period of grace specified by Parliament for an application to be made after the erection of fencing (which constituted a challenge to “as of right” use). The twenty year period in question was therefore 1990 to 2010. She explained that the three month period when the site had been closed off in 2001 due to the Foot and Mouth epidemic did not defeat the application because the Commons Act 2006 had specifically exempted events of this nature from the qualifying period. The evidence in respect of continuous use of the land was disputed. The objectors claimed that use had been interrupted during cattle grazing periods and during periods of flooding (particularly from 2000 to 2001). The applicants, however, considered that there had been no disruption when cattle were grazing and that the River Stour levels had been very low. They did not agree that substantial recreational use had been interrupted by flooding. The Public Rights of Way and Commons Registration Officer said that this too was a question that needed further investigation.

(10) The Public Rights of Way and Commons Registration Officer concluded her presentation by saying that as there were so many issues that were unclear, she was recommending that a non-statutory Public Inquiry should be held in order to clarify them.

(11) Members of the Panel commented that they did not feel that they had sufficient information to determine the application at this stage. The Chairman therefore asked whether those people who had previously indicated that they wished to address the Panel, still wished to do so. As no members of the public now wished to speak, the Chairman put the recommendation for a non-statutory Public Inquiry to the vote. This was carried unanimously.

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

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Kingsnorth Recreation Centre, Field View, Kingsnorth, Ashford TN23 3NZ on Tuesday, 13 December 2011.

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

ALSO PRESENT: Mr M J Angell and Mr J N Wedgbury

IN ATTENDANCE: Mr C Finch (Senior Projects Officer) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

20. Proposed Public Bridleway creation by agreement at Park Farm, Ashford (Item 3)

(1) The Members of the Panel visited the site of the proposed bridleway before the meeting. This visit was attended by the Local Member, Mr M J Angell; Mr J N Wedgbury (in his capacity as the Local Borough Councillor); and Mr N Shorter (Chairman) and Mr M Ciccione from Kingsnorth Parish Council.

(2) The Panel meeting itself was attended by everyone who was present at the site visit as well as two members of the public.

(3) The Senior Projects Officer explained that the County Council's policy was that dedication and creation agreements for Bridleways was that it satisfied one of the key principles set out in the Countryside Access Improvement Plan.

(4) Section 25 of the Highways Act 1980 enabled the County Council to enter into an agreement with any person having the necessary power for the dedication by that person of as footpath, bridleway or restricted byway in their area. In this instance, the landowners were Kent County Council and Ashford Borough Council.

(5) The Senior Projects Officer said that the proposed creation agreement satisfied the principle of "a more sensible network" in the Countryside Access Improvement Plan and also conformed to the County Council's "Growth Without Gridlock" policy for transport delivery within the County. This was because the proposed route would run through the southern perimeter of the Ashford growth area and create a direct sustainable transport link between the two primary schools and the surrounding residential area. The route would link with an existing surface path, providing the final link in the creation of a circular surfaced route through the Park Farm fields. This would be ideal for users of all abilities, as well as a route out to the wider countryside. The effect of this route would be to disperse traffic congestion.

(6) The Senior Projects Officer then described the proposed route. Its starting point (A) was at the intersection between PROW AW295 and Reed Crescent. From

there, it would pass a new bollard at Point B. It would then meet PROW AW307 and turn south east at the new bridge at Point C. It would go through a new bridle gate at Point D, pass the entrance to Furley Park Primary School at Point E and then connect with the existing bridleway (AW325) at Point F. The new bridle gate and bollards would reduce speed by cyclists and improve children's safety.

(7) The Senior Projects Officer said that in response to consultation, the Local Member, Mr Angell had expressed his support for the proposal, whilst the Local Borough Councillor, Mr Wedgbury had objected. The County Council had received 15 letters of support and 15 in objection from members of the public.

(8) The Senior Projects Officer then said that Kent Police had not objected because (although they noted the view that the proposed scheme could lead to criminals accessing neighbouring properties) the paths that were due to be improved were already in existence and were currently not a cause for concern.

(9) In response to questions from Mr Crowther and Mr Davies, the Senior Projects Officer said that it was unlikely that there would be a high degree of equestrian use and that the surfacing of the paths had been undertaken by Ashford Borough Council in part through a Section 106 Agreement provided by Ashford BC. The Borough and County Councils had been under the impression that the proposal had a great deal of support at the time this work had taken place.

(10) Mr N Shorter (Kingsnorth PC) addressed the Panel. He explained that he was the Chairman of the Parish Council, a Governor at Kingsnorth Primary School and a Borough Councillor (but not from the Ward in question). He said that the scheme had been presented by Ashford BC to the Parish Council in 2010. The Parish Council had expressed some concerns at that time in respect of health and safety (both generally and in respect of the children at the two primary schools) and over the potential for criminals to use the paths as escape routes. These concerns had resulted in elements of the bridleway being removed and other minor changes to the scheme.

(11) Mr Shorter then said that the changes made to the scheme had then been re-presented to the Parish Council by Ashford BC Officer prior to formal re-submission. The Parish Council had been mindful that existing laws and civil powers enabled control of any inappropriate usage of the network. Concerns about potential miss-use by a minority should not prevent the provision of improved facilities for many parishioners. It had therefore given provisional agreement subject to the Head Teacher of Furley Park Primary School being agreeable to the provision of a bridleway across the front entrance of the school.

(12) Mr Shorter continued by saying that the Head Teacher of Kingsnorth CEP School had written a letter of support for the scheme. This was because of the high level of current usage of the existing facility and the benefit of an enhanced "safe route to school" that would be provided for pupils from Park Farm, which provided a significant area of the school intake.

(13) Mr Shorter went on to say that at the Parish meeting when Ashford BC had re-submitted the application, the Parish Council had agreed to support the scheme. Further meetings involving the Parish Council, Ashford BC, Kent County Council and

the contractor had led to agreement on all aspects of the implementation of the scheme.

(14) Mr Shorter concluded his presentation by saying that Kingsnorth Parish Council saw the scheme as a significant improvement to the footpath and cycleway facilities being provided for the residents of the Parish, the creation of a “safe route to School” and a cost effective use of the funding that was available to the community. It therefore supported the scheme.

(15) In response to a question from Mr Davies, Mr Shorter said that the proposed bridleway would be part of a general plan to provide continuous countryside access in the Ashford area from Mersham in the east to Great Chart in the west.

(16) Mr M Ciccione (Kingsnorth PC Footpath Officer) opened his presentation with a declaration of Personal Interest as a user of land next to the proposed bridleway.

(17) Mr Ciccione then said that the population of Kingsnorth Parish had grown in recent years to 10,000 people. The old footpath network could not cater for this number of people. It was important to both expand the network and to provide upgraded all-weather countryside access to people of all ages and abilities.

(18) Mr Ciccione then said that Kingsnorth Parish was divided in two by the main road. The Parish Council had persuaded the developer of Park Farm to put in a new bridleway to link the two halves. He did not expect that it would be used by horses, and said that its main purpose would be as a legal cycleway.

(19) Mr Ciccione went on to say that the creation of the bridleway would enable the Parish Council to fence off neighbouring grazing and woodland areas that were used by dog walkers whilst providing a managed process that would enable a community of 10,000 people to retain its rural character.

(20) Mr Ciccione concluded his remarks by saying that he did not consider that criminality would be a problem and that the proposed hedging arrangements should alleviate the concerns about overlooking that had been raised by the neighbouring residents along Kestrel Close (between Points C and D).

(21) Mr J N Wedgbury addressed the Panel in his capacity as the local Borough Councillor. He was a resident of the Park Farm Estate and a Governor at Furley Park Primary School. He took his daughter to this school every day.

(22) Mr Wedgbury said that he was objecting to the proposed bridleway because (apart from the section between points E and F) it was in the wrong place and ran the risk of encouraging criminality and other anti-social behaviours.

(23) Mr Wedgbury said that he knew from personal experience that all the pupils would not use the proposed bridleway to get to school as they would take a shorter route through the middle of the estate and Reed Crescent.

(24) Mr Wedgbury continued by saying that he was an employee of the Fire and Rescue Service, and that his father had worked for Kent Police. In the light of his experiences of the work of these two services, he believed that the proposed bridleway would be used by motor motorcyclists as well as for anti-social purposes.

(25) Mr Davies commented that the Police had not objected to the proposal on the grounds of potential crime. He asked whether Mr Wedgbury had discussed his concerns with them. He also noted Mr Wedgbury's observation that a route in Tenterden had been the subject of a gating order. He said that he believed that the circumstances had been different as the path in question that day had been narrow and enclosed and had also been the subject of a considerable degree of reported anti-social and criminal behaviour. The path under discussion at this Panel meeting was much broader and more open.

(26) The Panel asked the Senior Projects Officer to summarise the objections of a local resident from Kestrel Close who had indicated at one stage that he wished to speak to the Panel. These were that the route should not have been upgraded; that the all-weather surfacing would increase the risk an unacceptable level of intrusion into their privacy by users of the route overlooking.

(27) The Senior Projects Officer said that he believed that the residents of Kestrel Close were now, in part, satisfied that their concerns about overlooking had been mitigated by the proposal to provide hedging.

(28) Mr M J Angell (Local Member) said that neither Ashford Community Safety Partnership nor Kent Police had objected to the scheme. He supported the proposal for a number of reasons. These were that it linked with the National Cycleway; that it met a local demand for cycle access across Kingsnorth; that it gave increased countryside access to the community; and that it was an inclusive scheme for people of all ages and abilities. He congratulated Mr Wedgbury on ably representing local concerns in his capacity as a Borough Councillor and then said that his perspective as the local County Councillor had to be broader. He acknowledged that the scheme would cause some inconvenience to people whose properties bordered the route (although he was glad that something was being done to improve matters for them). Their concerns needed to be set against the general benefit to the community. He said that when the scheme was considered in this light, its approval by the Panel was very important.

(29) On being put to the vote, the recommendations of the Head of Countryside Access Service were agreed unanimously.

(30) RESOLVED that approval be given to the Head of Countryside Access Service to enter into a Public Bridleway Creation with Ashford Borough Council and to provide a Deed of Dedication over Kent County Council land between Reed Crescent and the existing Bridleway AW325 at Kingsnorth, Ashford.

By: Head of Democratic Services & Local Leadership

To: Regulation Committee 24 January 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 September 2011 and 31 December 2011

1. Introduction

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

2. Transport Appeal Statistics – 2011

(2.1) For the period between 1 September 2011 to 31 December 2011 a total of 36 Home-to-School Transport appeals were submitted to 10 Transport Appeal Panel meetings. 10 were successful, (28%) at least in part (eg, time-limited assistance).

(2.2) 11 of the appellants had Local Member representation at their appeals and 16 different Members sat on the Transport Appeal Panels.

(2.3) There are 12 appeals to date at various stages of the appeals process which will need to be heard by the Transport Appeals Panel. There is also a hazardous walk to be assessed.

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 SEPTEMBER 2011 – 31 DECEMBER 2011

Grounds for Appeal	Upheld	Not Upheld	Total	% Upheld
Denominational	0	3	3	0
Distance	0	0	0	0
Not Attending NAS	6	11	17	35
16+	2	6	8	25
Hazardous Routes	1	0	1	100
Other	0	0	0	0
Low Income Criteria	0	0	0	0
TOTALS	9	20	29	31

APPEALS BY AREA: WEST: 11 - MID: 10 - EAST: 6 - O/S KENT: 2

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

1 SEPTEMBER 2011 – 31 DECEMBER 2011

Grounds for Appeal	Upheld	Not Upheld	Total	% Upheld
Denominational	0	0	0	0
Distance	1	4	5	20
Not Attending NAS	0	2	2	0
16+	0	0	0	0
Hazardous Routes	0	0	0	0
Other	0	0	0	0
Low Income Criteria	0	0	0	0
TOTALS	1	6	7	14

APPEALS BY AREA: WEST: 1 - MID: 3- EAST: 3 - O/S KENT: 0

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Update from the Commons Registration Team

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee on Tuesday 24th January 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. During the last twelve months, there have been seven Regulation Committee Member Panel meetings and a total of 18 Village Green applications have been considered. Of these, five were referred to Public Inquiry, nine were registered as new Village Greens (of which five were voluntary dedications by the landowner), three applications were rejected and one has been referred to the Planning Inspectorate for determination.
3. There are five Public Inquiries in relation to Village Green applications due to take place over the coming months. The Public Inquiry which commenced in September 2011 in relation to the Grasmere Pastures case at Whitstable has had to be adjourned on two occasions and will now take place on 30th January 2012. Similarly, the Public Inquiry which commenced in November 2011 in relation to the Herne Bay application also had to be adjourned and will reconvene on 12th March 2012. Additionally, there will be two further Public Inquiries (at Lyminge and Wickhambreaux) in the early summer, but the exact details are still in the process of being finalised.
4. There will be a further Public Inquiry taking place on 7th March 2011 in relation to the Long Field case at Cranbrook. This Public Inquiry is being arranged and administered by the Planning Inspectorate. It was agreed in relation to this particular case, at a meeting of the Regulation Committee Member Panel on 22nd February 2011, that it would not be appropriate for the County Council to determine the application on the basis of its significant interest in the outcome of the application. The County Council will therefore have no active role in the Inquiry in its capacity as the Commons Registration Authority, but it will be taking part in its capacity as the owner of the affected land. The County Council's Property Group has formally objected to the application and will be presenting a case against registration at the Public Inquiry.
5. There are currently 19 applications awaiting determination by the County Council, of which 10 are currently under investigation. It is anticipated that Regulation Committee Member Panel meetings will be arranged over the next few weeks to deal with several of the outstanding cases.

Commons Act 2006 – Pilot project

6. 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.
7. Over the last year, the County Council has initiated six proposals to correct known errors to the Registers of Commons Land and Town and Village Greens. Four of those cases, including the matter of VG235 at Wittersham, have been referred to the Planning Inspectorate for determination as required by the relevant Regulations (the County Council does not have the power to determine matters of this kind). Due to the current volume of cases being dealt with by the Planning Inspectorate, final decisions on these cases are not expected until the summer.
8. Members will recall that the County Council has also been dealing with an application from Mrs. A. Wilks to amend the Register of Village Greens for VG128, which relates to an area of beach at Seasalter. This has been an extremely emotive, time-consuming and complex matter with a long history. It was reported at the last Committee meeting in September that the matter had been submitted to the Planning Inspectorate for determination and that it was anticipated that a Public Inquiry would probably be held later this year to hear the numerous objections.
9. However, the County Council has recently learnt that, for reasons which are not entirely clear, Mrs. Wilks has now decided to withdraw her application. The poor state of the Register map and the uncertainty concerning the correct boundary of the Village Green leaves the County Council in a very difficult position when it comes to dealing with requests for information and property searches relating to this area of land. Legal advice is currently being sought as to what (if any) action the County Council should take in relation to this matter and a further update will be provided to the Committee at the next meeting in May.

Consultation on the registration of new Town or Village Greens

10. At the last Committee meeting in September, Officers reported on a consultation that had been launched by DEFRA on proposals to reform the system for registering new Town or Village Greens under section 15 of the Commons Act 2006. Members will recall that the reforms were being proposed in response to growing concerns regarding the volume, nature, cost and impact of Village Green applications, and the Government's desire to achieve an improved balance between protecting valuable open space and enabling development to occur.
11. A response to the consultation was prepared and sent on behalf of the County Council by the Cabinet Member for Customer and Communities. A copy of the full response is available from the Public Rights of Way and Commons Registration Officer on request.
12. The outcome of the consultation and any proposed legislative changes arising from this, have yet to be announced. We understand from colleagues at DEFRA that a summary of the consultation responses is due to be published by the end of January

and DEFRA's conclusions will be made available in the summer. These conclusions will be reported to the Committee in due course.

Recommendation

13. 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

Countryside Access Service

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Email: melanie.mcneir@kent.gov.uk

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

**Applications resolved by the Regulation Committee since last report
(7th September 2011)**

Description	Parish	Member(s)	Outcome
Playing Field	Marden	Mrs. P. Stockell	ACCEPTED and registered as VG260 on 11/11/11
Dawbourne Wood	Tenterden	Mr. M. Hill	REJECTED on 11/11/11

Forthcoming Public Inquiries

Description	Parish	Member(s)	Details
Grasmere Pastures at Whitstable	Whitstable	Mr. M. Harrison Mr. M. Dance	Commences 30/01/12 at Whitstable Castle
Land known as Long Field at Angley Road*	Cranbrook	Mr. R. Manning	Commences 07/03/12 at Vestry Hall, Cranbrook
The Downs	Herne Bay	Mrs. J. Law	Commences 12/03/12 at Christ Church Parish Centre, Herne Bay
Seaton Meadow	Wickhambreaux	Mr. M. Northey	Date to be confirmed
Land at Woodland Road	Lyminge	Ms. S. Carey	Date to be confirmed

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

Outstanding applications to be resolved

Description	Parish	Member(s)	Status
Round Wood at Walderslade	Boxley	Mr. P. Carter	On hold at applicant's request
Broadstairs Cricket Ground	Broadstairs	Mr. B. Hayton Mr. R. Bayford	Under investigation
Land known as Fisherman's Beach	Hythe	Mr. C. Capon	Under investigation
Land at Mountfield Road	Meopham	Mr. M. Snelling	Under investigation
Scrapsgate Open Space	Minster-on-Sea	Mr. A. Crowther	Under investigation
The former airfield	Lympne	Ms. S. Carey	Under investigation
Rammell Field	Cranbrook	Mr. R. Manning	Under investigation
Chaucer Field (at the University of Kent campus)	Canterbury	Mr. G. Gibbens	Awaiting investigation
Sandgate Escarpment	Sandgate	Mr. T. Prater	Awaiting investigation
Land at Duncan Down	Whitstable	Mr. M. Harrison Mr. M. Dance	Awaiting investigation
Land at Cockreed Lane	New Romney	Ms. C. Waters	Awaiting investigation
The Glebe Field	Goudhurst	Mr. A. King	Awaiting investigation
The Cricket Field	Marden	Mrs. P. Stockell	Awaiting investigation
Land at Ursuline Drive	Westgate	Mr. R. Burgess	Awaiting investigation
Land at Bishop's Green	Great Chart	Mr. J. Wedgbury	Awaiting investigation

From: Sonia Coventry (Public Rights of Way Officer (Definition))
To: Regulation Committee – 24 January 2012
Subject: Town and Country Planning Act 1990 – Public Rights of Way Diversion and Extinguishment Orders: Service Level Agreement with District and Borough Councils.

Summary: To seek authority to enter into a Service Level Agreement with the District and Borough Councils in order to undertake all Town and Country Planning Act Public Path Orders on their behalf.

FOR DECISION

Introduction

1. Sections 257 and 258 of the Town and Country Planning Act 1990 enable the making of Public Path Orders (“Orders”) to divert and extinguish Public Rights of Way in order to enable development to take place.

Procedure

2. The responsibility for making such Orders rests with the Planning Authority responsible for granting the planning permission. Applicants who have received detailed, or on occasions, outline planning consent, must therefore apply to that Planning Authority for such an Order. Therefore, as planning consent is granted, not by the County Council but by one of the twelve District and Borough Councils, then it is that specific Council that has to make the Order.

Background

3. Several District and Borough Councils, have in the past, mentioned to the County Council that they do not have the staff with the ability or expertise to undertake these Orders; accepting that those abilities rest with County Council staff. In consequence, difficulties have arisen and advice often sought from the County Council’s staff to overcome them. This has been time-consuming for County Council staff and diverted resources away from resolving County Council issues.
4. One such Authority where difficulties had arisen in the past was Ashford Borough Council. Having undertaken a consultation exercise into this area of work the independent consultants recommended that Ashford Borough Council approach the County Council with a view to the more experienced County Council staff undertaking this work on their behalf.

Service Level Agreement

5. Following discussions with Officers from Ashford Borough Council and having sought authority from the Regulation Committee on 18 May 2012, staff within the County Council's Public Rights of Way Definition Team have successfully undertaken the making of Town and County Planning Act 1990 Orders on behalf of Ashford Borough Council, with little impact upon current applications.
6. Due to the success with Ashford Borough Council, and following approaches from Tunbridge Wells and Dartford Borough Councils and Dover District Council, the County Councils Rights of Way Definition Team are eager to roll out this service to other District and Borough Councils. As with Ashford Borough Council, I will be given the responsibility for processing these Orders - in addition to current duties - and carrying out the necessary liaison with the relevant District and Borough Councils, assisted by another part-time member of the team where necessary.
7. As with the Ashford Borough Council model the County Council would liaise directly with developers and landowners in respect of the cost incurred in making this type of Order. The County Council is able to recover its full costs of making these Orders and has set its own appropriate fees to generate income.
8. In addition, one other major benefit is that the County Council will be able to deal with landowners and developers at the early stages of the planning process, which will go a long way in overcoming some of the problems that new development has caused to the Public Rights of Way network and a reduction in the resources that have had to be expended by the County Council in order to overcome such issues. This has certainly been the case with Ashford Borough Council.
9. It has been recognised – during the discussions with Ashford Borough Council – that it is important for a Service Level Agreement to be drawn up, which clearly sets out the roles, responsibilities and the conditions which would apply to both Authorities in this respect.
10. As with Ashford Borough Council lawyers from both the County Council and the relevant District or Borough Council will draw up a suitable Service Level Agreement. The Service Level Agreement currently in place between Ashford Borough Council and the County Council will be used as a model for future Service Level Agreements. A copy of this Agreement is attached at Appendix A.

Recommendation

11. I recommend that the County Council enter in a Service Level Agreement with any of the District and Borough Councils - who express an interest – in order to undertake, on their behalf, the making of all Orders under the Town and Country Planning Act 1990.

Background Documents:

Appendix A – A copy of the Service Level Agreement between Kent County Council and Ashford Borough Council

Contact Officer:

Sonia Coventry
Public Rights of way Officer (Definition)
Countryside Access Service
Tel: 01622 221512

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**I HEREBY CERTIFY THIS
TO BE A TRUE COPY
SERVICE LEVEL AGREEMENT**

**ON THE PROVISION OF IMPLEMENTATION AND ADMINISTRATION OF
PUBLIC RIGHTS OF WAY DIVERSIONS**

BETWEEN

ASHFORD BOROUGH COUNCIL – ENVIRONMENTAL SERVICES

AND

~~THE~~ KENT COUNTY COUNCIL – ~~PUBLIC RIGHTS OF WAY TEAM~~

This Agreement is made the 27th of May two thousand and ten

BETWEEN

- (1) ~~THE KENT COUNTY COUNCIL PUBLIC RIGHTS OF WAY TEAM (KCC - (KCC) PROW)~~ of County Hall, Maidstone, Kent ME14 1XX; and
- (2) ASHFORD BOROUGH COUNCIL ENVIRONMENTAL SERVICES (ABC - ENV SERVICES) of Civic Centre, Ashford, Kent TN23 1PL

WHEREAS

1. The parties have agreed to enter into this Agreement which sets out the principles, roles, responsibilities and accountabilities underpinning arrangements for the provision of the implementation and administration of Public Rights of Way diversions by KCC.

2. This Agreement is intended to act as a point of reference for the parties.

NOW IT IS HEREBY AGREED as follows:

3. PARTIES

3.1 The parties to the Agreement are Ashford Borough Council of Civic Centre, Ashford, TN23 1PL and Kent County Council of County Hall, Maidstone ME14 1XX together referred to as the parties.

4. STATUS OF AGREEMENT

4.1 This agreement is not legally binding but is intended to represent the clear intentions of the parties in relation to the provision of the implementation and administration of Public Rights of Way diversions by KCC on behalf of ABC.

5. PURPOSE OF AGREEMENT

5.1 The purpose of this Agreement is to:

- (a) set out in general terms the public rights of way administration and functions to be undertaken by KCC
- (b) indicate the arrangements for undertaking the relevant work
- (c) indicate arrangements for monitoring service delivery, in terms of both quality of work and turnaround times
- (d) specify basic financial arrangements
- (e) set out any other obligations of the parties in relation to the delivery of services under the Agreement.

6. COMMENCEMENT AND DURATION OF SCHEME

- 6.1 This Agreement commences on the date hereof
- 6.2 This Agreement shall remain valid until superseded by a revised agreement mutually endorsed by the authorised signatories of the parties or until termination in accordance with clause 12.1

7. DESCRIPTION OF SERVICES

- 7.1 (a) KCC shall provide Public Rights of Way advice to applicants under S257 and S258 of the Town & Country Planning Act 1990
- (b) KCC shall undertake and facilitate on behalf of ABC the statutory requirements for the making of an order under:
- (i) S257 Town and Country Planning Act 1990
 - (ii) S258 Town and Country Planning Act 1990
- with the exception of ABC's statutory requirements as listed in Clause 8 (Operational Detail)
- (c) undertake all publishing and consultation requirements of the Act
- (d) certify the adequacy and provision of suitable alternative routes as provided in consequence of the confirmed order

8. OPERATIONAL DETAIL

- (a) Applications and enquiries by applicants will be dealt with by KCC direct
- (b) Any meetings with applicants or objectors will be dealt with by KCC
- (c) Any site meetings will be arranged and handled by KCC
- (d) KCC will use plans provided by developers/applicants and, where necessary, supplement with use of its own electronic plans
- (e) Proof of Title/land ownership will be requested and considered by KCC
- (f) Public Rights of Way Orders will be drafted by KCC.
- (g) KCC will conduct informal consultations (in accordance with ABC's list of designated consultees) and respond to comments and/or objections, using its best endeavours to resolve any objection(s).
- (h) ABC will retain the authority to seal the Orders and will undertake this within the required timeframe after the informal consultation process has been completed
- (i) ABC's Head of Environmental Services will receive a copy of the Order to approve, under delegated powers, prior to sealing. KCC to brief ABC's Head of Environmental Services as deemed necessary

- (j) After sealing, formal consultation of the Order making process will be undertaken by KCC
- (k) KCC will send Deposit copies to ABC
- (l) KCC will use DX to transport Orders to ABC
- (m) ABC will arrange for Deposit copies to be held in the Customer Contact Centre for public inspection and displayed on the main ABC notice board
- (n) KCC will advertise the Orders via local newspapers and the KCC website.
- (o) All advertisements will have KCC and ABC logos to denote a service level agreement
- (p) ABC must provide ABC's corporate logo for incorporation into correspondence and advertising templates.
- (q) ABC will provide a link from its website to KCC's website
- (r) KCC will conduct a site visit and issue the Certificate where certification is required
- (s) If no objections are received after a period of 28 days, the Order is to be confirmed as (j) to (n) above
- (t) KCC will invoice developers/applicants direct for all costs associated with the provision of the service directly and will not involve ABC in this process
- (u) For unresolved objections not withdrawn within the two month negotiation period, KCC will seek the instructions of ABC as to whether the Order should be referred to the Secretary of State who will decide the matter by holding a Public Inquiry or by appointing a person to hear the representations of the objector(s). The Secretary of State then decides whether to confirm the Order with or without modification.
- (v) In respect of any legal challenges, KCC to immediately inform ABC's Head of Environmental Services who in consultation with ABC's Head of Legal and Democratic Services will determine what action shall be taken. In the event of ABC requesting KCC to undertake any legal proceedings on its behalf the costs associated with such additional service will be as agreed between the parties at that time.
- (w) Regular monitoring will be undertaken by KCC; an annual review meeting will take place between KCC PROW Team, ABC's Head of Environmental Services and a representative of the Planning Department.

9. STANDARD OF SERVICES

- 9.1 (a) Both parties recognise that the delivery of services depends upon full co-operation and openness between the parties.
- (b) KCC will provide its public rights of way advice and service with reasonable care and skill to a professional standard and to the best of its ability. KCC shall comply with and observe all lawful and proper requests which may be made for advice or and shall give such advice, information or service as is reasonably required.
- (c) The appropriate timetable for the provision of the services will depend on the particular circumstances (for example, the time taken by the Applicant/Agent in answering queries and supplying background information). KCC shall generally supply the service in a timely manner.
- (d) KCC cannot be held responsible for any delay in the delivery of services

10. RESPONSIBILITY FOR PROVIDING IMPLEMENTATION AND ADMINISTRATION OF PUBLIC RIGHTS OF WAY DIVERSIONS

- 10.1 KCC shall provide such services from within its own resources, provided that KCC shall be required to supply only such staff and resources as may be reasonably possible.
- 10.2 Selection of staff for performance of the services shall be the responsibility of KCC.

11. VARIATION

- 11.1 This Agreement may be varied by agreement in writing between the parties.
- 11.2 A proposal to add or modify a particular area or topic of work that has the potential effect of increasing the need for the provision of services by KCC will need to be discussed between both KCC and ABC and any modifications to this agreement can only be introduced with the consent of both parties

12. DURATION AND TERMINATION

- 12.1 Either party may end this Agreement by giving four months written notice to the other party.

13. NO AGENCY OR PARTNERSHIP

- 13.1 Nothing contained in this Agreement shall be construed as creating an agency or partnership relationship between the parties.

Update on Planning Enforcement Issues

Item 8

Report by Head of Planning Applications Group to the Regulation Committee on 24th January 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 7th September 2011 Regulation Committee.
2. Summary schedules of all current cases have been produced (see Appendices 1, 2 and 3). They cover unauthorised breaches of planning control and those occurring on permitted sites, primarily waste-related. The emphasis is on live and active cases along with those resolved between Meetings. Those cases resolved or 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

Change in work emphasis

5. There is a natural division of work between 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 has eased slightly of late. That is probably largely due to the recession. The level of economic activity and enforcement workload tend to go 'hand-in-hand'. The winter weather is also a factor and there is the further

deterrent effect of the cases that we have successfully enforced. Four Gun Field, Upchurch (see Schedule Appendix 1, number 11) is a notable example.

7. In addition, the Environment Agency (EA) has deployed appropriate specialists to its frontline enforcement work and is focussing their efforts on the worst waste cases. That in turn, is helping to prevent such cases from spiralling into more intractable problems. The DEFRA website of 8th December 2011 points to further resourcing:

*“A specialist environmental crime taskforce which will blitz illegal waste sites in England and Wales over the next two years has been set up by the Environment Agency. It includes former police detectives, and will work closely with enforcement partners to gather intelligence and act quickly to close illegal waste sites. The taskforce will be supported by up to **£5million of Environment Agency funding** for the first two years”.*

8. Reflecting this enforcement drive, there already appears to be a trend towards more severe court fines in the more serious cases brought by the EA. For instance, a Crown Court Judge on Monday 19 December 2011 fined a South London recycling company £191,262. That included £75,000 for each offence and £41,247 in legal costs.

Response to changes in work emphasis

9. The changes to work emphasis mentioned under paragraphs 5 to 8 above, may simply mirror current economic circumstances. It is difficult to be sure at this stage. What it does allow however, at least in the short run, is some freeing of resources along the sliding scale of enforcement from the more challenging unauthorised end towards compliance matters on permitted sites. A partial switch is already reflected in the attached Schedules and in the absence of any green confidential reports on the more protracted cases. This needs to be tempered of course by a proportionate response to on-site problems. It is important to take into account the current economic difficulties that the business community face. Balancing that however, 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.

Co-ordinating and Advisory Role

10. I am 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 role where appropriate. The ‘Bydews’ case in Maidstone (see number 3 of Schedule 1 / Appendix 1) is a good advisory example. Milton Creek in Sittingbourne and Chestnut Street, Borden, both within Swale Borough (see numbers 13 and 15 of Schedule 1 / Appendix 1, respectively) are other examples of the pooling of expertise and powers and a sharing of workloads between regulators. Landowners and operators, tend to yield and co-operate more wholeheartedly when they are presented with a united enforcement front.

Consultation on draft National Planning Policy Framework (NPPF)

11. The County Council has been consulted on the Government's proposed streamlining of national planning guidance. The intention is to bring together all current Planning Policy Guidance (PPGs), Planning Policy Statement (PPSs) and related supplementary guidance into one all-embracing and simplified document.
12. The County Council has produced a single co-ordinated response and contributed to various Peer Group responses, such as the Planning Officers Society (POS) and the National Association for Planning Enforcement Officers (NAPE).

Policy Position

13. One of the key concerns conveyed by this Authority to Government has been the potential for a policy vacuum to open-up within the planning enforcement field. Whilst the aim of streamlining national planning policy is acknowledged, it would nonetheless take away a detailed body of guidance, relied upon by staff engaged in enforcement action.
14. Of particular relevance to this Committee, is the proposed removal of PPG 18 'Enforcing Planning Control'. This forms the common and agreed basis for planning enforcement. It informs what might be expected of the service and proscribes how local authorities should carry out the function in a balanced and proportionate way. It also promotes consistency and fairness. For the moment however, it remains in force pending release of the confirmed National Planning Policy Framework (NPPF).
15. In the same context, there is limited mention of planning enforcement within the newly assented Localism Act. Nevertheless, Regional Spatial Strategy (RSS) Policies (which in the case of Kent, is the South-East Plan) will remain in force (probably until the end of 2012), pending completion of the RSS revocation procedures integral to the Act. That is alongside 'saved' policies within the Kent Waste Local Plan.
16. Should the confirmed NPPF not include sufficient policy context for planning enforcement, the County Council would need to rely on the emerging Minerals & Waste Development Framework (MWDF), our agreed Enforcement Protocol, any 'saved' waste local plan policies and any other relevant material considerations. In the case of the MWDF, I reported to the last meeting on the following draft policy which is proposed for inclusion within the document:

"The County Council will carry out its planning enforcement functions within the terms of its own Enforcement Protocol (and any subsequent variations) and specifically for waste-related matters, in light of the European Union Waste Framework Directive."

17. If eventually enshrined as County Council policy, this would act as a vehicle for developing a 'local replacement' version of the current PPG18 (Enforcing Planning Control), expanded to include case law precedents and examples of good practice gleaned from peer group networks. Either way, the Regulation Committee would have a pivotal role in the formation of such 'replacement' policy guidance. The support of Members to a set of operational principles would undoubtedly prove decisive in any subsequent enforcement action.

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

18. Village Green Policy comes under the remit of this Committee and has general planning aspects. Under the Chairman's guidance a response has now been made to DEFRA on the 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 Commons Registration and signed-off by the respective Cabinet Members.

Case focus

19. Since the last Meeting resources have been focussed on 3 sites where formal enforcement action has been taken, 5 cases where investigations are underway and a further 6 cases have been satisfactorily progressed.

Achievements / Successes [including measurable progress on sites]

Shaw Grange, Charing (Member: Richard King)

20. I reported to Members at the last Meeting that I would keep them informed of the progress in absorbing this challenging enforcement site back into its sensitive AONB setting.
21. Initial restoration is now complete with attendant control of leachate. Tree-planting and related landscaping is planned to take place during this planting season but has been set back by adverse weather, preventing heavy machinery on site. The aim is to create within available means, a landscape asset drawn from a former contravention site, close to local residents. The ideal outcome in the longer term would be for the site to be made available for low-key recreational use.

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

22. A further and conclusive achievement concerns this longstanding case of alleged waste-related activities on this former lawful brickfield site, at Upchurch. Summary particulars are given under Appendix 1, Schedule 1, No.11.
23. The site remains quiet and inactive. The County Council's Enforcement Notice has been confirmed and compliance has been achieved. Residual matters have been granted planning permission by Swale Borough Council (SBC) such as the site office, turning area and wheel-spinner.
24. SBC is now the first port of call for any question as to what planning use might be carried out under the B2 (General Industrial) Lawful Use on site. The KCC's Enforcement Notice is available to prevent the kind of unacceptable use described within its terms, which should now be in the past. All other planning and enforcement aspects now fall to SBC to manage and control.
25. At the last case conference at SBC's Offices, under the chairmanship of their Chief Executive, it was agreed that the County Council would now draw back from the case in favour of other sites. I shall however maintain contact with the Borough Council and local residents, until a more permanent planning solution is found at the site. I shall assist in

that endeavour, in the public interest but SBC is now the all-purpose lead authority in the case, covering all development management, forward planning, enforcement and environmental health issues.

26. A notable success has been achieved, with the Borough Council extending it's thanks to this Authority for its sustained and decisive intervention in the case.

New Cases, especially those requiring action / Member support

27. Eight new cases have arisen since the last Meeting.

Appendix 1 / Schedule 1: Faversham Road, Seasalter (see entry no. 2); the Former KCC Offices at Springfield (see no. 4); a former chalk pit, Wormshill (no.5); Johnson's Recycling Ltd, Folkestone (no. 10) and

Appendix 2 / Schedule 2: Lawful waste use at 2-8 Little Queen Street, Dartford (no. 3); SWEEP Kuusakoski Ltd, Gas Road, Sittingbourne (no. 4); Countrystyle Recycling, Ridham (no.5);

Appendix 3/ Schedule 3: Seal CEP School, Seal (no.2).

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

Significant on-going cases

29. I would refer Members to the 'Achievements' section from paragraphs 20 to 26 above. Four Gun Field in particular has been brought to a conclusive point, as far as this Authority is concerned. The staff time saved may now be put to the general enforcement workload reported elsewhere in these papers.

Other cases / issues of interest and requests from Members

30. I would refer Members to the extended section on 'Meeting Enforcement Objectives' between paragraphs 5 to 19 of this report, concerning a tentative change in work emphasis and a growing advisory and co-ordinating role in complex multi-agency cases. Also, the consultee responses made in fields of interest to and on behalf of this Committee

Monitoring

Monitoring of permitted sites and update on chargeable monitoring

31. 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 30 chargeable monitoring visits to mineral and waste sites and 8 non-chargeable visits to sites not falling within the chargeable monitoring regime.

Resolved or mainly resolved cases requiring monitoring

32. 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.
33. 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. An example this time is Hooks Hole, Chestnut Street, Borden (see Schedule 1, Appendix 1 and No.15).
34. There is a running list of sites which fall within this category, against which priorities are drawn and enforcement monitoring checks are made.

Conclusion

35. This report signals a measured change in emphasis (at least in the short run) from uncontrolled and overt enforcement cases to some of the more pressing compliance work on permitted sites. This in turn is being reinforced by standard and chargeable monitoring and the sharper focussing of resources by the Environment Agency. Larger and more taxing cases such as Shaw Grange and Four Gun Field are helpfully coming to a close. That is allowing further scope for our consultative and advisory work with other bodies to be developed. The County Council's enforcement workload will always take precedence but closer working with other regulatory bodies can bring benefits to all parties.

Recommendation

36. I RECOMMEND that MEMBERS:
 - (i) ENDORSE the actions taken or contemplated on the respective cases set out in paragraphs 5 to 34 above and those contained within Schedules / Appendices 1, 2 and 3.

Case Officers: Robin Gregory

01622 221067

Background Documents: see heading

Active Enforcement Cases

Schedule 1: Contraventions on (part) unauthorised sites

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
1	<p>Ashford</p> <p>DC3/AS/03/COMP/0090 Shaw Grange, Charing (Member: Richard King)</p>	<p>Previous multiple breaching of landfill permissions, Enforcement Notices and High Court Injunctions.</p>	<p>To secure restoration of the site in the public interest.</p>	<p>The landfill site has now been sealed, restored, contoured and seeded with a wild flower mix. The site is being left to settle, with leachate under active review.</p>	<p>The site is now in its planting and landscaping phase.</p>
2	<p>Canterbury</p> <p>DC3/CA/11/COMP Faversham Road, Seasalter, Whitstable (Members: Mark Dance / Mike Harrison)</p>	<p>Canterbury City Council (CCC) reported that waste materials were being buried in the shingle on the beach to the rear of The Sportsman Public House.</p>	<p>To investigate and establish whether the reported activity falls within the County Council's planning enforcement remit.</p>	<p>The waste materials were identified as spoil from the works to the causeway. The lead enforcement action is being taken by the Environment Agency, supported by CCC.</p>	<p>The waste materials have now been excavated, removed and the site restored. CCC has overall control of the situation and will monitor the remaining causeway works. I shall therefore remove from these schedules but report back on any recurrence.</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;">Maidstone</p> <p>DC3/MA/11/COMP Bydews, Farleigh Hill, Maidstone (Member: Alan Chell)</p>	<p>Unauthorised re-modelling of residential land through the importation of waste materials to raise the land in question.</p>	<p>To investigate and establish whether the reported activity falls within the County Council's planning enforcement remit.</p>	<p>Maidstone BC (MBC) has assumed the enforcement lead through service of an Enforcement Notice. The planning breach has now ceased but restoration of the land remains outstanding.</p>	<p>Advice has been sought through the local County Member Alan Chell, on an enforced route to restoration. An option I would recommend for MBC to consider would be for MBC to apply for a court mandatory injunction. If granted, that would in effect require restoration to be carried out by court order. I have forwarded such advice and in the meanwhile, I shall remove from these schedules.</p>
4	<p>DC3/MA/11/COMP Former KCC Offices, Royal Engineers Road, Maidstone (Member: Ian Chittenden)</p>	<p>Report of unauthorised importation, storage and recycling of waste materials within the grounds of the former County Council offices.</p>	<p>To investigate and establish whether the reported activity falls within the County Council's planning enforcement remit.</p>	<p>This site benefits from a temporary planning permission granted by MBC for 'B8' storage of waste materials to support the ongoing Maidstone Town Centre High Street refurbishment. There is no evidence of any waste recycling.</p>	<p>A copy of my site report has been passed to MBC, to assist in the monitoring and control of their own planning permission. In the circumstances, I now intend to remove from these papers.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
5	DC3/MA/11/COMP Wormshill / Frinstead (Member: Jenny Whittle)	Report of the unauthorised in-filling of a small chalk pit in the vicinity of Norwood Farm located in the rural area of Wormshill and Frinstead.	To investigate and establish whether the reported activity falls within the County Council's planning enforcement remit.	The EA had initially intervened, bringing an apparent close to the activity. A thorough area search confirmed that there was no further evidence of any alleged unauthorised tipping.	No further reports have been received of similar alleged unauthorised activity in this area. I therefore intend to remove from these papers.
6	Sevenoaks DC3/SE/11/COMP/ Marwood House Crockenhill (Member: Roger Gough)	The importation, depositing, land raising and storage of waste materials on agricultural land. Of late, that has included the supply of materials for construction of a security bund, apparently sanctioned by Sevenoaks DC (SDC).	To investigate and establish whether the reported activity falls within the County Council's planning enforcement remit. If not, to advise and assist in brokering a solution to the site given its scale and impact.	SDC have jurisdiction over the site, given the equestrian development, caravan park, builders' merchants and ancillary storage. A retrospective planning application for the builder's yard has been received by SDC. Inputs of materials for the bund construction have been stopped by the EA, pending further investigation.	The County Council and EA's recent and further joint intervention has brought the latest round of importation to a temporary halt. That should assist SDC in attempting to consolidate the planning position, taking any advice they may require from KCC and the EA. I shall report further at the Meeting on any new developments on site. Otherwise I shall remain on monitoring alert.

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
7	SE/10/03196/FUL. Brasted Sandpits Brasted (Member: Richard Parry)	Delayed restoration of a former sand quarry with some unauthorised infilling.	To achieve restoration to original levels, in compliance with the County Council's confirmed Enforcement Notice.	The EA pursued the errant tipping through the courts, resulting in the site being sold to the adjoining Golf Club. A planning application has since been submitted to SDC for a 9 hole par 3 Golf Course, completion of restoration and a Golf Academy.	County Council officers were consulted by SDC on the original and revised set of proposals. We have commended both as creative solutions to delayed restoration of a former sand quarry. Unfortunately, the application was refused. I hope to report to the Meeting on the prospect of any further revised proposals being submitted.
8	Shepway DC3/SH/10/COMP/A02 Keith Cornell Waste Paper Ltd, Lympne Industrial Park, Lympne (Member: Ms Susan Carey)	Alleged unauthorised waste-related recycling use on industrial land, resulting in noise complaints and related disturbance from local residents.	To achieve a reduction in the current amenity impacts through voluntary restraint, pending determination of the current application for retention of the use.	The operator has voluntarily re-located the noisy bottle recycling use away from those affected. That has provided some benefit but a continuing and general noise problem persists. The application will test in particular whether the noise issue is overriding or not?	The planning application will not have been determined by the date of this Committee. I confirm however that I shall report to the next available Meeting. That would include the outcome of any necessary discussions with Shepway DC and the EA on the pooling of amenity controls.

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
9	DC3/SH/11/COMP/A02 Moore's Turf & Topsoil Brenzett (Member: Ms Carole Waters)	Waste material stockpiles encroaching into the countryside without authority.	To arrest and retract the alleged breach.	The alleged breach has been urgently addressed within the time frame of a recent and now granted Lawful Use Certificate for inert waste processing on site.	Compliance has been reached, without the need for any formal enforcement action. The Lawful Use and related boundaries are now fixed and enforceable. I shall now add the case to my monitoring list.
10	DC3/SH/11/COMP Johnsons Recycling Ltd, Unit 1 Park Farm Close, Folkestone (Member: Richard Pascoe)	Shepway DC reported that an alleged unauthorised waste scrap metal recycling use was taking place in this 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.	In line with enforcement guidance, a retrospective planning application is expected in an attempt to regularise the use.
11	Swale DC3/SW/04/COMP/0059 Four Gun Field, Upchurch (Member: Keith Ferrin)	Alleged waste activities on a former brickfield site with an associated lawful use.	To ensure that no waste-related use is carried out on site, particularly given its sensitivity close to housing.	Compliance has either been reached with the County Council's confirmed Enforcement Notice, or planning permission granted by Swale BC.	A notable success has been achieved. The site is quiet, compliance has been reached and Swale BC has agreed to resume control. Thanks have been extended by them to Members and Officers for KCC's intervention and role in the case.

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
12	DC3/SW/11/COMP/ APM Metals Sittingbourne (Member: Mike Whiting & Alan Willicombe)	Unusual site traffic movements disrupting peak-hour flows.	To urgently alleviate the problem.	Swale BC hold jurisdiction but the operator was contacted by County officers and a practical solution found. Phased use of the site was organised by radio, using remote parking spots.	Essential site improvements (required by the EA as part of the Site Permit) have generated the temporary off-traffic issues. The EA have been pressing for early completion of the works. I am currently seeking confirmation on the state of play at the site.
13	DC3/SW/11/COMP/ Milton Creek Sittingbourne. (Member: Mike Whiting & Alan Willicombe)	Over stacking and stock-piling of site materials causing collapse of the creek bank structure, resulting in the blockage of water flow within the creek and obstruction to navigation. This partly involves alleged trespass onto Medway Ports Authority land.	To see whether enforcement of the district planning permission for production of 'growing media' (i.e. soil-based compost) at the site, warrants the further intervention of the County Council?	A joint meeting involving officers from KCC, Swale B.C., the Environment Agency and Medway Ports Authority assumed responsibility for finding a solution to the problem. There is no direct County Council remit but a team co-ordinating role has been adopted.	The pooling of powers from a range of regulatory bodies should prove sufficient to ensure a reversal of damage on site and in the water channel. Swale BC holds the lead, with technical input from the EA, Medway Ports Authority and SBC Technical Services. I shall periodically inform Members of progress on receipt of briefings from Swale BC.

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
14	KCC/SW0194/2011 SITA UK Limited Unit 15A Ridham Dock Industrial Estate (Members: Mr M. Whiting & Mr A. Willicombe)	Alleged unauthorised wood-shredding.	To seek to regularise the on-site wood-shredding activities thorough submission of a retrospective planning application.	SITA secured the use of the site earlier last year and stopped the activity. The use has since been granted retrospective planning permission at the 6 th September 2011 Planning Applications Committee.	I now intend to remove the case from these schedules, in favour of normal permitted site monitoring.
15	DC3/SW/10/COMP Hooks Hole, Chestnut Street, Borden (Member: Keith Ferrin)	Alleged unauthorised in-filling of agricultural land through the importation of and depositing of waste materials	I initially reported this case in Schedule 1 of the Regulation Committee Report submitted for the Meeting on 9 September 2010. The Committee resolved to reserve enforcement action pending the outcome of talks between the landowner and Swale BC (SBC) on a retrospective planning application and on KCC being consulted on any subsequent scheme.	Swale BC granted planning permission in July 2011 for re-profiling of the land, to help complete the overall change of use from mixed agricultural use to the keeping of horses. The outline of this planning solution was negotiated by KCC officers. Technical advice was also offered. By not being consulted however, the County Council was unable to make any further and specialised contribution.	Waste materials are now being imported to the site in order to re-profile the section of land in question. I have advised the EA so as to ensure that the imported inert waste materials are of the necessary standard and free of contamination. All other matters are for Swale BC to determine, monitor and enforce.

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
16	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	To arrest the alleged breaches and return the site to its lawful wharf-related use.	<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>Potential sea defence contracts have offered the prospect of complete removal by barge. However, the contracts have yet to materialise.</p> <p>Independent advice has been organised through Remade South-East on alternative outlets and a report is awaited.</p>	<p>I am satisfied that genuine attempts are being made by the owner / occupier to find outlets for the surplus concrete beams. That is now being assisted by Remade South East.</p> <p>Crushing of the greater quantity of waste beams is prohibited under the EN, even though that might be the landowner's preferred option.</p> <p>Notwithstanding, the overdue restoration of the site, I would seek Members' support in the overall circumstances of the site to continue to reserve Enforcement Action.</p> <p>I intend to review the situation, when the Remade report is received.</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 style="text-align: center;">Ashford</p> <p>DC3/AS/COMP/ Ripleys Scrap Metal Recycling Tennyson Road Ashford</p> <p>(Member: George Koowaree)</p>	Over-stacking of permitted metal stockpiles and related additional noise and disturbance.	To bring the stockpiles back down and in compliance.	<p>The company Managing Director has taken personal ownership of the points of issue at the site, meeting with local residents in person.</p> <p>The stockpiles were reduced on last inspection and permission has been granted for an enhanced ‘buffer-strip’, with adjoining residents, including road surfacing, improved landscaping and gated private access.</p>	<p>The over-stacking issue is being addressed more directly through the acceleration of investment into more modern and capable machinery.</p> <p>The voluntary ‘side’ (i.e. buffer-strip) improvements are underway and the high site block wall has been extended as a further amenity benefit. I shall keep Members informed of progress, since these works and the way they have come about are very much within the spirit of the newly assented Localism Act.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
2	<p>Dartford</p> <p>DA/10/1232 Easy Load Ltd Dartford Heath</p> <p>(Member: Jan Ozog)</p>	<p>Alleged unauthorised use of soil screener on site.</p> <p>Also, the cross-sectional height of machinery, recently permitted has been breached, creating a potential noise, dust and visual problem.</p>	<p>To have the screener removed.</p> <p>To assess the alleged additional amenity impacts being caused, to see if they are acceptable within planning terms. Failing that, to ensure that the recently permitted elevations are honoured.</p>	<p>The screener has now been removed off-site.</p> <p>The operators have acknowledged the use of plant different to that approved under their planning permission, admitting contravention. They have submitted a fresh application incorporating the new plant. The application is currently invalid, requiring an updated noise report.</p>	<p>Retrospective planning permission would allow for control to be recovered.</p> <p>However, if a refusal is warranted, I would seek Members continued support for the service of Breach of Condition Notices to correct any site irregularities.</p>
3	<p>DC3/DA/11/COMP Waste Recycling Centre 2-8 Little Queen Street, Dartford</p> <p>(Member: Avtar Sandhu MBE)</p>	<p>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.</p>	<p>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.</p>	<p>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.</p>	<p>The Company has responded positively to our intervention. Discussions have already turned to the subject of relocation. Attempts will be made to broker that more permanent solution to the site. I shall report further to the next Meeting.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
4	<p align="center">Swale</p> <p>DC3/SW/11/COMP Sweep Kuusakoski Ltd Waste Electronic and Electrical Equipment (WEEE) recycling,, Gas Road, Sittingbourne</p> <p>(Member: Mike Whiting & Alan Willicombe)</p>	<p>Alleged breach of operational procedures at this waste recycling facility, which was granted permission in 2007. Complaints of noise and related disturbance have been received, along with an allegation and admission of 'out of hours' working.</p>	<p>A planning application is currently being processed for a proposed extension to the site. This affords the opportunity for reviewing the existing activity in the context of proposed site revisions, including any proposed extension to the current operating hours.</p>	<p>The noise issues raised in a petition prompted by the current application are already receiving detailed attention in the context of the revised scheme, by Jacobs the County Council's noise advisors. The out of hours dimension will also need to be factored in.</p>	<p>The current application will not have been determined by the time of this Meeting. I shall therefore need to report on the decision reached at the next Meeting in May, including any measures to address any issues relating to hours of working.</p>
5	<p>SW/10/1436 Countrystyle Recycling Ltd, In -Vessel Composting (IVC) and Materials Recovery Facility (MRF), Ridham Dock Road, Iwade.</p> <p>(Member: Mr Whiting / Mr Willicombe)</p>	<p>A number of breaches were found during a visit to the site on 1 November 2011. These <u>include</u>:</p> <ul style="list-style-type: none"> • open/broken roller shutter door to the MRF (where gypsum waste is currently being processed) • open/broken roller shutter door (where shredded wood waste is being part stored) 	<p>To repair 2 broken roller shutter doors in the MRF building in order to contain waste and control dust nuisance</p>	<p>The operator has prioritised repair of both doors and I can confirm that they are now fully operational</p>	<p>This entry shows the benefit of active site monitoring, with the operator responding urgently.</p> <p>The original permission ref SW/05/1392 gives consent for IVC and MRF. The opportunity for introducing the processing of low grade wood waste as a fuel source for a biomass plant was also granted in May 2010 (ref SW/09/894). An extension to the MRF building also formed part of that consent in order to ensure this activity was contained and</p>

		<ul style="list-style-type: none"> • External processing of low grade wood waste • External storage of stockpiled shredded wood • Dust control problems and containment issues arising from those activities above. • Concrete pad outside the permission area <p>Some minor alterations to the approved site layout were also found.</p>	<p>To assess any additional amenity impacts being caused and whether they are acceptable within planning terms</p> <p>To encourage a planning application to remedy this breach and establish its relevance to the gypsum recycling activity taking place in the MRF building</p>	<p>The operator is preparing a planning application in order to regularise this activity</p> <p>[NB A recent fire has apparently destroyed the wood processing machine and a quantity of stockpiled materials. The overall extent of the damage is being ascertained].</p>	<p>did not create any noise or dust nuisance given the sensitive location of the site (i.e. Ramsar, SSSI, SPA). Neither the biomass plant nor MRF building extension have been implemented, however wood is still being processed at the site. An application is being prepared to remedy this activity which will require an assessment of any impacts associated with this external activity on the nearby designated areas.</p> <p>The site will also need to be regularly monitored along with the EA who are seeking to address dust issues on site also.</p> <p>Should retrospective and valid applications for the wood waste activity and concrete pad not be received by 31st March 2012, I would seek Members support for the service of Breach of Condition Notices to correct any site irregularities and an Enforcement Notice in relation to the concrete pad.</p>
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	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
6	<p>Tonbridge & Malling</p> <p>DC3/TM/08/COMP/0013 Aylesford Metals Co. Ltd, Mill Hall, Aylesford</p> <p>(Member: Peter Homewood)</p>	Complaints from local residents of out of hours working and visual amenity impacts from the over-stacking of scrap.	To ensure compliance with the base planning permission and related Enforcement Notice.	Relocation holds the key to resolving issues on site. A suitable alternative site has been identified and the relevant planning application is due to be considered at the 17 th January 2012 Planning Applications Committee. There is a recommendation for planning permission, subject to conditions and a S106 Agreement to bring an end to the current Mill Hall activity.	The site is being closely monitored whilst the relocation scheme is being processed. The site benefits from an outline planning permission for housing, granted by TMBC. Should permission be granted and relocation occurs, housing is the current and preferred redevelopment option for the Mill Hall site.

Schedule 3: Alleged breaches on Permitted County Council Developments

Appendix 3

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
1	<p style="text-align: center;">Swale</p> <p>Tunstall School Bredgar</p> <p>(Members: Mike Whiting & Alan Willicombe)</p>	<p>Alleged breach of planning permission, concerning informal car parking in front of the Listed School building, which itself is within a Conservation Area.</p>	<p>To help alleviate the parking issue at the site and within its village context.</p> <p>Whilst the School are not actually in breach of any planning permission, we are continuing to monitor the situation.</p>	<p>The school parking problem remains unresolved.</p> <p>No one party is in a position to remedy the situation on their own. A mutually acceptable solution will need to be brokered among local interests. Talks have taken place but have so far proved inconclusive.</p>	<p>The Diocese and the Education Authority may yet improve upon their earlier submitted planning package to incorporate some properly managed parking on the school site with high quality landscape planting to complement the Conservation Area setting.</p> <p>I intend to report back when either an application has been submitted or a workable solution has been found.</p>

	<u>Site & Case Reference</u>	<u>Alleged Breach</u>	<u>Objectives / Actions</u>	<u>Progress</u>	<u>Notes / Remarks</u>
2	KCC/SE/0472/2011 Seal CEP School, Seal (Member: Nick Chard)	A timber-framed modular building sited within the school grounds adjacent to the existing built envelope, has been erected without planning permission. The purpose was to provide suitable teaching accommodation for pupils with Special Educational Needs.	The School were invited to make a planning application to regularise the development.	A planning application was received on 1 st November 2011 and is currently being considered by this Planning Authority.	I shall report on the outcome of the retrospective planning application at the May Meeting.

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